

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

May 29, 2014

9:18 A.M. to 9:41 A.M.

May 29, 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
Madelynn Liguori, Esq. - Dept. of Sanitation
Jorge Martinez, Esq., - Dept. of Health & Mental Hygiene
Douglas Swann - Citizen Member

ALSO PRESENT:

Helaine Balsam, Esq. - Deputy General Counsel, OATH
Denis Brogan - Assistant General Counsel, OATH
Kelly Corso, Esq. - Assistant Dir. of Adjudications, ECB
Jesse DeSalvo - Administrative Justice Coordinator
Aris Fernandez - Facilities Assistant, ECB
Fana Garrick - Public Affairs Assistant, ECB
David Goldin, Esq. - Administrative Justice Coordinator
Shamonda Graham - Department of Buildings
Gerry Kelpin - Department of Environmental Protection
Elias Kwon - Intern, OATH
Mark H. Leeds, Esq. - Special Counsel, ECB
Jim Macron, Esq. - Counsel to the Board, 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

May 29, 2014

INDEX

	Page
Amy Slifka, Esq.	4
Helaine Balsam, Esq.	4
Lt. Dan Albano, Esq.	5
Madelynn Liguori, Esq.	5
Gerry Kelpin	8
Kelly Corso	10
Emily Lally	15
Renaldo Hylton	17
Tayo Kurzman, Esq.	17
Elizabeth Knauer	22
Aris Fernandez	24

1 May 29, 2014

2 (The public hearing commenced at 9:18
3 A.M.)

4 MS. AMY SLIFKA, ESQ., DEPUTY

5 COMMISSIONER/EXECUTIVE DIRECTOR, ECB, OATH:

6 Okay, the meeting is called to order. Is there a
7 motion to adopt the minutes from the April 24,
8 2014 meeting? Okay. Alright. Any no's? Okay,
9 good. Okay, so now we're going to have a
10 presentation of the final rules. The first one
11 will be regarding amendments to the ECB
12 Sanitation Penalty Schedule and Helaine Balsam
13 will be presenting.

14 MS. HELAINE BALSAM, ESQ., DEPUTY GENERAL
15 COUNSEL, OATH: Good morning.

16 ALL: Good morning.

17 MS. BALSAM: I'm Helaine Balsam, Deputy
18 General Counsel for OATH. We have three final
19 rules today. The first final rule that we're
20 asking you to approve is regarding the redemption
21 of recyclables. The law prohibits the use of
22 motor vehicles to accept, receive or collect
23 recyclable containers and restricts the transfer
24 of recyclable containers in bulk from more than

1 May 29, 2014

2 one vehicle to another, etc. So, we had the
3 public hearing. There are no changes to the rule
4 from the proposed to the final rule.

5 MS. SLIFKA: Okay. Any questions? Dan
6 Albano?

7 LT. DAN ALBANO, ESQ., POLICE DEPARTMENT:
8 Dan Albano from the Police Department. Is this
9 for the people who collect the cans?

10 MS. BALSAM: It's actually for cars.

11 LT. ALBANO: For cars?

12 MS. BALSAM: Madelynn Liguori from
13 Sanitation?

14 MS. SLIFKA: Go ahead, Madelynn Liguori.

15 MS. MADELYNN LIGUORI, ESQ., DEPARTMENT
16 OF SANITATION: The mobile redemption law is
17 actually for the owners of vans that you might
18 see them in Chinatown on the corners.

19 LT. ALBANO: Right.

20 MS. LIGUORI: For one example, on the
21 corner with lines of people lined up and they're
22 collecting all the cans. That could be at the
23 moment what the mobile redemption legislation is
24 for.

1 May 29, 2014

2 LT. ALBANO: Okay. And that's prohibited
3 now?

4 MS. LIGUORI: It's prohibited on a City
5 street.

6 LT. ALBANO: Okay.

7 MS. LIGUORI: It's not prohibited on
8 private property if they register with the
9 Department.

10 LT. ALBANO: Okay.

11 MS. SLIFKA: Okay. Any other questions?
12 Okay. Is there a motion to approve? Okay. All in
13 favor? Anyone against? Any abstentions? One
14 abstention. Okay. Alright. And now Helaine Balsam
15 will present the final rule regarding amendments
16 to ECB's Health Code and miscellaneous food
17 vendor violations penalty schedule.

18 MS. BALSAM: So this final rule involves
19 the addition of penalties for a law that limits
20 carpets, the emissions of volatile organic
21 compounds or VOCs from carpets and carpet
22 cushions and is primarily designed to -- for
23 enforcement against carpet sellers and stores.

24 MS. SLIFKA: Okay. Any questions? Okay,

1 May 29, 2014
2 on that. Is there a motion to approve? Okay. All
3 in favor? Could you keep you hands up? Anybody
4 opposed? One. And any abstentions? Two. But we
5 have the right to go forward, right? Okay, very
6 good. Okay. And now we have a presentation of the
7 final rule regarding cure period for certain
8 violations on sanitation air code and noise code
9 penalties imposed. Helaine Balsam?

10 MS. BALSAM: So again there was no
11 change between the final rule and the proposed
12 rule and the final rule. And this rule provides
13 for cure periods for four different sections of
14 law, which are returnable to ECB. The first
15 involves sanitation tickets that are issued for
16 private carter decals. Then there are two air
17 code sections regarding the use and operation of
18 air contaminant detectors in oil burning
19 equipment. And finally the fourth cure period
20 would be pertaining to excessive noise from air
21 circulation devices. Any questions?

22 MS. SLIFKA: Questions? Okay. Is there a
23 motion to approve? Okay. All in favor? Alright.
24 It looks everybody. Any abstentions?

1 May 29, 2014

2 MS. LIGUORI: I should abstain from this
3 one.

4 MS. SLIFKA: You have an abstention,
5 okay.

6 MS. BALSAM: Thank you.

7 MS. SLIFKA: Okay. Next up we have DEP's
8 request for cease and desist orders. And this
9 time Gerry Kelpin is going to be presenting.

10 MS. GERRY KELPIN, DEPARTMENT OF
11 ENVIRONMENTAL PROTECTION: Good morning.

12 ALL: Good morning.

13 MS. SLIFKA: Gerry, why don't we do the
14 backflows first?

15 MS. KELPIN: Sure. We have 28 requests
16 for C&D orders for failure to install backflow
17 devices. We'd like the Board to approve them. If
18 you have any questions, I'd be happy to try to
19 answer them.

20 MS. SLIFKA: Okay. So, Gerry, you said
21 24?

22 MS. KELPIN: Twenty-eight.

23 MS. SLIFKA: Twenty-eight, okay. Are
24 there any questions on these? Okay.

1 May 29, 2014

2 LT. ALBANO: No.

3 MS. SLIFKA: Okay. Is there a motion to
4 approve? Okay. All in favor? And no abstentions.
5 Okay. This looks like everybody. Okay, good.
6 Okay. And you want to do the other C&Ds?

7 MS. KELPIN: We also have 14 requests
8 for C&Ds related to the boilers permits that have
9 either expired or are needed for different
10 buildings. This goes back to what the Board
11 approved for us so that we could move forward on
12 changing out the fuel type to the cleaner fuel
13 for the City.

14 MS. SLIFKA: Okay. Any questions on
15 these? Okay. Is there a motion to approve? Okay.
16 All in favor? I think that's everybody. Okay. Any
17 abstentions? No. Okay.

18 ALL: Doug.

19 MS. SLIFKA: Oh, Doug, I'm sorry. I
20 missed that. Sorry. Okay. Alright. And thank you,
21 Gerry.

22 MS. KELPIN: And actually there were two
23 more that were late arrivals.

24 MS. SLIFKA: Okay.

1 May 29, 2014

2 MS. KELPIN: For again, two C&D requests
3 for failure to comply with the City's grease trap
4 requirements. If there are any questions?

5 MS. SLIFKA: Just which ones were those?

6 MS. KEPLIN: There are two for failure
7 to comply with the grease trap requirements.

8 MS. SLIFKA: Okay.

9 MS. KEPLIN: And for restaurants.

10 LT. ALBANO: You said that last night I
11 think, right?

12 MS. SLIFKA: Right, right. Okay, MJK
13 Bagels. Okay. Alright. Okay, any questions on
14 those? Okay. Motion to approve? Okay. And it
15 looks like all are in favor. Any abstentions? One
16 abstention. Very good.

17 MS. KELPIN: Thank you very much.

18 MS. SLIFKA: Thank you, Gerry. Alright.
19 Next up we have a presentation of the pre-sealing
20 reports by Kelly Corso.

21 MS. KELLY CORSO, ESQ., ASSISTANT
22 DIRECTOR OF ADJUDICATIONS, ECB: Good morning. We
23 had 26 pre-sealing reports for today's Board, all
24 of which were issued after live hearings. But we

1 May 29, 2014

2 have one pre-sealing report that pertains to a
3 violation of the air code and this is 2014F. At
4 the May 20, 2014 pre-sealing hearing, Russell
5 Pecunies on behalf of DEP stated that the
6 respondent -- excuse me, the respondent is the
7 former managing agent for the property; that
8 respondent that no longer has any relationship
9 with the cited property. And in that case, the
10 ALJ recommended that the C&D proceeding be
11 discontinued. So that was the first of the 26.

12 The remaining 25 pre-sealing reports, of
13 those three of them pertain to violations of the
14 noise code which I'll discuss in more detail in a
15 minute, and 22 of the reports pertain to failure
16 to install backflow device violations, and 21 of
17 those recommend that there be no sealing or other
18 action given respondents' compliance; the
19 remaining backflow pre-sealing order I will
20 discuss in more detail because the ALJ
21 recommended the water shut-off.

22 So first, Amy, unless you want me to do
23 it in a different order, I'll discuss the noise
24 code cases?

1 May 29, 2014

2 MS. SLIFKA: Okay.

3 MS. CORSO: Alright. So there was three
4 noise code cases. The first one is for C&D order
5 2014N. This is for the respondent 265 Lafayette
6 Restaurant, LLC. The premises is a restaurant at
7 265 Lafayette Street in Manhattan. And in this
8 case a predicate violation was issued in January
9 2014 for noise from the respondent's kitchen
10 exhaust unit. A default judgment order was issued
11 for the predicate violation in March of 2014,
12 imposing a penalty and ordering compliance with
13 the noise code. A subsequent NOV for noise from
14 the cited equipment was issued in January,
15 February and March of 2014. The Board approved
16 the cease and desist order in April. At the May
17 20, 2014 pre-sealing hearing, the respondent's
18 representative presented evidence of acoustical
19 roof remediation and a follow-up noise survey
20 conducted at the premises showing that the noise
21 levels from the kitchen exhaust fan are now in
22 compliance with current requirements.

23 In the pre-sealing report, ALJ Jaffee
24 recommended that DEP inspect and monitor the

1 May 29, 2014

2 equipment and confirm that the equipment does in
3 fact operate in compliance with the noise code;
4 and that the equipment remain unsealed only if
5 the initial re-inspection shows no violation and
6 a further re-inspection for a period of 180 days
7 shows no violation. Any questions on that one?
8 Okay.

9 The second pre-sealing report is for C&D
10 order 2013H. This respondent is Tower Owner's
11 Inc. The premises is 25 Seacoast Terrace
12 Brooklyn. It's a commercial premises and the
13 equipment is a bathroom exhaust fan on the roof.
14 In this case the predicate violation was issued
15 in October 2012. Following a hearing December
16 2012, a decision and order was issued sustaining
17 the violation and imposing a penalty and ordering
18 compliance with the noise code. Subsequent NOVs
19 for noise from the cited equipment were issued in
20 May, August and November of 2013. And
21 subsequently, the Board approved a cease and
22 desist order on December 19, 2013.

23 At the May 20, 2014 pre-sealing hearing,
24 the respondent's representative submitted

1 May 29, 2014

2 evidence to show the respondent had installed a
3 new exhaust system and had disconnected the old
4 system. Based on that, the ALJ recommended that
5 DEP re-inspect the equipment to confirm that the
6 old equipment isn't operable and that the new
7 equipment has been installed. Any question on
8 that?

9 MS. SLIFKA: No.

10 MS. CORSO: Okay. And the last noise
11 code violation C&D is for C&D order 2014C. This
12 respondent is Le Petit Puppy. The premises is 18
13 Christopher Street in Manhattan. In this case,
14 the predicate violation was issued in September
15 2012 for the respondent permitting unreasonable
16 noise at its kennel facility. Following a hearing
17 -- excuse me, in November of 2012 a decision and
18 order was issued sustaining the violation and
19 imposing a penalty and ordering compliance with
20 the noise code. Subsequent NOV's -- sorry,
21 subsequent violations for noise from the cited
22 equipment -- sorry, not the cited equipment; from
23 the cited kennel were issued in October 2013 and
24 January 2014. Subsequently, the Board approved

1 May 29, 2014

2 the cease and desist order on January 30, 2014.

3 At the May 20, 2014 pre-sealing hearing,
4 the respondent's counsel stated that
5 soundproofing materials have been installed and
6 that the respondent believes that the work is
7 sufficient to comply with the noise code. Russell
8 Pecunies on behalf of DEP recommended that the
9 order to close Le Petit Puppy be stayed, pending
10 a re-inspection of the premises during a 180-day
11 period to confirm that the noise problem no
12 longer exists. Mr. Pecunies recommended that if a
13 noise violation is found within the 180-day
14 inspection period, the order to close the kennel
15 be carried out. In the pre-sealing report, the
16 ALJ recommended that DEP re-inspect the premises
17 and that the premises remain open only if the
18 initial re-inspection shows no violation and
19 further re-inspection for a period of 180 days
20 shows no violation.

21 MS. SLIFKA: Okay. Any questions? Emily
22 Lally, Citizen Member?

23 MS. EMILY LALLY, CITIZEN MEMBER: I just
24 have one question about this. I thought I

1 May 29, 2014

2 remembered that it was, that they were required
3 to cease the kennel operations but not -- but the
4 place had to be closed; is that a fair assessment
5 of the situation?

6 MS. CORSO: I think that's correct but
7 I'm not a hundred percent sure.

8 MS. LALLY: But I'm just wondering what
9 happens on the cease and desist. They don't have
10 to shut down their business but they can't have
11 the kennel? I'm just thinking of they sell like
12 toys or whatever they get to go do that but they
13 can't do a kennel operation. And I was just
14 wondering if there's a distinction on what they
15 would be required to cease and desist?

16 MS. SLIFKA: But it's the noise that
17 they have to cease and desist.

18 MS. LALLY: Right.

19 MS. SLIFKA: So if there's no noise; if
20 they're just selling, you know, puppy toys or
21 whatever, it wouldn't be the noise.

22 MS. LALLY: Right. I'm just wondering,
23 they're not going to get locked out of the
24 premises or anything until they can't have a

1 May 29, 2014

2 kennel operation?

3 MS. SLIFKA: I don't think so. There's
4 going to be a re-inspection. If there's no noise,
5 there won't anything going on. And then they have
6 180 days where they'll be going back. But I think
7 if they, if they're only boarding dogs and there
8 is a noise, it could result in shutting down the
9 premises. If they're doing more and they don't
10 have the boarding of the dogs, I think they'll be
11 alright.

12 MR. RENALDO HYLTON, EXECUTIVE DIRECTOR,
13 DEPARTMENT OF BUILDINGS: But that's a question.
14 Is it the premises that gets shut or just the
15 kennel operations? Renaldo Hylton.

16 MS. SLIFKA: Okay, Renaldo Hylton. I
17 believe it's the premises -- I mean, the kennel
18 operation that they would be shutting down, not
19 the whole premises. So, they'd be closing down
20 the business is what would be happening.

21 MS. TAYO KURZMAN, ESQ., FIRE DEPARTMENT:
22 Tayo Kurzman from the Fire Department.

23 MS. SLIFKA: Sure.

24 MS. KURZMAN: Could Gerry Kelpin maybe?

1 May 29, 2014

2 MS. SLIFKA: I don't know, do you have
3 anything to add on that?

4 MS. KELPIN: The intent would be that
5 the dogs would be taken out of the premises. But
6 they could continue to do the business, the
7 regular business they actually do or whatever.

8 MS. SLIFKA: Right. And Gerry, they
9 would be shutting down just the business if the
10 noise continued?

11 MS. KELPIN: Well, they would have the
12 option. If they can't remove the dogs, we would,
13 you know, we'd have to close down the premises
14 and that would force them to remove the dogs.

15 MS. SLIFKA: Okay. So that's what --
16 they would close down the whole premises. Any
17 other questions? Okay. I'm sorry, do you have a
18 question, Renaldo? Okay. Why don't we take a vote
19 on these three? Is there a motion to approve?
20 Okay. All in favor? All in favor? Everyone. Any
21 abstentions? No. Okay. Why don't we now go to the
22 backflow?

23 MS. CORSO: Okay. So the last pre-
24 sealing report for today is C&D order number

1 May 29, 2014

2 2013-064. This one was issued to Sylvia Gloria
3 Brown Trust for the failure to install a backflow
4 device at the -- at an office building at 109
5 West 27th Street in Manhattan. In this case, the
6 ALJ has recommended a water shut-off. The history
7 of this case is that in September 2011, there was
8 a Commissioner's order ordering the respondent to
9 install backflow prevention devices in its water
10 pipes at the premises within 30 days. The
11 Commissioner's order warned that failure to do so
12 may result in enforcement action, including shut-
13 off of the water supply to the building.

14 On July 25, 2012, DEP issued a violation
15 to the respondent for failing to install the
16 backflow devices as required by the order.
17 Respondent failed to appear for the August 10,
18 2012 hearing on this violation and the penalty
19 has not been paid. An April 15, 2013 official
20 inspection of the Bureau of Water and Service
21 Operations records show that respondent has still
22 not complied with the Commissioner's order.

23 On April 25, 2013 the Board issued a
24 cease and desist order directing the respondent

1 May 29, 2014

2 to appear for a pre-sealing hearing to show good
3 cause why the water supply to the respondent's
4 building should not be terminated and/or the
5 violating devices be sealed. At the initial June
6 4, 2013 pre-sealing hearing, the case was
7 adjourned for the respondent to submit plans to
8 DEP. Subsequently, the case was adjourned
9 approximately 13 more times for the respondent.
10 Several of the adjournments for the respondent to
11 submit plans to DEP and subsequently, to resubmit
12 plans that were rejected by DEP.

13 On at least five occasions, the ALJ's
14 orders contained a warning that the building's
15 water may be shut off if the respondent did not
16 submit plans to DEP. In addition, at several
17 prehearing conferences, the respondent's
18 representative made untrue representations that
19 plans had been submitted to DEP, when in fact no
20 plans had been submitted. Respondent's
21 representative's explanation for this was that
22 they were simply relaying what they had been told
23 by the respondent.

24 At the last four pre-sealing hearing

1 May 29, 2014

2 conferences, the ALJ ordered the respondent to
3 obtain a limited alteration application express
4 permit from DOB. At the pre-sealing hearing on
5 May 20, 2014, the respondent's representative
6 stated that he had no information as to when the
7 respondent would have a limited alteration
8 application express permit and that he did not
9 think that the respondent would be communicating
10 with him any time soon.

11 Erin Callahan, the DEP representative at
12 the hearing, recommended a sealing and water
13 shut-off and stated that DEP had concluded that
14 no other businesses or residences would be
15 affected. In the pre-sealing report, ALJ Hort
16 found that the respondent had not shown any basis
17 for not shutting off the premises water and
18 sealing it and recommended that there be a water
19 shut-off and sealing.

20 MS. SLIFKA: Okay. Any questions on this
21 one? Okay.

22 MR. HYLTON: I just need a -- what is
23 the business again? I'm sorry.

24 MS. CORSO: It's an office building.

1 May 29, 2014

2 MS. ELIZABETH KNAUER, CITIZEN MEMBER:
3 Elizabeth Knauer, Citizen Member. I was just
4 wondering what was the -- why it was a backflow
5 prevention device needed for this building? Was
6 it just for a sprinkler system or some other use?

7 MS. CORSO: It's for the water service
8 pipes. That's all I --

9 MS. SLIFKA: Gerry Kelpin, do you think
10 you can answer that question?

11 MS. KELPIN: Backflow prevention isn't
12 my forte. But in order to prevent sewage from
13 coming back up into the building, these devices
14 control that flow if they shut it off in the
15 street. So it's a --

16 MS. KNAUER: I know. But it's not --
17 usually when we, for example, when we get the C&D
18 requests, it indicates what, what use is in the
19 building that requires them.

20 MS. KELPIN: I'm sorry, I don't have
21 that info.

22 LT. ALBANO: It might be the height of
23 the building too, the size of the building.

24 MS. CORSO: It's an 11-story building.

1 May 29, 2014

2 MS. SLIFKA: As we don't have that
3 information right now, we could -- if you feel
4 comfortable, we could vote on it or we could
5 table it to the next Board meeting?

6 MR. HYLTON: Is this -- I'm sorry,
7 Renaldo Hylton, DOB. Is this simply the fact that
8 it's a mixed-use commercial and residential?

9 MS. KNAUER: We don't know.

10 MS. CORSO: It's my understanding it's
11 only commercial.

12 MR. HYLTON: It's all commercial?

13 MS. CORSO: Mm-hmm.

14 MS. SLIFKA: Any comments? Do you want
15 to table this? Let me take a vote to see if
16 anybody wants to table this until the next
17 meeting, until we have more information. Anybody
18 want to table this? No. Okay. You're comfortable
19 voting on it?

20 LT. ALBANO: Yes.

21 MS. SLIFKA: Okay. So let's vote on this
22 one separately. All in favor? Okay. Any
23 abstentions? No. Okay. Let's vote on the -- there
24 were how many other ones?

1 May 29, 2014

2 MS. CORSO: We did the 25.

3 MS. SLIFKA: We didn't vote on them.

4 MS. CORSO: We didn't vote on the 25.

5 MS. SLIFKA: We didn't vote on the 25.

6 Okay. So, we have the 25 other backflow.

7 MS. CORSO: Twenty-two -- I'm sorry.

8 MS. SLIFKA: Twenty-two.

9 MS. CORSO: Twenty-two.

10 MS. SLIFKA: Okay, 22 other backflows.

11 Okay. Is there a motion to approve? All in favor?

12 And no abstentions? No one else. Okay. Very good.

13 Thank you. Thank you, Kelly. Okay. Is there a

14 motion to go into executive session? Okay. We'll

15 now go into executive session. Those people who

16 are not a member will have to leave.

17 [OFF THE RECORD]

18 [ON THE RECORD]

19 MS. SLIFKA: Okay. Do you want to check

20 and see if anybody's --

21 MS. ARIS FERNANDEZ, FACILITIES

22 ASSISTANT, ECB: Nobody.

23 MS. SLIFKA: Okay. Okay, so we're back

24 in public session. So, all those in favor of

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May 29, 2014

affirming the appeals decisions from May 1, 2014 and the May 15, 2014 appeals panel? All those in favor? Okay. Any abstentions? Okay. Looks like it's everyone. Okay. Did all -- did everyone here sign in the sign-in sheet? Aris gave it to you. Okay, great. Okay. Is there a motion to adjourn? Okay. This meeting is adjourned. Thank you everybody.

LT. ALBANO: Alright, thank you. Amy, if you have a minute?

MS. SLIFKA: Yeah.

(The public hearing concluded at 9:41 A.M.)

May 29, 2014

CERTIFICATE OF ACCURACY

I, Andrew Slawsky, certify that the foregoing transcript of the Board Meeting of the Environmental Control Board on May 29, 2014 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Certified By



Date: May 30, 2014

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