

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

June 26, 2014

9:20 A.M. to 10:15 A.M.

June 26, 2014

## MEMBERS PRESENT:

Lt. Dan Albano, Esq. - Police Department  
 Robert Carver, Esq. - Citizen Member  
 Hon. Ernest J. Cavallo - Citizen Member  
 Renaldo Hylton - Exec. Dir., Dept. of Buildings  
 Elizabeth Knauer, Esq. - Citizen Member  
 Tayo Kurzman, Esq. - Fire Department  
 Emily Lally - Citizen Member  
 Thomas Shpetner, Esq. - Citizen Member  
 Jorge Martinez, Esq., - Dept. of Health & Mental Hygiene  
**Russell Pecunies, Esq. - Dept. of Environmental Protection**  
 Douglas Swann - Citizen Member

## ALSO PRESENT:

Julie Amadeo - Intern, ECB  
 Zoe Atlas - Intern, OATH  
 Steven Ballew - Intern NYPD  
**Helaine Balsam, Esq. - Deputy General Counsel, OATH**  
 Denis Brogan - Assistant General Counsel, OATH  
 Caitlin Corcoran - Intern, Dept. of Environ. Protection  
 Ellen Cooper - Department of Sanitation  
 Jesse DeSalvo - Administrative Justice Coordinator  
 Fana Garrick - Public Affairs Assistant, ECB  
 David Goldin, Esq. - Administrative Justice Coordinator  
 Katherine Harrigan - Intern, NYPD  
 Megan Houston - Intern, Dept. of Environ. Protection  
**Petal Hwang, Esq. - Agency Attorney Intern, OATH**  
 Kyoung Jung - Intern, OATH  
 Maria Kalousi-Tatum - Intern, Dept. of Environ. Protection  
 Mark H. Leeds, Esq. - Special Counsel, ECB  
 Jim Macron, Esq. - Counsel to the Board, ECB  
 Maria Marchiano, Esq. - Senior General Counsel  
 Kyle Madden-Peister Intern, Dept. of Environ. Protection  
 Amelia Maddox - Intern, OATH  
 Dallas O'Dell - Intern, Dept. of Environ. Protection  
 Kelsey Penrose - Intern, ECB  
 Ali Raymond - Intern, ECB  
 Peter Schulman, Esq. - Deputy Supervising Attorney, Appeals, ECB  
 Marisa Senigo - Assistant Commissioner for Public Affairs  
 & Communications  
 Amy Slifka, Esq. - Deputy Commissioner/Executive Director, ECB  
 Thomas Southwick, Esq. - Supervising Attorney, Appeals, ECB  
 Ron Su - Intern, ECB  
 Andrew Tabenkin - Intern, OATH  
 Helen Terrero - Intern, ECB  
 Bianca Vitale - Intern, NYPD  
**Eftyhia Xidias, Esq. - Hearing Officer, ECB**

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2 (The public hearing commenced at 9:20  
3 A.M.)

4 MS. AMY SLIFKA, ESQ., DEPUTY  
5 COMMISSIONER/EXECUTIVE DIRECTOR, ECB, OATH: Is  
6 there a motion to approve? Okay. Any abstentions?  
7 No abstentions. Alright. And now this is a  
8 Russell Pecunies show -- his show, his meeting.  
9 So --

10 MR. RUSSELL PECUNIES, ESQ., DEPARTMENT  
11 OF ENVIRONMENTAL PROTECTION: Is the PowerPoint  
12 ready to go? Or I can do the other penalty  
13 schedule thing first if the PowerPoint is not --

14 MR. MICHAEL HARRIS, OATH IT: They're  
15 still adjusting it. So --

16 MS. SLIFKA: They're still adjusting it?  
17 Alright. Do you want to go forward with the  
18 penalty schedules first. And then we'll go with  
19 the other part.

20 MR. PECUNIES: Penalty schedule first?  
21 Okay.

22 MS. SLIFKA: Okay.

23 MR. PECUNIES: Okay. Good morning. DEP  
24 has for the Board's consideration this month

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2 several requests for changes to penalty  
3 schedules. There are changes to the air code  
4 penalty schedule. The first one pertains to a new  
5 rule that took effect in February, relating to  
6 posting requirements for dry cleaners.

7 This rule was promulgated because of the  
8 growing use of so-called green cleaning agents at  
9 dry cleaners as alternatives to Perc, which is  
10 the usual substance that's used. The use of Perc  
11 is being phased out. Many dry cleaners are now  
12 using these new solvents. Many people had no idea  
13 what these solvents were. And so in order to  
14 address that, the current posting requirement,  
15 which basically just said that you have to post  
16 what the State requires for the use of Perc, was  
17 amended so that dry cleaners that don't use Perc  
18 now have to post something that has a link that  
19 people can go to, to see the material safety  
20 datasheet for whatever chemical or chemicals they  
21 are using.

22 We have obviously not begun to enforce  
23 this yet, even though it took effect in February.  
24 There is an extensive outreach effort to the dry

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2 cleaners that has been going on for months and  
3 will continue to be going on for a while, while  
4 this change to the penalty schedule goes through  
5 the CAPA process.

6 So for the new subdivisions, the  
7 existing requirement to post the State sign is  
8 still in effect and that is 12-18A. And there is  
9 an existing penalty for that which remains  
10 intact. For the new subdivisions, 12-18B, C and  
11 D, the Department is proposing a first offense  
12 penalty of \$220, a second offense penalty of \$440  
13 and a default penalty of \$875. And those numbers  
14 come from the minimum and maximum in the air code  
15 penalty schedule that apply to basically all  
16 other sections. So do we want to do these one at  
17 a time or separately?

18 MS. SLIFKA: I think we should do them  
19 one at a time.

20 MR. PECUNIES: One at a time?

21 MS. SLIFKA: Okay. So are there any  
22 questions on this?

23 MR. PECUNIES: Yeah?

24 MS. ELIZABETH KNAUER, ESQ., CITIZEN

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2 MEMBER: I actually have a question about the  
3 rule. When, when I would just look at the excerpt  
4 that was presented -- I'm sorry about my voice;  
5 I'm sorry, it's Elizabeth Knauer, Citizen Member.

6 MR. PECUNIES: That's okay.

7 MS. KNAUER: When I just look at the  
8 excerpt that was provided in the materials, it  
9 suggests that subdivision A still applies even to  
10 those dry cleaners that aren't using Perc. I  
11 mean, it's just reading the plain language of it,  
12 that you would still have to provide the State  
13 notice regarding Perc even if you're not using  
14 it; is that the case?

15 MR. PECUNIES: Well, no. My understanding  
16 is that the State sign and I'll take a look at it  
17 -- we'll take a look at it, if the rule needs to  
18 be fixed, then we'll; but my understanding is  
19 that the State rule is for -- is for Perc. But if  
20 that's -- that's not the way it reads to you?

21 MS. KNAUER: Well, it just says the  
22 facility owner must post the notice required by  
23 the State rules --

24 MR. PECUNIES: By State law.

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2 MS. KNAUER: -- in a conspicuous  
3 location. So are you saying that the State -- the  
4 State law only --

5 MR. PECUNIES: The State sign is for  
6 Perc.

7 MS. KNAUER: It's only -- but it's only  
8 required for dry cleaners that use Perc?

9 MR. PECUNIES: That use Perc, yes.

10 MS. KNAUER: Okay, okay.

11 MR. JORGE MARTINEZ, ESQ., - DEPT. OF  
12 HEALTH & MENTAL HYGIENE: Jorge Martinez,  
13 Department of Health. How come the penalty  
14 amounts for the State notice are slightly higher  
15 than the penalty amounts for the City notice, at  
16 least with respect to the first offense?

17 MR. PECUNIES: One of the things that  
18 the dry cleaning industry was told is that if we  
19 did this rule that the penalties will be the  
20 minimum possible penalties. So we did the rule. A  
21 lot of the dry cleaners were somewhat unhappy  
22 about it. Although even all it does is actually  
23 require them to print out one piece of paper and  
24 put it up. But we, we had agreed that we would

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2 ask for the minimum penalty and that's why we're  
3 asking for the lowest possible penalty.

4 MS. SLIFKA: Any other questions? Okay.  
5 Let's take a vote on this schedule. All in -- is  
6 there a motion to approve? Okay. All in favor?  
7 Okay. I think that's everybody. No abstentions?  
8 Okay. Alright. So, we'll go forward on this.  
9 Please continue.

10 MR. PECUNIES: Okay. The next one is  
11 also an air-related one. It is for -- pertains  
12 to, to new rules that have recently been  
13 promulgated; the first being under Chapter Two of  
14 DEP's rules. This is a very extensive rule that  
15 had dated back to the 1970's. It set various  
16 engineering criteria for boilers. It's -- it had  
17 become very outmoded. So it was completely  
18 overhauled. And it now requires boilers to be  
19 periodically, actually annually tuned up and  
20 tested. The only charging section in the rule is  
21 really the requirement under 209, that there be  
22 records maintained of that tune-up and that test.

23 In addition there was also a recently  
24 promulgated rule on emergency generators. Again,

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2 the charging section in the rule is the section  
3 that requires recordkeeping. So for these new  
4 recordkeeping requirements, DEP is requesting  
5 additions to the air penalty schedule under 2-09  
6 and 40-02B, calling for a first offense penalty  
7 of 350, a second offense penalty of 545 and a  
8 default penalty of 875. These are the same as  
9 existing air code recordkeeping related  
10 penalties.

11 MS. SLIFKA: Any questions? Renaldo  
12 Hylton?

13 MR. RENALDO HYLTON, EXECUTIVE DIRECTOR,  
14 DEPARTMENT OF BUILDINGS: Yeah, I have questions  
15 on it. This is Renaldo -- Renaldo of DOB. The  
16 stip offers the same as the offense -- the first  
17 offense?

18 MR. PECUNIES: That's the way -- under  
19 air and noise the stip amount and the penalty  
20 amount are the same.

21 MR. HYLTON: Okay.

22 MR. PECUNIES: There's no reduction.

23 MR. HYLTON: I just have a question  
24 about emergency generators. This is still in the

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2 commercial use?

3 MR. PECUNIES: Hmm?

4 MR. HYLTON: Emergency generator -- is  
5 this for like the first, if you may have a home  
6 and a emergency generator and these are done by  
7 --

8 MR. PECUNIES: No. Well, for like a home  
9 generator, it would fall below the threshold.  
10 These are like for the emergency generators like  
11 at our sewage treatment plants and facilities  
12 like that.

13 MR. HYLTON: Okay, got it.

14 MR. PECUNIES: Yeah.

15 MS. SLIFKA: Any other questions? Is  
16 there a motion to approve? Alright. All approve?  
17 Any abstentions? Okay. One abstention.

18 MR. PECUNIES: Okay. And then the last  
19 one under the air penalties schedule relates to a  
20 local law that was enacted back in 2010, that  
21 we're going to be starting to enforce. And this  
22 relates to the deliveries of heating oil;  
23 specifically two, four and six oil. And these  
24 oils now must contain at least two percent

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2 biodiesel by volume. The penalties provisions  
3 that were put in the local law are very specific  
4 for the use of oil that does not contain at least  
5 two percent biodiesel. The law requires that the  
6 penalties be as per Schedule E, which is an  
7 existing schedule and the penalties depend on the  
8 size of the equipment and BTU.

9 And for the delivery of such oil, the  
10 penalties again are explicitly set forth in the  
11 law. For a first offense, the penalty is \$2,000.  
12 A second offense, the penalty is \$4,000. And in  
13 both cases, it would be plus an aggravated  
14 penalty for excess profit. This is something that  
15 the City Council has put in several air code  
16 provisions. And it would require a calculation of  
17 how much the supplier of the fuel had profited by  
18 not putting enough biodiesel in it. Again, I'm  
19 not sure how that would actually work in  
20 practice. It's never come up so far with any of  
21 these provisions but that is the explicit  
22 language in the bill. So that's what we have to  
23 ask for in the -- in the penalty schedule.

24 MS. SLIFKA: Any questions? Dan Albano?

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

3 Dan Albano. I notice the fuel oil refers to is  
4 two, four and six. Wasn't there a change to the  
5 type of fuel there that you have to use?

6 MR. PECUNIES: In terms of just in  
7 general?

8 LT. ALBANO: Right.

9 MR. PECUNIES: We're going to actually  
10 get to that. Yes. Six is going to be out as of  
11 next year.

12 LT. ALBANO: Right.

13 MR. PECUNIES: And four will be banned  
14 in 2030.

15 LT. ALBANO: Right. Okay, thank you.

16 MS. EMILY LALLY, CITIZEN MEMBER: I was  
17 --

18 MS. SLIFKA: Oh, Emily Lally, Citizen  
19 Member?

20 MS. LALLY: I was just wondering who the  
21 penalty and violation gets written to? Is it  
22 possible that the owner or who person who's  
23 getting the delivery is charged? Or is it only on  
24 the oil company?

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2 MR. PECUNIES: Oh, could you repeat the  
3 question?

4 MS. SLIFKA: Oh, she wanted to know who  
5 is going to be issued the violation? Will it be  
6 the person getting the delivery? Or will it be  
7 the person delivering -- the oil company  
8 delivering the oil?

9 MR. PECUNIES: The enforcement --  
10 there's a separate provision to enforce again for  
11 use and for delivery. We would -- I would think  
12 that it would be primarily targeted at the person  
13 who is supplying the oil that didn't comply.  
14 People using it might not even be aware that what  
15 they were getting from the supplier was not in,  
16 you know, in compliance with the law. So, I think  
17 if we ever do enforce this, it would be much more  
18 likely that we would do it against the supplier.  
19 But the, the -- what, the way the law was passed,  
20 it provides for specific penalties for both. So  
21 --

22 MS. SLIFKA: Elizabeth --

23 MS. KNAUER: -- Knauer, Citizen Member.  
24 I just had a question about the third and

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2 subsequent offense. There are no penalties listed  
3 for that. Does that mean that --

4 MR. PECUNIES: They were not set forth  
5 in the law.

6 MS. KNAUER: So that it would just be  
7 the same for the second offense?

8 MR. PECUNIES: We would -- if we, if  
9 anybody ever violated this more than twice, they  
10 would just be cited again as a second offender.  
11 Although I would think if it was a supplier and  
12 they were habitually doing this, then it might be  
13 referred to other -- potentially to other law  
14 enforcement, besides getting a notice of  
15 violation.

16 MS. SLIFKA: Any other questions? Is  
17 there a motion to approve? Okay. All approve?  
18 Vote for approval? I think that's everybody.  
19 Okay, that's everybody. Any abstentions? Oh, one  
20 abstention. I'm sorry.

21 MR. PECUNIES: Okay. The next one is for  
22 an addition to the asbestos penalty schedule. And  
23 this relates to a new law that the Council passed  
24 in January, overriding Mayor Bloomberg's veto of

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2 it in December. This establishes a new program,  
3 which DEP is required to administer, for  
4 registering individuals as master environmental  
5 hazard remediation technicians.

6 And in order to get this certificate,  
7 one has to be a licensed asbestos handler, a  
8 licensed lead abatement worker. And you must  
9 complete specified training in hazardous  
10 materials, microbial remediation, water damage  
11 restoration, fire damage restoration, PCB  
12 awareness, lead-borne pathogens and infection  
13 control. And once you have completed all of these  
14 trainings, you would submit the evidence of all  
15 of this to DEP. And DEP would then issue you this  
16 certificate. I would point out that the  
17 certificate itself does not entitle you to do  
18 anything; that the other trainings are what  
19 entitle you to do the various things.

20 There is only one charging section in  
21 the new law, which is 24-10-02C; which makes it  
22 unlawful to say that you are one of these people  
23 when you are not in fact one of these people. The  
24 law provides for a minimum penalty of \$1,000 and

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2 no maximum penalty. Since the asbestos control  
3 program is going to be administering this  
4 program, what we decided to do is to establish  
5 penalties that were similar to those in the  
6 asbestos penalty schedule. So for the first  
7 offense, it would 1,200, with a stipulation offer  
8 of a thousand. Second offense would be 2,400 with  
9 a stipulation offer of 1,500. And the default  
10 penalty would be \$10,000.

11 MR. HYLTON: I have a question on this.  
12 Renaldo Hylton from Buildings. So if this title  
13 doesn't entitle you to anything, what would make  
14 someone hold them self out to be a master  
15 environmental hazardous --

16 MR. PECUNIES: It, it appears that this  
17 bill was something that the environmental  
18 contractors were pushing for, specifically the  
19 unionized ones. Many of these trainings that you  
20 need to get this certificate are only available  
21 through union administrated programs. So that  
22 appears to be the reason why they passed this  
23 bill. I assume that they want to hold their  
24 workers out as having this certificate for sort

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2 of marketing purposes.

3 LT. ALBANO: And so you can charge more.

4 MS. SLIFKA: Right.

5 MR. HYLTON: I'm just wondering how does  
6 DEP intend to like even --

7 MR. PECUNIES: We intend to -- we are  
8 setting up a program. And if people come into us  
9 with all these certificates that they have done  
10 all these trainings, we will give them this  
11 registration. And again, it doesn't entitle you  
12 to do anything that you wouldn't ordinarily  
13 otherwise be entitled to do. So, we really do not  
14 have any enforcement type of program in mind.  
15 It's more of just a license issuing program at  
16 this point.

17 MR. HYLTON: Right. Besides this, so  
18 that's -- my point is why do we need to develop a  
19 penalty schedule for it? Why --

20 MR. PECUNIES: Because the law does  
21 provide that it's illegal if you hold yourself  
22 out to be one of these people if you're not one  
23 of them. And that it's really the only -- it's  
24 the only charging section in the law. In the

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2 unlikely event that anybody ever did that, we  
3 decided that we should have a penalty available.  
4 I mean, I, I don't know whether we'll ever issue  
5 a ticket for this. But --

6 MR. HYLTON: And you have no miscellan-,  
7 I'm sorry, I don't know about your penalty  
8 schedule for this specifically; but do you have  
9 like a miscellaneous charging section that you  
10 could technically --

11 MR. PECUNIES: No. Because this, this  
12 law has a penalty provision in it that says a  
13 violation of this law shall carry a minimum  
14 penalty of \$1,000. There's no maximum but it says  
15 a minimum of 1,000. So, since the asbestos group  
16 is going to administer this, we decided to just  
17 basically use the lowest category of asbestos  
18 penalties.

19 MS. SLIFKA: Any other questions? Is  
20 there a motion to approve? Okay. All approve?  
21 Vote for approval? How many do we have now? One,  
22 two, three, four, five, six. Any abstentions?  
23 Two. Any no's? And one no.

24 MR. PECUNIES: That's a total of nine.

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2 MS. SLIFKA: Alright, who did we miss?  
3 Okay. All approve? Could we get it again? Eight.  
4 Abstentions? We'll just go through it again. Two.  
5 And one no. That's good? Okay.

6 MR. PECUNIES: And finally we have a  
7 section in the asbestos rules that obviously is  
8 not issued very often. But we recently discovered  
9 that it had been omitted from the asbestos  
10 penalty schedule. It probably has been so omitted  
11 for a long time: 1-91N, which relates to proper  
12 installation of air ducting. And we're just  
13 requesting that the Board add that to the  
14 asbestos penalty schedule at the lowest level of  
15 penalty.

16 MS. SLIFKA: Any questions? Okay. Motion  
17 to approve? Okay. All approve? Any abstentions?  
18 [Unintelligible][00:19:37].

19 MR. PECUNIES: And obviously, I abstain  
20 on all of these, right?

21 MS. SLIFKA: Right. Like obviously.

22 MR. PECUNIES: Obviously.

23 MS. SLIFKA: Alright. Okay. Russ, you're  
24 up again. I think we have --

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2 MR. PECUNIES: Here's the PowerPoint.

3 MS. SLIFKA: We have the PowerPoint?

4 Alright.

5 MR. PECUNIES: We have the slides.

6 MS. SLIFKA: We do have the slides on  
7 the printout.

8 MR. PECUNIES: Everybody has the  
9 handout.

10 MS. SLIFKA: Yes. We put them all on  
11 there.

12 MR. PECUNIES: The DEP [unintelligible]  
13 [00:20:13].

14 MS. SLIFKA: Alright. Well, as we wait  
15 to find out if we have the PowerPoint  
16 presentation up; Russ was going to go forward on  
17 the request for C&D's.

18 MR. PECUNIES: Okay. So this month in  
19 terms of cease and desist requests, DEP has 20 --  
20 the usual 28 requests for cease and desist orders  
21 relating to failure to install backflow  
22 prevention devices. So, those all follow the  
23 usual pattern. So, if anybody has any questions  
24 about any of those?

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2 MS. SLIFKA: Any questions? Okay. Is  
3 there a motion of approve? And all approve? Okay.  
4 And Russ abstains.

5 MR. PECUNIES: Okay. Then under the  
6 noise code, there are two requests for cease and  
7 desist orders. The first is relating to Fav or  
8 Fave Pizza Corp. at 186 Columbus Avenue. This  
9 restaurant has been cited on four occasions for  
10 noise from its kitchen exhaust; most recently in  
11 May. And based on the repeated violations and  
12 continuing failure to come into compliance, DEP  
13 is requesting an order to cease and desist.

14 I can do the other noise one or we can  
15 do the noise one separately?

16 MS. SLIFKA: Does anybody have any  
17 questions on this one? No. But you can do them  
18 both together.

19 MR. PECUNIES: Do them both? Okay. The  
20 other one relates to the 7/11 located at 170  
21 Avenue A. And this one is for noise from the  
22 refrigeration system. It has been cited three  
23 times, most recently also in May. And again due  
24 to the repeated violations and continuing failure

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2 to comply, DEP is requesting an order to cease  
3 and desist.

4 MS. SLIFKA: Any questions? Okay. Is  
5 there a motion to approve? Okay. And all approve?  
6 Any abstentions? You're approving?

7 MR. HYLTON: I approved.

8 MS. SLIFKA: Okay. Alright. And Russell  
9 abstains.

10 MR. PECUNIES: And lastly, we have I  
11 believe 23 requests for cease and desist orders  
12 relating to failure to have operating  
13 certificates for boilers using number six fuel  
14 oil. The increase in the number of these requests  
15 and there will probably continue to be this many  
16 requests at every Board meeting for about the  
17 next year or so is the reason why we had decided  
18 to do this PowerPoint. But we have 23 of these  
19 today. These are all locations where the current  
20 certificate of operation is expired. It is for  
21 use of number six fuel oil. Respondent has been  
22 given the notice of violations, been adjudicated  
23 in violation. The time for correction has passed  
24 and they still have not renewed the certificate

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2 for another type of fuel.

3 MS. SLIFKA: Okay. There's a question.

4 MR. DOUGLAS SWANN, CITIZEN MEMBER:

5 Douglas Swann, Citizen Member. I just wanted to  
6 know if you are maybe to consider to target areas  
7 in Harlem and the Bronx first, because they have  
8 historically high asthma rates?

9 MR. PECUNIES: Well, with -- when, when,  
10 if, when we do the PowerPoint and we look at the  
11 maps, you'll see that in the borough, in each  
12 borough -- not in all of them; but particularly  
13 in Manhattan and the Bronx, number six boilers  
14 are heavily concentrated in certain areas. And we  
15 are in fact targeting the areas where they have  
16 the most number. But the law requires that  
17 everybody stop doing -- stop using this fuel by  
18 June of next year. So really, it's an -- it's an  
19 effort that's Citywide. But extra attention is  
20 being paid to the areas that have the greatest  
21 number of these installations.

22 MS. SLIFKA: Okay. Any other questions?  
23 Is there a motion for approval? Okay. And all  
24 approve? [Unintelligible][00:24:35].

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2 MR. SWANN: No, there's one abstention.

3 MS. SLIFKA: One -- oh, I'm sorry. One  
4 absten-, wait, let's go back. Okay. Everybody  
5 who's for it, please raise your hand. Okay. Any  
6 abstentions?

7 MR. MARTINEZ: Yes. One abstention for  
8 the request for order to cease and desist  
9 covering 21 Holland Avenue in the Bronx.

10 MR. PECUNIES: Okay.

11 MS. SLIFKA: Any other abstentions?  
12 Alright. Russ, I think we're ready for your  
13 PowerPoint presentation. Okay.

14 MR. PECUNIES: We are.

15 MS. SLIFKA: Alright. Just to let  
16 everybody know: apparently, the date that was on  
17 the board that shows up in the back was  
18 incorrect. It said March 27th and obviously today  
19 is June 26th, I hope, right? June 26, 2014, okay  
20 then.

21 MR. PECUNIES: Okay. So again, since  
22 we're going to be asking the Board to approve a  
23 lot of these cease and desist requests over the  
24 next year, probably almost about the same number

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2 every month as we're doing now for the backflow,  
3 like 20 to 25 requests; we had thought that it  
4 would be a good idea to do a real quick  
5 PowerPoint for the Board to explain why all of  
6 this is going on and what the big rush is.

7 So, just by way of a little historical  
8 background. May of 2011, the rule change provided  
9 that no new certificates of operation for boilers  
10 could be issued for number four or number six  
11 oil. So these are new, brand new certificates of  
12 operation. As of July 1st of 2012, there would be  
13 no more renewals of existing certificates of  
14 operation to use number six. So certificates of  
15 operation are good for three years. So the last  
16 valid number six certificates will be expiring on  
17 June 30th of next year.

18 So as you can see, on July 1st of next  
19 year, number six is no longer allowed. In terms  
20 of enforcement, there may be some people next  
21 June who are still in the process of converting.  
22 And so we will basically let those conversions go  
23 through even if they don't quite finish by July  
24 1st. And for that same reason, enforcement may

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2 also extend beyond July 1st of next year. There  
3 will probably be some holdover people that we'll  
4 still be enforcing against in the second half of  
5 next year. And then in 15 years, number four use  
6 has to be discontinued as well.

7 So number six fuel oil, this is what it  
8 is. This is what it looks like. You see it's a  
9 very heavy, thick, tarry substance. And it's  
10 manufactured basically from crude oil. When all  
11 of the other products are made from crude oil:  
12 gasoline, jet fuel, everything else; number six  
13 is what's left. And that's why they call it  
14 residual fuel oil as well. And that's why all of  
15 the impurities in the crude oil are left behind  
16 in this stuff. All of the heavy metals, all of  
17 the sulfur, everything that was not -- that when  
18 they cooked off the gasoline and all of the other  
19 products, all that stuff gets left in this gunk,  
20 which is number six fuel oil. And that's why it  
21 is something that we want people to stop using.

22 So as you can see from this chart, which  
23 goes up to 2009, in a 20-year period the use of  
24 this oil has decreased substantially. And the

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2 green part, which is commercial and residential  
3 use, has by 2009 almost completely disappeared.  
4 If anybody has any questions, they can just --  
5 whenever anything comes up? Again, you see that  
6 beginning in -- on this chart, in 1940; the  
7 production of this and the supply of this peaked  
8 in the 1970's and has been continuously going  
9 down ever since.

10 And so this is really why we're doing  
11 this. If you look at the top line in the 2008  
12 numbers, that was the amount of various  
13 pollutants that were being generated by the use  
14 of number six oil. And you have particulate  
15 material, nitrogen oxides, sulfur dioxide, carbon  
16 monoxide and carbon dioxide. And the numbers  
17 below are the reductions if the use of number six  
18 had been changed completely to each of those  
19 different fuels. So for example under sulfur  
20 dioxide, you can see that if everybody who was  
21 using number six in 2008 switched to natural gas,  
22 the sulfur -- the sulfur emission would have  
23 essentially completely vanished because natural  
24 gas has no sulfur in it and number six fuel oil

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2 has a lot of sulfur in it.

3 So as you can see by getting people to  
4 switch to these cleaner fuels, there will be  
5 tremendous reductions in these pollutants, with  
6 the exception of carbon monoxide, which is --  
7 actually would increase. The reason for that  
8 being that number six is very dense and it has a  
9 lot of energy in it; so you don't have to burn  
10 that much of it to generate the energy. The other  
11 fuels are much lighter and you have to burn more  
12 of them. And that actually results in an increase  
13 -- a slight increase but an increase in carbon  
14 monoxide; but a tremendous decrease in, in all of  
15 the other pollutants.

16 Just to quickly go through the status of  
17 where we are in some of these pollutants. Under  
18 US EPA, New York City right now is not in  
19 containment with the ozone standard, which is  
20 caused by the nitrogen oxide; which the banning  
21 of number six will reduce substantially. We are  
22 finally now in compliance with particulate matter  
23 standard. But this is still a very harmful  
24 pollutant that we want to reduce as much as

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2 possible. And you can see that both PM and ozone  
3 are linked to many different physical problems.

4 And on the next slide, you can see  
5 specifically with regard to asthma that New York  
6 City is -- this is ten years ago but I think it  
7 still holds true; substantially above the  
8 national average in terms of asthma  
9 hospitalizations for children, particularly in  
10 the Bronx. And as we'll see when we get to the  
11 maps, you'll see that the Bronx has an unusually  
12 high concentration of boilers that are still  
13 using number six.

14 So in June of 2011, we had 5,300  
15 certificates of operation for number six fuel  
16 oil. As of March of this year, that has been  
17 reduced by 3,200. So as of March, we had 2,100  
18 left; of which 950 were expired and 1,150 were  
19 still valid. So obviously all of these cease and  
20 desist orders that you're seeing requests for are  
21 from that 950 group. And as you see on the  
22 bottom, from the 950 we've issued as of March,  
23 880 notices of violation; which have resulted in  
24 450 conversions. And as of the time this slide

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2 was prepared, we had only requested 15 cease and  
3 desist orders. But that went up last month and  
4 now it has increased again by the ones from this.

5 So in Manhattan the comparison between  
6 2011 and 2014, you see that each dot represents a  
7 boiler that's using number six. So you can see  
8 that it's somewhat less dense. And you can see  
9 where the concentrations are in Manhattan: on the  
10 Upper East Side, the Upper West Side and in  
11 midtown. And you'll see in the Bronx that there  
12 are also a lot of these and it's basically in the  
13 corridor that -- I think that's the Grand  
14 Concourse; along the Grand Concourse, in that  
15 vicinity, there are a lot of buildings that use  
16 number six fuel.

17 In Brooklyn it's more scattered but  
18 mostly around Prospect Park. And you can see that  
19 it's decreased in Brooklyn quite a bit from 2011  
20 to 2014. In Queens, it's mostly in northern  
21 Queens and again it's decreased quite a bit. And  
22 so by next June, all of these dots are supposed  
23 to be gone and Staten Island only have --

24 MS. SLIFKA: Questions?

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2 MR. PECUNIES: So, any questions?

3 MS. KNAUER: I just was wondering if the  
4 concentration in certain areas is due to the age  
5 of the buildings in those areas or is it  
6 something else?

7 MR. PECUNIES: Yeah, a lot of these are  
8 apartment buildings and they're sort of pre-war  
9 apartment buildings. A lot of them I think were  
10 originally built to use coal. And then in the  
11 1940's with the graph, everybody started using  
12 this number six fuel. I think a lot of them in  
13 that timeframe of like the 40's to the 70's  
14 converted to boilers that used this fuel. But  
15 there were people up until three years ago when  
16 it was banned, who were still looking to install  
17 new number six boilers because the fuel is cheap.

18 So, that's another -- as we ban this and  
19 people stop using it, one of the things that will  
20 probably happen is that the fuel is going to  
21 start to become much harder to get in this part  
22 of the country. This -- New York City is really  
23 the last bastion of this in the northeast. So as  
24 it gets less and less used, the suppliers are

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2 really going to convert to using -- to producing  
3 and supplying other fuels. So we hope that will  
4 be an incentive for hold-outs to convert.

5 MR. HYLTON: This is Renaldo Hylton from  
6 Buildings. I think we had passed this before,  
7 this money; number six, the supply is still legal  
8 right? It's still going to be legal but you have  
9 to convert?

10 MR. PECUNIES: Yeah. Oh, yeah, well, Con  
11 Ed has a plant that runs on it. So, yes, it, it's  
12 -- there are other uses. This is -- it's banned  
13 for use in boilers and hot water heaters that  
14 require a certificate of operation from us under  
15 the air code. For power generation, for use in  
16 ships; in one of the slides -- actually I didn't  
17 mention it, but the main use of this going  
18 forward is going to be in ships. It's called  
19 bunker fuel. And so it will continue to be made  
20 and used. But, so yeah, the ban only applies to  
21 things that need a certificate of operation under  
22 the air code.

23 MR. HYLTON: Yeah, but wouldn't, I mean,  
24 to speak a little frenetic, if the City had

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2 banned its supply to these particular use -- for  
3 these particular uses in the City of New York so  
4 that the fuel would be --

5 MR. PECUNIES: Well, that would involve;  
6 it specifically would involve a major Con Ed --

7 MR. HYLTON: No. Well, you can exempt,  
8 you know, companies, right? I'm talking about  
9 supplying, supplying these to these residential  
10 and commercial buildings that use them now and  
11 having a ban --

12 MR. PECUNIES: Well, they, they'll --  
13 the ones that have valid certificates are legal  
14 until June.

15 MR. HYLTON: I understand. But after, you  
16 know, where I'm going with this is I don't know  
17 how much enforcement you're going to have really  
18 at issuing some violations. Because you really  
19 can't turn people's heat off in the wintertime.  
20 So for those guys --

21 MR. PECUNIES: Well, we will -- we will  
22 seal people who fail to comply with this.  
23 Probably not right now. But we will ultimately;  
24 we will seal people who don't comply with this.

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2 That decision has been made at the -- at the  
3 Commissioner level.

4 MR. HYLTON: Yeah, I understand. So in  
5 sealing those folks, the City's prepared I guess  
6 to --

7 MR. PECUNIES: They'll be given every  
8 possible notice and warning first. But if they  
9 ultimately decide that for whatever reason  
10 they're not going to do it, then next, next  
11 summer they will be sealed.

12 MS. SLIFKA: There's another air  
13 question?

14 MR. PECUNIES: Yes?

15 MS. LALLY: Emily Lally, Citizen Member.  
16 How does this relate to the other section about  
17 having two percent biodiesel delivery? Does that  
18 cover --

19 MR. PECUNIES: Biodiesel has to be used  
20 in all of these fuels, except obviously natural  
21 gas. But for two, four and six, biodiesel has to  
22 be used in all of them.

23 MS. LALLY: So maybe they get cited  
24 under that section.

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2 MR. HYLTON: It's just that sometimes,  
3 you know, it's going to be easier to just pay  
4 these penalties.

5 MR. PECUNIES: Oh, we, we have -- we  
6 have a very; we, we know who the suppliers are  
7 and we are monitoring them, how that's going.  
8 And, yeah -- and, and they are, you know, as the  
9 market for it is contracting, they are getting  
10 out of the number six business.

11 MS. SLIFKA: Okay. Any other questions?  
12 Alright.

13 MR. PECUNIES: Okay.

14 MS. SLIFKA: Thank you, Russ.

15 MR. PECUNIES: Thanks a lot.

16 MS. SLIFKA: Okay. Helaine Balsam is  
17 going to make a presentation on the sanitation  
18 penalty schedule.

19 MS. HELAINE BALSAM, ESQ., DEPUTY GENERAL  
20 COUNSEL, OATH: Okay. So we have a final rule.  
21 This is -- was a technical rule. It was -- it  
22 involved re-lettering two subdivisions relating  
23 to the City yard waste collection program. Nobody  
24 appeared at the public hearing. Any questions?

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2 MS. SLIFKA: Okay. So, is there a motion  
3 for a vote? Okay. All, all for? Okay. Anybody  
4 against? Any abstentions? One abstention.

5 MS. BALSAM: Thank.

6 MS. SLIFKA: Okay, very good. Okay.  
7 Effie Xidias is going to present on the  
8 presealing reports.

9 MS. EFTYHIA XIDIAS, ESQ., HEARING  
10 OFFICER, ECB: Good morning. There are 13 reports  
11 for today's Board; all of which were issued after  
12 live hearings and all of which are presealing  
13 reports. One of the presealing reports recommends  
14 that the C and D action be discontinued in light  
15 of the fact the named respondent, 2995 Botanical  
16 Square, did not own the cited property at the  
17 time of NOV. And nine of the presealing reports  
18 recommend that there be no sealing given  
19 respondent's compliance and are therefore  
20 unremarkable.

21 However, I would like to bring to the  
22 Board's attention to the presealing reports  
23 issued in C&D orders 2013A, 2013D and 20140. In  
24 C&D order 2013A, the predicate NOV was issued to

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2 Willett Town Marketing doing business as Ira's  
3 Takeaway. The premise is located at 16 Columbia  
4 Street in Brooklyn -- for odor emanating from its  
5 premises on May 12, 2012. The C and D was  
6 approved by the Board in January 2013, following  
7 respondent's default and the issuance of three  
8 NOVs for odor emissions.

9 At the presealing held on June 10th,  
10 respondent's representative testified that an  
11 exhaust fan and duct had been installed and  
12 provided proof of purchase and installation.  
13 Therefore, based upon the foregoing, ALJ Julie  
14 Jaffee recommended that the premises remain  
15 unsealed pending reinspection by DEP and further  
16 reinspection confirming no violation.

17 In C&D order 2013D, the predicate NOV  
18 was issued to Abbott Management, the premises  
19 located at 53 92nd Street in Brooklyn for noise  
20 coming from respondent's cooling tower in  
21 violation of the New York City noise code. A C&D  
22 was approved by the Board in August 2013,  
23 following the issuance of two additional NOVs for  
24 noise violations.

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2 On June 10th, respondent's counsel  
3 appeared at a presealing hearing to report that  
4 respondent had removed the cited cooling tower  
5 and replaced it with a new cooling tower, which  
6 is in compliance with the New York City noise  
7 code. Therefore, based upon the foregoing, ALJ  
8 Jaffee recommended that there be a reinspection  
9 of the equipment to confirm that the old  
10 equipment had been removed and new equipment had  
11 indeed been installed.

12 Finally, and C&D order 20140, the  
13 predicate NOV was issued to Café Talulah,  
14 premises located at 240 Columbus Avenue in New  
15 York, for noise coming from the respondent's  
16 kitchen exhaust unit. A C&D was approved by the  
17 Board in April 2014, following the issuance of  
18 two additional NOVs. At the presealing hearing  
19 conducted recently on June 17th, respondent  
20 presented proof that a soundproof enclosure had  
21 been installed around the exhaust fan on the roof  
22 of the cited premises, as well as a letter from  
23 its acoustic engineer confirming compliance with  
24 the noise code. Therefore, based upon the

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2 foregoing, ALJ Jaffee recommended the equipment  
3 remain unsealed pending initial reinspection  
4 confirming no violation and reinspection 180 days  
5 thereafter. Thank you.

6 MS. SLIFKA: Any questions? Okay. Is  
7 there a motion for a vote? Okay. All approve? Any  
8 abstentions? [Unintelligible][00:44:17] Okay. Is  
9 there a motion to go into executive session?  
10 Okay. We're now going into executive session.  
11 Everyone not a part of ECB, I'm going to have to  
12 ask you to leave. Thank you.

13 [OFF THE RECORD]

14 [ON THE RECORD]

15 MS. SLIFKA: And it was quick.

16 MS. BALSAM: That's everyone.

17 MS. SLIFKA: That's everyone? Okay.

18 We're back in public session. So all those in  
19 favor of affirming the appeals decisions from  
20 June 5, 2014 and June 19, 2014 appeals panel  
21 presented? Okay. That looks like everybody. Okay.  
22 Before we adjourn this meeting or before I ask  
23 for a motion to adjourn, I just want to make sure  
24 all attendees have signed the attendance sheet.

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And now is there a motion to adjourn the meeting?

MR. HYLTON: Before you do that?

MR. PECUNIES: Okay.

MR. HYLTON: Can I make another motion?

MS. SLIFKA: Okay.

MR. HYLTON: I would like a motion that this Board declares its support for the US Men's Soccer Team.

MS. SLIFKA: Is there a motion to approve?

MR. THOMAS SHPETNER, ESQ. - CITIZEN MEMBER: It's ultra-virus, but I like it.

MS. SLIFKA: Alrighty. So now is there a motion to adjourn? Okay. This meeting's adjourned. Thank you.

(The public hearing concluded at 10:15 A.M.)

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CERTIFICATE OF ACCURACY

I, Andrew Slawsky, certify that the foregoing transcript of Environmental Control Board on June 26, 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: June 30, 2014

GENEVAWORLDWIDE, INC

256 West 38th Street - 10th Floor

New York, NY 10018