

NEW YORK CITY  
OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS  
ENVIRONMENTAL CONTROL BOARD

HEARING  
BOARD MEETING

Training Room 143, 12th Floor  
100 Church Street, New York, New York

April 24, 2014

9:25 A.M. to 10:07 A.M.

April 24, 2014

## MEMBERS PRESENT:

Lt. Dan Albano, Esq. - Police Department  
Suzanne Beddoe, Esq., Chair, OATH  
Hon. Ernest Cavallo - Citizen Member  
Elizabeth Knauer, Esq. - Citizen Member  
Tayo Kurzman, Esq. - Fire Department  
Emily Lally - Citizen Member  
Jorge Martinez, Esq., - Dept. of Health & Mental Hygiene  
**Russell Pecunies, Esq. - Dept. of Environmental Protection**  
Thomas Shpetner, Esq. - Citizen Member  
Douglas Swann - Citizen Member  
Madelynn Liguori, Esq. - Department of Sanitation

## ALSO PRESENT:

Helaine Balsam, Esq. - Deputy General Counsel, OATH  
Denis Brogan - Assistant General Counsel, OATH  
**Kelly Corso, Esq. - Assistant Director of Adjudications,  
ECB**  
Jesse DeSalvo - Administrative Justice Coordinator  
Fana Garrick - Public Affairs Assistant, ECB  
David Goldin, Esq. - Administrative Justice Coordinator  
Joseph Hughes - Deputy Commissioner for IT, OATH  
**Petal Hwang, Esq. - Agency Attorney Intern, OATH**  
Renaldo Hylton - Executive Director, Dept. of Buildings  
Peggy Kuo, Deputy Commissioner & General Counsel, OATH  
Mark H. Leeds, Esq. - Special Counsel, ECB  
Jim Macron, Esq. - Counsel to the Board, ECB  
**Angelina Martinez-Rubio, Esq. - Associate General Counsel,  
OATH**  
Teresita O'Neill - Assistant Director for Public Data, ECB  
Peter Schulman, Esq. - Deputy Supervising Attorney,  
Appeals, ECB  
Marisa Senigo - Assistant Commissioner for Public Affairs  
& Communications  
Frances Shine - Secretary to the Board, ECB  
**Amy Slifka, Esq. - Deputy Commissioner/Executive Director,  
ECB**  
**Thomas Southwick, Esq. - Supervising Attorney, Appeals,  
ECB**

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2 (The public hearing commenced at 9:25  
3 A.M.)

4 MS. SUZANNE BEDDOE, ESQ., CHAIR, OATH:  
5 Okay, everyone, welcome. This is the April 24th  
6 Environmental Control Board Meeting. We have a  
7 quorum. And I just want to remind everyone seated  
8 at the table today that because these meetings  
9 are being recorded and then subsequently  
10 transcribed, if you could wait to be recognized  
11 before speaking. So that we continue to have  
12 clean transcript and know that we can get that  
13 without people speaking over each other. So I  
14 appreciate your cooperation.

15 Okay. Before we get to the substance of  
16 today's meeting, is there a motion to adopt the  
17 minutes from our last meeting of March 27th?

18 Okay. Thank you. Any abstentions? Renaldo.

19 Renaldo Hylton abstains.

20 So the first item on our agenda is our  
21 quarterly presentation. As all of you are  
22 familiar with, this is the quarterly data that we  
23 like to present to you that will take a look back  
24 at January, February and March for 2014; give you

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2 a snapshot of where we are and also to give you a  
3 picture of how the decisions are being handled in  
4 terms of the outcomes and percentages and so on.

5 So, Amy, are you presenting today? Amy  
6 Slifka is presenting. Will I be in the way? Or  
7 should I move over a little bit? Is that good?  
8 Okay.

9 MS. AMY SLIFKA, ESQ., DEPUTY  
10 COMMISSIONER/EXECUTIVE DIRECTOR, ECB: Okay. Good  
11 morning. Alright, as Sue said, the quarter review  
12 gives you a snapshot of where ECB is. It gives  
13 you -- tells you the number of violations  
14 received by ECB and a quarterly comparison of the  
15 violations received, heard and decisions  
16 rendered; and a look at the elapsed time from  
17 hearing to decision date and a look at the  
18 decision results for each of the issuing  
19 Agencies; and lastly, a look at the most commonly  
20 issued violations by Agency.

21 Okay. So let's begin. Okay. So  
22 violations received by ECB in the first quarter  
23 of 2014. So, for the Department of Sanitation,  
24 it's 78,425 and that's a ten percent decrease

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2 from last quarter. Department of Buildings, six  
3 percent increase from 10,760 to 11,422.

4 Department of Transportation, a four percent  
5 increase from 7,522 to 7,819. The Fire Department  
6 is a 14 percent increase from 10,508 to 12,019.

7 Department of Environmental Protection is an  
8 eight percent decrease, 3,325 to 3,062. And the

9 Department of Health and Mental Hygiene is a 27  
10 percent decrease from 6,114 to 4,442. The

11 Department of Parks and Recreation is a 23  
12 percent decrease from 1,751 to 1,356. NYPD is a

13 25 percent decrease from 6,296 to 4,726. The

14 Department of Information and Technology is an  
15 increase from 178 to 254. And the Business

16 Integrity Commission is from 12 to eight. And the  
17 Landmarks Preservation Commission is up from ten  
18 to 61, a 510 percent increase. Yes, Dan Albano?

19 LT. DAN ALBANO, ESQ., POLICE DEPARTMENT:

20 Yeah, Dan Albano. This quarter, we're being  
21 compared to last quarter or the quarter from --  
22 same quarter from first quarter from 2013?

23 MS. SLIFKA: This quarter was a  
24 comparison from last quarter.

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2 LT. ALBANO: Okay.

3 MS. SLIFKA: Okay. And now this is a  
4 quarterly comparison, comparing from first  
5 quarter 2013 to first quarter 2014. Okay?  
6 Alright.

7 So for the Department of Sanitation it's  
8 -- hold on. Bear with me for one second. Okay,  
9 it's an 11 percent increase from 70,776 to  
10 78,425. For the Fire Department it's a nine  
11 percent increase from 10,995 to 12,019. For the  
12 Department of Buildings, it's from 10,572 to  
13 11,422, which is an eight percent increase.  
14 Department of Transportation, 6,934 to 7,819;  
15 it's a thirteen percent increase. NYPD is a  
16 decrease of three percent from 4,879 to 4,726.  
17 Department of Health and Mental Hygiene is a 36  
18 percent decrease from 6,940 to 4,442. Department  
19 of Environmental Protection is a five percent  
20 decrease from 3,236 to 3,062. Department of Parks  
21 and Recreation is a 20 percent increase from  
22 1,131 to 1,356. Department of Information and  
23 Technology, 58 percent increase from 161 to 254.  
24 Landmarks from 44 to 61 is a 39 percent increase.

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2 BIC from 35 to eight is a 77 percent decrease.

3 Okay. Any questions?

4 Okay. And the total violations for  
5 again, this is comparing the first quarter in  
6 2013 to the first quarter in 2014. So the  
7 Department of Sanitation is a 34 percent  
8 decrease; so from 21,144 to 13,983. Department of  
9 Buildings, it's a three percent decrease from  
10 11,758 to 11,445. Fire Department is a 16 percent  
11 increase from 4,168 to 4,840. Police Department  
12 is a seven percent decrease from 4,272 to 3,976.  
13 Department of Environmental Protection is a 14  
14 percent increase from 3,109 to 3,546. Department  
15 of Health is a 13 percent decrease from 3,643 to  
16 3,160. Department of Transportation is a 16  
17 percent decrease from 2,236 to 1,889. DOITT is an  
18 83 percent increase from 498 to 909. Department  
19 of Parks, very marginal, like zero percent, 334  
20 to 333. Landmarks, it was a decrease of 59  
21 percent from 32 to 13. BIC was a 75 percent  
22 decrease from four to one.

23 And then we have again, comparing the  
24 first quarter of 2013 with the first quarter of

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2 2014: decisions rendered. So, for the Department  
3 of Sanitation, it decreased by nine percent from  
4 12,254 to 11,091. Department of Buildings  
5 decreased three percent from 6,409 to 6,201. Fire  
6 Department, it was up 21 percent from 3,107 to  
7 3,744. NYPD is marginal, again 2,903 to 2,905.  
8 Health is a 16 percent decrease from 3,118 to  
9 2,631. Department of Environmental Protection, a  
10 12 percent increase from 1,724 to 1,937.  
11 Department of Transportation, a 14 percent  
12 decrease, 1,550 to 1,338. Parks was a seven  
13 percent increase, 237 to 253. DOITT was a 62  
14 percent increase from 151 to 244. Landmarks was a  
15 decrease of 72 percent from 32 to nine. And BIC  
16 was a decrease from 75 percent from four to one.

17 Okay. Hearings to decisions. Okay. I'm  
18 very happy to say that in the first quarter, 90  
19 percent of our decisions were completed in less  
20 than ten days and 98.1 percent were completed in  
21 less than 20 days. And that's the time from the  
22 hearing to the decision date.

23 Okay. So this is overall comparison of  
24 the decisions rendered, the results in violation

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2 or dismissed. And it's comparing first quarter of  
3 2013 with the first quarter of 2014.

4 So in 2013, 57 percent -- 57.7 percent  
5 of all violations returned to ECB were found in  
6 violation; 41.1 percent were dismissed. In 2014,  
7 60.2 percent were found in violation; 38.7  
8 percent were dismissed. And in comparing 2013 and  
9 2014, approximately one percent of the violations  
10 are stipulated.

11 LT. ALBANO: What does that mean?

12 MS. SLIFKA: Stipulated -- Department of  
13 Buildings for example offers a stipulation; where  
14 a person can agree that they created the  
15 violation, that they admit to the violation and  
16 they agree to pay a penalty and they will comply.  
17 Buildings Department has a compliance part; where  
18 they'll comply with the violating conditions,  
19 correct the violating conditions within the 75  
20 days.

21 MR. RENALDO HYLTON, EXECUTIVE DIRECTOR,  
22 DEPARTMENT OF BUILDINGS: For a reduced penalty.

23 MS. SLIFKA: For a reduced penalty,  
24 correct. Okay. Also, Department of Environmental

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2 Protection has stipulated penalties too. So, it's  
3 part of the penalty schedule. Okay?

4 Okay. Decisions rendered after a  
5 hearing. This is broken down by Agency. So for  
6 the first quarter, this is 2014. So for the  
7 Department of Sanitation, 52 percent were  
8 dismissed; 48 percent were found in violation.  
9 For the Fire Department, 88 percent were found in  
10 violation; 11 percent dismissed. Fire Department  
11 also issues a stipulation -- offers a stipulation  
12 and it's one percent accepted that. Department of  
13 Environmental -- I'm sorry; DOB, Department of  
14 Buildings, 75.4 percent in violation; 24.5  
15 percent dismissed. Department of Environmental  
16 Protection, 66.4 percent in violation; 19.4  
17 percent dismissed. Transportation, 67 percent in  
18 violation; 33 percent dismissed. NYPD, 49 percent  
19 in violation; 51 percent dismissed.

20 LT. ALBANO: When we say dismissed, it's  
21 because the summons was facially deficient? They  
22 didn't write the right, as we discussed a couple  
23 of minutes ago the, you know, mistakes made --

24 MS. SLIFKA: Okay. Lieutenant Albano is

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2 asking questions as to why a case would be  
3 dismissed. There are various reasons. Yes, there  
4 could be a defect on the ticket on the face. For  
5 example, there's no section of law cited correct  
6 or the name of the respondent's not there or  
7 something like that. Or it could be someone came  
8 in and presented a defense on the merits, which  
9 the judge found to be credible; so they rebutted  
10 the prima facie case.

11 LT ALBANO: Do we have any way of  
12 breaking that down, drilling down on that number  
13 a little more as to which one, you know, how many  
14 are because the person presented a better case as  
15 opposed to problems with the NOV's?

16 MS. SLIFKA: We have reason codes; we  
17 have reason codes why a case is dismissed. And I  
18 believe if you go into Open Data, it does a  
19 breakdown? I'm asking someone in the audience  
20 here. Joe Hughes?

21 MR. JOSEPH HUGHES, DEPUTY COMMISSIONER  
22 FOR IT, OATH: It should be there.

23 MS. SLIFKA: It's there. So on this Open  
24 Data, which is accessible to everyone, you can

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2 look at and figure out why cases are dismissed,  
3 the reasons for dismissed.

4 MR. HUGHES: That element should also be  
5 in the nightly feed of data that your Agency  
6 receives from us through Data Share.

7 LT. ALBANO: Alright.

8 MS. SLIFKA: Yes, Tayo Kurzman?

9 MS. TAYO KURZMAN, ESQ., FIRE DEPARTMENT:  
10 Also, I'm not sure if you get the ECO-STAT  
11 reports for your Agency?

12 LT. ALBANO: Yeah, I do. I do.

13 MS. KURZMAN: But it's broken down in  
14 there.

15 LT. ALBANO: Broken down in there too?

16 MS. SLIFKA: Right.

17 LT. ALBANO: Okay.

18 MS. SLIFKA: Exactly. And David Goldin's  
19 working on that. So you could speak with David  
20 Goldin about that.

21 LT. ALBANO: Alright.

22 MS. SLIFKA: Okay? Department of Health  
23 and Mental Hygiene, 58 percent dismissed; 42  
24 percent in violation. BIC, I guess all in

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2 violation; one ticket was found in violation.  
3 Department of Parks and Recreation, 58 percent in  
4 violation; 42 percent dismissed. Landmarks, 89  
5 percent in violation; 11 percent dismissed. And  
6 DOITT, 67 percent in violation; 33 percent  
7 dismissed.

8 Okay. So now we have the most commonly  
9 issued violations by Agency. For Department of  
10 Transportation, it's: failure to obtain  
11 confirmation number and failure to comply with  
12 the terms and conditions of your permit and  
13 opening the street without a permit. For  
14 Buildings Department, it's: failure to comply  
15 with the Commissioner's order, failure to  
16 maintain in compliant manner and work without a  
17 permit. For NYPD, it's: vending in a bus stop,  
18 failure to display a license or items not in or  
19 under cart; so these are vending violations.

20 LT. ALBANO: Right.

21 MS. SLIFKA: For Sanitation, well, it's  
22 makes sense for this first quarter that it would  
23 be: snow, ice and dirt on sidewalks; failure to  
24 clean 18 inches into the street and dirty area.

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2 For Department of Environmental Protection, it's:

3 failure to submit an annual test report for a

4 backflow preventer, operating without renewing or

5 an expired operating certificate, and failure to

6 install backflow preventer. For Health, it's:

7 failure to eliminate road infestation and per

8 signs; and then it's failure to eliminate

9 conditions conducive to rodent; and it's just

10 general miscellaneous health code provisions. For

11 the Fire Department, it's: fire protection

12 systems; failed to prevent unnecessary,

13 unwarranted alarms; inspection and testing; and

14 posting of permits. For Landmarks, it's: work

15 without a certificate of approval for different

16 types of things. You know, it could be a banner.

17 It could be a sign. It could be a flag. That's

18 basically it. And for DOITT, it's: installation,

19 operation of a public payphone without a permit;

20 failure to provide working public payphones; and

21 failure to clean and maintain the payphones. For

22 BIC, it's: idling motor vehicle engine over three

23 months; failure to register wholesale or market

24 business; and loose rubbish. And for Parks, it's:

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2 failure to comply with the directions,  
3 prohibitions on the signs; unleashed or  
4 uncontrolled animals; and unauthorized presence  
5 in the park when it's closed to the public. Okay.  
6 Any questions? Okay. Thank you.

7 MS. BEDDOE: Any questions for Amy?  
8 Nothing at all? Okay. Thank you.

9 MS. KURZMAN: She forgot the appeals.

10 HON. ERNEST CAVALLO, CITIZEN MEMBER:  
11 Aren't you going to do the appeals?

12 MS. SLIFKA: Oh, I forgot the appeals.  
13 Okay. Right. We'll go back. Good point. Thank  
14 you. Okay, so the appeals; appeal violations by  
15 issuing Agency. Thank you.

16 For the Department of Sanitation, the  
17 number of violations, 531. For Buildings, 300 --

18 MS. BEDDOE: Amy, let me just clarify.

19 MS. SLIFKA: Yes.

20 MS. BEDDOE: This is the number that the  
21 Agency appealed or just the number that we  
22 received?

23 MS. SLIFKA: This is the number that the  
24 Agency appealed. No -- this is the number that we

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2 received.

3 MR. THOMAS SOUTHWICK, ESQ., SUPERVISING  
4 ATTORNEY, APPEALS, ECB: Total.

5 MS. SLIFKA: Okay.

6 MS. BEDDOE: Okay.

7 MS. SLIFKA: Clarification from the  
8 audience. Sorry about that. So this is the number  
9 of appeals we have received for the first  
10 quarter, which actually makes more sense. So for  
11 Sanitation, it's 531. For Buildings, it's 354.  
12 Fire Department, 89. Transportation, 67. Health,  
13 48. DEP, 42. NYPD, 36. Parks, 14. Oh, look, the  
14 one violation that was found in violation --

15 LT. ALBANO: It's appealed.

16 MS. BEDDOE: Okay.

17 MS. SLIFKA: They're appealing it.  
18 Anyway, and for DOITT, it's one. Okay? Okay,  
19 thank you.

20 MS. BEDDOE: Alright, thanks again.

21 LT. ALBANO: What percentage of those do  
22 you guys usually appeal? Do you know? Yeah, I'm  
23 just curious.

24 MS. BEDDOE: Okay. And as Amy mentioned,

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2 Open Data is also an incredible resource for not  
3 only the public but for the Agencies looking to  
4 get further refinement on those numbers. You're  
5 able to drill down exactly by, you know, the  
6 dismissal codes or reasons for the dismissals,  
7 etc. etc. It gives a lot of information. And it's  
8 worth just playing around with that portal  
9 because there is so much there.

10 Next up on the agenda is a presentation  
11 from our General Counsel's Office, regarding the  
12 Sanitation Penalty Schedule. Angelina is going to  
13 be presenting today.

14 MS. ANGELINA MARTINEZ-RUBIO, ESQ.,  
15 ASSOCIATE GENERAL COUNSEL, OATH: Good morning.  
16 So this proposed rule is coming from last month's  
17 proposal by the Department of Sanitation. There  
18 were some re-lettering that happened pursuant to  
19 local law 77 of 2013. So a couple of the  
20 provisions, actually four provisions in the  
21 penalty schedule that were changed. I've already  
22 told you that and this local law related to a  
23 citywide yard waste collection program by the  
24 Department of Sanitation. And the only thing

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2 that's different from the proposal that you saw  
3 last month is that the persistent violator amount  
4 in the proposal was 500. And we double-checked  
5 and really the correct amount is 400. So the  
6 proposed rule reflects that. Do you guys have any  
7 questions?

8 LT. ALBANO: No.

9 MS. BEDDOE: No? Okay. Well, with that,  
10 is there a motion to approve? Anyone against? Any  
11 abstentions? Madelynn is going to abstain. And  
12 with that, we will proceed with the CAPA process.  
13 Okay. That was quick and easy. Thank you. Okay.  
14 Next up is the DEP request for cease and desist  
15 orders. Russ Pecunies is going to present.

16 MR. RUSS PECUNIES, ESQ., DEPARTMENT OF  
17 ENVIRONMENTAL PROTECTION: Okay. Good morning.  
18 So, DEP has quite a few cease and desist requests  
19 this month. I'll start out with the noise ones  
20 and do those one at a time.

21 MS. BEDDOE: Please.

22 MR. PECUNIES: Okay. Alright. So the  
23 first one is for 265 Lafayette Ristorante, LLC at  
24 265 Lafayette Street in Manhattan. This is a

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2 restaurant called Sant Ambroeus. There has been  
3 some news coverage on this one. And the last page  
4 of the attach-, not the last page but in the  
5 enclosure there is actually a picture of the  
6 problem; which is the kitchen exhaust, which is  
7 this large silver thing that's connected to a  
8 duct. And as you can see, where they put it, it  
9 is surrounded by people's windows. And so this  
10 equipment has been cited already four times this  
11 year for excessive noise. And based on the  
12 repeated violations and the continuing failure to  
13 come into compliance, DEP is requesting that the  
14 Board issue an order to cease and desist.

15 MS. BEDDOE: Okay.

16 MR. PECUNIES: Should we do one at a  
17 time?

18 MS. BEDDOE: Let's do the noise ones one  
19 at a time. And then we can do the backflow ones  
20 otherwise because they're more standard.

21 MR. PECUNIES: Okay. That's fine.

22 MS. BEDDOE: Let's take any questions  
23 for Russ Pecunies on this particular, on this  
24 particular case. Any questions? Okay. Russ, do

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2 you want to go ahead with the next one?

3 MR. PECUNIES: Okay. The next one is  
4 Best Margarita Incorporated. Again, this is a  
5 restaurant. And this one is in Brooklyn at 172  
6 Norman Avenue. And again the problem is noise  
7 from the kitchen exhaust. And this one has been  
8 cited on four occasions since last June for  
9 excessive noise. And again based on the  
10 continuing violations and the failure to correct,  
11 DEP is requesting that the Board issue an order  
12 to cease and desist.

13 MS. BEDDOE: Okay. Any questions on Best  
14 Margarita? Okay.

15 MR. PECUNIES: The next one is another  
16 restaurant. This one is Café Tallulah, LLC at 240  
17 Columbus Avenue in Manhattan. Again, the problem  
18 is noise from a kitchen exhaust. This one has  
19 been cited three times since October; most  
20 recently, earlier this month. And again, due to  
21 the repeated violations and continuing failure to  
22 comply, DEP is requesting an order to cease and  
23 desist.

24 MS. BEDDOE: Any questions? Emily, I

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2 know you always have --

3 MS. EMILY LALLY, CITIZEN MEMBER: I read  
4 through this and --

5 MR. PECUNIES: The last one is slightly  
6 different. It is again a restaurant, Classic  
7 Cooking LLC. It is in Queens. And this one is not  
8 a kitchen exhaust. This one is related to three  
9 large refrigeration units that the restaurant has  
10 out in back of their premises. And on different  
11 occasions, we have cited violations to either  
12 one, two or all three of the units. So since they  
13 have all been in violation on different  
14 occasions, DEP is requesting an order to cease  
15 and desist that would cover the refrigeration  
16 units collectively.

17 MS. BEDDOE: I actually had a question  
18 on that, Russ. I was having a hard time visually  
19 imagining what you meant by a refrig-, like do  
20 they have like fridges outside?

21 LT. ALBANO: Yeah.

22 MR. PECUNIES: Now, these are three --  
23 they're like -- they're like out in back of the  
24 restaurant.

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2 MS. BEDDOE: Yeah.

3 MR. PECUNIES: I actually did have  
4 pictures but I don't think they're attached to  
5 this.

6 MS. BEDDOE: What do they look like?

7 MR. HYLTON: It looks like an air  
8 conditioner.

9 MR. PECUNIES: There may be a diagram of  
10 this.

11 MS. BEDDOE: Just like an air  
12 conditioner?

13 MR. HYLTON: Just like an air  
14 conditioner. And it feeds, it just cools the  
15 Freon -- the stuff that refrigerates the unit  
16 that's inside the building.

17 MS. BEDDOE: I see. Okay. Because I was  
18 thinking it was like you just ran out of space  
19 inside and then you put them outside.

20 MR. HYLTON: No.

21 LT. ALBANO: Yeah, exactly.

22 MR. PECUNIES: No, they're not like meat  
23 lockers.

24 MS. BEDDOE I was like: "Wow, can you do

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2 that?" Okay.

3 MR. PECUNIES: Yeah. No, they're not  
4 like meat lockers.

5 MS. BEDDOE: That's what I -- that's  
6 what I -- okay. Thank you for that clarification.  
7 Okay. So let us then vote collectively on these  
8 noise cease and desist requests. Is there a  
9 motion to approve all four? Anyone against? Any  
10 abstentions? Russ, of course you're abstaining?

11 MR. PECUNIES: Oh, yes, of course.

12 MS. BEDDOE: Okay.

13 MR. PECUNIES: Okay. Next, DEP has nine  
14 requests for cease and desist orders relating to  
15 boilers with expired certificates of operation.  
16 In all of these cases, the respondent's  
17 certificate of operation for their boiler burner  
18 has been expired for varying periods of time.  
19 These are all boilers that were last certified to  
20 run on Number 6 oil. And in each of these cases,  
21 DEP has issued a NOV, which has been adjudicated  
22 in violation. They have failed to comply within  
23 the 30 days that is incorporated in the decision  
24 on the NOV. And due to the fact that these

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2 boilers are operating uncertified on Number 6 oil  
3 and have been found in violation, DEP is  
4 requesting in each of these nine cases that the  
5 Board issue an order to cease and desist.

6 MS. BEDDOE: Okay. Let's open up for  
7 questions on any of these nine requests. Any  
8 facts, any information that you'd want to know?

9 MR. THOMAS SHPETNER, ESQ., CITIZEN  
10 MEMBER: C&D though is predicated --

11 MS. BEDDOE: Tom Shpetner, Citizen --

12 MR. SHPETNER: I'm sorry, Tom Shpetner.  
13 That's a predicate for shutting them off  
14 eventually, right? We're not going to shutting  
15 off boilers?

16 MR. PECUNIES: Well, the -- in terms of  
17 sealing them?

18 MR. SHPETNER: Procedurally, I mean,  
19 what -- what happens next? I guess is my  
20 question.

21 MR. PECUNIES: Well, I mean, for  
22 example, in the first batch of six; two of them  
23 failed to appear for hearings. Normally, we would  
24 go out and seal the equipment if it was a noise

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2 case or something of that nature. Both of the  
3 respondents that failed to appear were rather  
4 large managing agents that operate a lot of  
5 buildings in the City. So we just figured out  
6 sort of how to get in touch with somebody at  
7 their offices and just called them and said: "You  
8 failed to appear for the cease and desist." And  
9 they have both rescheduled. It may come to a  
10 point where we may have to, you know, go out to  
11 seal one of these things. And I think there was a  
12 question at the last board meeting as to the  
13 expense of a temporary boiler in case we did have  
14 to seal one.

15 MR. SHPETNER: Right.

16 MR. PECUNIES: And what I was told is  
17 that: Well, it varies based on the size of it and  
18 the amount of time that you rent it for. On  
19 average, it's about \$2,500 a week to rent one of  
20 those.

21 MR. SHPETNER: Okay. But we haven't  
22 reached that stage?

23 MR. PECUNIES: Hmm?

24 MR. SHPETNER: We haven't reached that

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2 stage yet?

3 MR. PECUNIES: No, not at all.

4 MR. SHPETNER: Okay.

5 MS. BEDDOE: Okay. Any more questions  
6 for Russ on the nine boiler cease and desist  
7 requests? Okay. Let's take a vote on those. Is  
8 there a motion to approve? Anyone against? Okay.  
9 Russ?

10 MR. PECUNIES: And finally, we have 28  
11 requests for cease and desist orders to -- for  
12 people, for respondents who have not complied  
13 with orders to install backflow prevention  
14 devices. And those are the same 28 requests  
15 pretty much as we have every month.

16 MS. BEDDOE: Okay. Any question on the  
17 backflows? Okay, those are pretty standard. So,  
18 is there a motion to approve? Anyone against? And  
19 Russ, of course you abstain.

20 MR. PECUNIES: Thank you.

21 MS. BEDDOE: Thank you for that. Next up  
22 we have Kelly Corso with ECB, who is going to be  
23 talking to us about pre-sealing reports.

24 MS. KELLY CORSO, ESQ., ASSISTNANT

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2 DIRECTOR OF ADJUDICATIONS, ECB: Good morning.

3 MR. SHPETNER: Good morning.

4 MS. CORSO: We have 18 pre-sealing  
5 reports for today for all which were reviewed  
6 after live hearings. All the pre-sealing reports  
7 pertain to failure to install backflow devices.  
8 Seventeen of the reports recommended that there  
9 be no sealing or other action given to  
10 respondents' compliance. The remaining pre-  
11 sealing report is for C&D order number 2013/061  
12 and this report recommends sealing. So, I'm going  
13 to discuss this in a little more detail.

14 In this case the respondent is 185-225  
15 Park Hill LLC. The premises is located at 185  
16 Park Hill Avenue in Staten Island. And this is a  
17 six-story building that has approximately 150  
18 residential units and a Laundromat. There  
19 apparently are four waterlines; two are domestic  
20 and two are fire. The case history goes back to  
21 April 1, 2011. At that time, the Commissioner's  
22 order was issued, ordering the respondent to  
23 install backflow prevention devices in his water  
24 service pipes at the premises within 30 days.

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2 Over a year later, on July 11th -- I'm  
3 sorry, July 10, 2012, DEP issued a violation to  
4 the respondent because it had failed to install  
5 the required devices. The violation was heard and  
6 sustained on March 14, 2013. The hearing was held  
7 after five reschedules and adjournments by the  
8 respondent. Again, the violation was sustained  
9 and a penalty amount of \$700 was imposed. A  
10 little over a month later on April 25, 2013,  
11 after an inspection of DEP records that indicated  
12 that no backflow device had been installed at the  
13 premises as required, the board issued a cease  
14 and desist order.

15 The order directed the respondent to  
16 appear for a special hearing on May 21, 2013 to  
17 show good cause why the water supply to the  
18 respondent's building should not be terminated or  
19 the violating devices sealed. Then after five  
20 reschedules and adjournments by the respondent,  
21 at a hearing conference on November 12, 2013, it  
22 was determined that DEP had approved plans  
23 submitted by respondent's professional engineer  
24 for four backflow devices. The hearing was then

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2 adjourned three more times for the respondent to  
3 obtain Department of Building permits. After a  
4 hearing conference on February 4, 2014, the  
5 hearing was adjourned again four times for the  
6 respondent to submit the original reports on  
7 tests and maintenance for the four backflow  
8 devices.

9 On April 1st, the pre-sealing hearing  
10 was conducted. At the hearing, the respondent's  
11 representative didn't provide any proof of  
12 compliance or progress toward achieving  
13 compliance. At the hearing, the representative  
14 stated that the last time he had spoken with the  
15 respondent's managing agent was on March 4th. At  
16 that time, the managing agent made a vague  
17 reference to modifications. The representative  
18 stated that his subsequent phone call and email  
19 to the managing agent on March 25th had not been  
20 returned. The representative also stated that he  
21 contacted the plumber on March 26th and that he  
22 received a vague statement from him that the  
23 plumber knew about the job and would let the  
24 respondent know what was going on.

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2 The representative acknowledged that he  
3 had not brought any new information to the  
4 hearing conferences for this case for some time  
5 and that he had no indication that the respondent  
6 was close to being done with the work. At the  
7 hearing, the DEP representative stated that  
8 there's a holding tank, two large boilers,  
9 complex plumbing and a Laundromat at the  
10 premises. The DEP representative recommended  
11 sealing of specific hazards to the water supply,  
12 while not cutting off the supply to residential  
13 units.

14 Based on the lengthy history of the case  
15 and the respondent's failure to comply and  
16 failure to provide a good reason for not sealing  
17 the specific hazards to the water supply, ALJ  
18 Jaffe has recommended that the specific hazards  
19 to the water supply be sealed while not cutting  
20 off the water supply to residential units.

21 MR. HYLTON: I'm sorry, Kelly. What's  
22 the address again?

23 MS. CORSO: The address is 185 Park Hill  
24 Avenue in Staten Island.

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2 MS. BEDDOE: I have a question from  
3 Ernie Cavallo.

4 MR. CAVALLO: Just technically, how do  
5 they do that? How do they seal off part of these  
6 pipes without sealing off some of the water  
7 supply to the house or to the building?

8 MS. CORSO: I'll have to --

9 MR. CAVALLO: You don't know, Russell?

10 MR. PECUNIES: I can probably --

11 MS. BEDDOE: We're going to defer to  
12 Russ Pecunies.

13 MR. PECUNIES: Yeah, this is the first  
14 time we would be doing this.

15 MR. CAVALLO: Oh, okay.

16 MR. PECUNIES: Okay. In the past, we've  
17 only -- there have only been recommendations to  
18 the Board to terminate water to buildings where  
19 terminating the water would not sort of put  
20 people out of their houses. So, because this is  
21 an apartment building, we can't recommend that  
22 the water supply be terminated because the whole  
23 building would be out in the street. So what we  
24 would do here probably for starters is just send

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2 in inspectors, possibly with police backup, and  
3 seal the laundry room. Okay? Because the  
4 Laundromat is one of the reasons why they need a  
5 backflow device. Sealing the laundry room might  
6 be enough to get them into compliance. Okay.

7 MR. CAVALLO: And you're talking about  
8 the laundro-, the commercial Laundromat or their  
9 laundry room?

10 MR. PECUNIES: It, it's probably -- it's  
11 a laundry room for people in the building I'm  
12 assuming.

13 MR. CAVALLO: Okay.

14 MR. PECUNIES: It's not -- I don't think  
15 it's a commercial Laundromat.

16 MR. CAVALLO: Oh.

17 MR. PECUNIES: There's also the other  
18 things were a holding tank and two large boilers.  
19 Okay, so we could seal those as well without  
20 putting people out of the building. They would  
21 have to get a temporary boiler. So this would be  
22 something where we would try and get them into  
23 compliance by sealing the specific equipment that  
24 was causing them to need the backflow device;

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2 instead of terminating the water supply to the  
3 whole building.

4 MS. BEDDOE: Okay. Elizabeth Knauer?

5 MS. ELIZABETH KNAUER, ESQ., CITIZEN  
6 MEMBER: Just in terms of the equipment that  
7 required the backflow device, I think we've seen  
8 in certain cases where there's been violations of  
9 not having backflow devices, that they were  
10 required for sprinkler systems.

11 MR. PECUNIES: Yeah, we would not -- we  
12 would not close a fire sprinkler system. This is  
13 not one of those cases, I don't think. They  
14 didn't mention the fire sprinkler in the list of  
15 things that -- no. So, I don't think this is one  
16 of those cases.

17 MS. KNAUER: Well, I thought it was --

18 MR. CAVALLO: It's discussed --

19 MR. PECUNIES: But we would not try to  
20 force them into compliance by sealing a fire  
21 sprinkler system.

22 LT. ALBANO: You would have to vacate  
23 the building, right? If you --

24 MS. BEDDOE: That's Dan Albano speaking.

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2 MS. KURZMAN: It depends. Maybe, maybe  
3 not. There are -- sorry, Tayo Kurzman. There are  
4 provisions for fireguards and other --

5 LT. ALBANO: Yeah, fire guards.

6 MS. KURZMAN: Yeah, there are other  
7 precautions that can be taken if a fire  
8 suppression system is out of service.

9 MS. BEDDOE: Okay. Any other questions  
10 for Kelly on this particular 185 Park Hill case?  
11 Okay. And then the other 17 you said were --  
12 there was no recommendation for sealing?

13 MS. CORSO: Correct.

14 MS. BEDDOE: Okay. So let us take a  
15 vote, first of all, on the 17 that don't require  
16 any sealing. Is there a motion to approve those  
17 17? Anyone against? Abstentions? Russell  
18 Pecunies. And let us take a vote on the  
19 recommendation for the 185-225 Park Hill LLC  
20 matter. Anyone in favor? Anyone against? And Russ  
21 abstaining. Okay. Thank you for that.

22 Okay. And with that, we will now take a  
23 vote to move into executive session to discuss  
24 litigation. Is there a motion to go into

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2 executive session? Thank you everyone. And anyone  
3 who is not part of OATH ECB will have to leave us  
4 temporarily. Okay. We're now in executive  
5 session.

6 [OFF THE RECORD]

7 [ON THE RECORD]

8 MS. BEDDOE: We're back to public  
9 session? Yes, okay, we can resume recording.  
10 Okay. And we are back in public session. Just as  
11 a matter of procedure, let's just make sure that  
12 anyone who stepped out during executive session  
13 isn't waiting to return to the room. Can someone  
14 check for me?

15 Okay. I don't think there's anyone who's  
16 going to be returning or joining us. So, let us  
17 proceed with the votes on the appeals. There were  
18 two appeal panels. One from April 3rd and the  
19 other from April 17th. And is there a motion to  
20 approve the appeals decisions from both of those  
21 panels? Okay. Thank you very much.

22 Any other business we need to address  
23 before we adjourn? Is there a motion -- oh, I'm  
24 sorry. Renaldo Hylton?

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2 MR. RENALDO HYLTON, EXECUTIVE DIRECTOR,  
3 DEPARTMENT OF BUILDINGS: How about the access to  
4 this building for the board members? Can  
5 something be arranged for us in terms of, you  
6 know, instead of having to join --

7 MS. BEDDOE: What is the process for you  
8 getting in? You have to sign in?

9 MR. SHPETNER: It's a bit of a process.  
10 You've got to sign in at the desk. But then  
11 you've got to be admitted --

12 MR. HYLTON: Every time you take a  
13 photo.

14 MR. SHPETNER: Right. Take a photo.  
15 Present I.D. But then you need to card swipe to  
16 get past one of these doors. And so you need to  
17 get some aid from the court officer or whatever  
18 that fellow is doing there by the elevator.

19 MS. BEDDOE: Oh, I see.

20 MS. KNAUER: And there was supposed to be  
21 someone stationed there.

22 MS. BEDDOE: Elizabeth Knauer is  
23 speaking.

24 MS. KNAUER: Oh, I'm sorry.

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2 MS. BEDDOE: That's okay.

3 MS. KNAUER: There was supposed to be  
4 someone stationed there. But I guess when that  
5 person is bringing someone else back, if you  
6 arrive --

7 MS. BEDDOE: Oh, there's no one to swipe  
8 you in?

9 MS. SHPETNER: Right. And --

10 MS. BEDDOE: Let us check with the  
11 building security protocol and see what we can  
12 arrange to facilitate the Board, the board  
13 members getting in and out. I don't know that  
14 we're going to be able to issue building I.D.'s  
15 obviously. But let's see if there's something a  
16 little, something in between what we have now.  
17 But if we can issue I.D.'s, obviously I'll look  
18 into that.

19 MS. KNAUER: Because just --

20 MS. BEDDOE: But we'll try to arrange  
21 that for next time. Elizabeth?

22 MS. KNAUER: Just because I think it was  
23 also creating a bit of a hassle for the staff;  
24 just because there weren't enough people.

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2 MS. BEDDOE: They were kind of ushering  
3 you in one --

4 MS. KNAUER: They keep shuttling people  
5 in.

6 MS. BEDDOE: -- one by one.

7 MS. KNAUER: Yeah.

8 MS. BEDDOE: And Tom?

9 MR. SHPETNER: And, yes. There are  
10 actually two doors you need to be swiped through.

11 MS. BEDDOE: Yes.

12 MR. SHPETNER: One of them was ajar  
13 somewhat; so I was able to make it.

14 MS. BEDDOE: Yes.

15 LT. ALBANO: \$700,000 fine.

16 MS. BEDDOE: Apparently in this new  
17 building, there's an incredible wind tunnel  
18 effect in the hallway.

19 MR. SHPETNER: Oh, fair enough. Yeah,  
20 right.

21 MS. BEDDOE: Yeah. So there's an  
22 engineering defect. But there you go.

23 MR. SHPETNER: That's Renaldo's issue.

24 MS. KURZMAN: Hopefully, not mine if the

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2 door hasn't closed.

3 MR. SHPETNER: Yeah, right.

4 MS. BEDDOE: Yeah. So, anyway is there a  
5 motion to adjourn? Okay. Thank you everyone. And  
6 I will see you next month.

7 (The public hearing concluded at 10:07  
8 A.M.)

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CERTIFICATE OF ACCURACY

I, Andrew Slawsky, certify that the foregoing transcript of Environmental Control Board on April 24, 2014 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Certified By



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Date: April 25, 2014

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