

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 28, 2015

9:24 A.M. to 10:47 A.M.

May 28, 2015

## MEMBERS PRESENT:

Robert Carver, Esq. - Citizen Member  
Honorable Ernest Cavallo- Citizen Member  
Fidel F. Del Valle, Esq. - Commissioner, OATH, Chair and  
Executive Director, ECB  
Joseph Gregory, Esq. - Fire Department  
Renaldo Hylton - Exec. Dir., Dept. of Buildings  
Elizabeth Knauer, Esq. - Citizen Member  
Madelynn Liguori, Esq. - Dept. of Sanitation  
Russell Pecunies, Esq. - Dept. of Environmental Protection  
Thomas D. Shpetner, Esq. - Citizen Member  
Douglas Swann - Citizen Member

## ALSO PRESENT:

Jim Macron, Esq. - Counsel to the Board, OATH ECB  
Frances Shine - Secretary to the Board, OATH ECB  
Rachel Amar - Special Assistant to the Commissioner, OATH  
James Armstrong - Law School Fellow, OATH  
Helaine Balsam, Esq. - Deputy General Counsel, OATH  
Denis Brogan, Esq. - Assistant General Counsel, OATH  
John Burns, Esq. - First Deputy Commissioner, OATH  
John Castelli, Esq. - Assistant Commissioner for  
Legislative Affairs, OATH  
Kelly Corso, Esq. - Assistant Director of Adjudications,  
OATH ECB  
Arisleyda Fernandez - Facilities Assistant, OATH ECB  
Fana Garrick - Public Affairs Assistant, OATH  
David Goldin, Esq. - Administrative Justice Coordinator  
Shamonda Graham - Department of Transportation  
Vivienne Kahng, Esq. - Deputy Supervisor of Appeals, OATH  
ECB  
Peggy Kuo, Esq. - Deputy Commissioner and General Counsel,  
OATH  
Mark H. Leeds, Esq. - Special Senior Counsel, OATH ECB  
Maria Marchiano, Esq. - Senior Counsel/Assistant  
Commissioner, OATH  
Danielle Ravich - General Counsel Intern, OATH  
Peter Schulman, Esq. - Assistant Director of  
Adjudications, OATH ECB  
Amy Slifka, Esq. - Deputy Commissioner, OATH ECB  
Thomas Southwick, Esq. - Supervising Attorney, Appeals,  
OATH ECB  
Doris Stewart - Department of Transportation  
Guoyu Tao - General Counsel Intern, OATH

May 28, 2015

## INDEX

	Page
Fidel F. Del Valle, Esq.	4
Elizabeth Knauer, Esq.	4
Helaine Balsam, Esq.	5
Renaldo Hylton	6
Joseph Gregory, Esq.	13
Amy Slifka, Esq.	18
Russell Pecunies, Esq.	24
Madelynn Liguori, Esq.	30
Robert Carver, Esq.	32
Thomas D. Shpetner, Esq.	51
Doug Swann	64
Kelly Corso, Esq.	73

1 May 28, 2015

2 (The public hearing commenced at 9:24  
3 A.M.)

4 Chair DEL VALLE: Good morning. I want  
5 to start off first of all by apologizing for  
6 something that I didn't know was happening until  
7 after the last meeting of last month; which was  
8 they put the time for this meeting in my calendar  
9 15 minutes after they put the time on the  
10 calendar for everybody else. And apparently that  
11 had been some sort of tradition. It isn't going  
12 to happen again. Consequently I would walk in  
13 late, not knowing I was walking in late. Now I'm  
14 walking in early. Is there a motion to adopt the  
15 minutes from the previous meeting or any  
16 questions or changes or alterations, corrections,  
17 whatever?

18 ELIZABETH KNAUER, ESQ., CITIZEN MEMBER:  
19 Motion to adopt.

20 Hon. ERNEST CAVALLO, CITIZEN MEMBER:  
21 Abstain.

22 Chair DEL VALLE: It's adopted  
23 unanimately with one abstention. However, that  
24 might be an oxymoron. Helaine Balsam is going to

1 May 28, 2015

2 brief you on our efforts to create a universal  
3 summons. I don't want to use the word universal  
4 summons too much because that'll get confused  
5 with the Police Department's use of the word  
6 universal summons, which is a criminal court  
7 summons.

8 But as Helaine will explain, one of the  
9 things we've discovered in reviewing stuff in the  
10 last few months is that there are a zillion  
11 different flavors of summonses that are issued,  
12 that are returnable to us. One agency in  
13 particular has I think 35 different flavors of  
14 summonses. That is incredibly confusing to the  
15 public who gets a summons from one agency, then  
16 from another agency. They think they've got first  
17 time around, they've got the process down pat and  
18 then they find out that it's a whole different  
19 drill. So, Helaine, please.

20 HELAINE BALSAM, ESQ., DEPUTY GENERAL  
21 COUNSEL, OATH: Okay. So, what we tried to do was  
22 make things as homogenous as possible. And  
23 obviously as between long-form tickets and short-  
24 form tickets, there are going to be some

1 May 28, 2015

2 significant differences. What you have before you  
3 are short-form tickets. But to the extent that  
4 some of the long-form tickets will look this way;  
5 it's really the back of the long-form ticket  
6 that's going to be different. So, I'm just going  
7 to take you through the different fields. So the  
8 first thing you'll notice is that we are asking  
9 the agencies to put their logos at the top. Do  
10 you have this one?

11 RENALDO HYLTON: It's just that are two  
12 of them. Which one are we --

13 MS. BALSAM: Yes, one is -- okay, so one  
14 is a little one that we shrunk for Sanitation.

15 MR. HYLTON: Oh, okay.

16 MS. BALSAM: Okay. And then the other is  
17 the larger one, which actually DOT is going to be  
18 implementing very shortly.

19 MR. HYLTON: Okay. Which one are you  
20 looking at now?

21 MS. BALSAM: I'm holding up the bigger  
22 one.

23 MR. HYLTON: The bigger one, okay.

24 MS. BALSAM: But you can look at either

1 May 28, 2015

2 because that's the beauty of it: they're actually  
3 the same. Okay?

4 MR. HYLTON: Okay, alright.

5 MS. BALSAM: So, we're asking the  
6 agencies to put their logo at the top. We're  
7 changing it from notice of violation to summons.  
8 If anybody's concerned about that because the  
9 Charter does say: Notice of violation, the Board  
10 shall prescribe notices of violation. ECB's rules  
11 define notice of violation as a document issued  
12 by a petitioner to a respondent, which specifies  
13 the charges forming the basis of an adjudicatory  
14 proceeding before ECB. So I think that the  
15 definition is broad enough that it can encompass  
16 the word summons. And we will be changing that  
17 when we do rulemaking later in the year.0020

18 Chair DEL VALLE: Let me interject, the  
19 main reason for that is the way the language is  
20 structured it sounds like we're telling people:  
21 You're guilty. Come in and prove you're innocent;  
22 when you say notice of violation.

23 MS. BALSAM: So then we have the agency  
24 name in a fairly large -- a larger font, whatever

1 May 28, 2015

2 the division is, agency address and phone number.  
3 I know that there's been some -- I don't want to  
4 say pushback but some comment on agency address  
5 and phone number and does it have to be there. It  
6 doesn't have to be there. You could put 311 there  
7 if you want. It's really up to the agency. But  
8 the field will be there and some agencies do want  
9 to put it there. And remember this is not going  
10 to be just for ECB. It's also going to be for the  
11 Health Tribunal, which will soon be the Hearings  
12 Division, and also for Taxi.

13 Chair DEL VALLE: And let me interject  
14 there, again, in the last few months that I've  
15 been here I keep on getting remarks from City  
16 Councilmen or the public in general complaining  
17 that the ECB is sending me all these summonses  
18 for this, that or the other thing. And I have to  
19 enlighten them that ECB doesn't issue summonses.  
20 Enforcement agencies issues summonses. ECB  
21 adjudicates summonses. So to clear up that  
22 confusion to the public, which seems to be pretty  
23 intense; the public should know who issued the  
24 summons. Right now the current summons simply

1 May 28, 2015

2 just has an agency code. Like who in creation  
3 knows that 457 means Sanitation Department or 568  
4 means Police Department or whatever? They'll know  
5 clearly that the summons was issued by a  
6 Sanitation inspector or DEP or whomever and they  
7 can complain to them instead of to me. Thank you.

8 MS. BALSAM: Okay. The next set of  
9 fields concern the respondent and who the  
10 respondent is: the name. If the respondent has a  
11 DBA, that can be filled in. It doesn't have to be  
12 filled in. The respondent's mailing address,  
13 which we have on all the summonses now. Any ID  
14 number that's used for the respondent. So it  
15 could be a vendor license. It could be a permit  
16 number, depending on the issuing agency. The type  
17 of ID and who issued it. Again, not all of these  
18 have to be filled in. But obviously there does  
19 need to be a named respondent.

20 The next set of fields is about where  
21 and when the violation occurred. Start and end  
22 times of inspection actually is more for the  
23 Health Tribunal. For the issuing agencies here,  
24 it would just be whatever the time that you put

1 May 28, 2015

2 on the NOV's now. And then we have the hearing  
3 date. And it was really important to me that the  
4 hearing date be large, in the middle easily  
5 recognizable. We do want you to spell out the  
6 month in your electronic summonses if you can  
7 because let's face it, not everybody is from  
8 here. And there are some cultures where month  
9 comes before day and day comes before month. So I  
10 think spelling out the month would be very  
11 helpful for our population that comes here. The  
12 hearing location. Instructions. And then the  
13 summons number is going to be there too.

14 And then underneath that field we have;  
15 we moved up the warning about what happens if you  
16 don't appear. It had been buried sort of near the  
17 bottom of the summons. So we made that a little  
18 more prominent. I know the font is still fairly  
19 small but at least it's in its own location and  
20 not sort of buried in other text.

21 And then we have the details of  
22 violation. And I've been referring to that as the  
23 agency real estate. So that's where you can put  
24 in whatever you want, subject to ECB IT. You will

1 May 28, 2015

2 need to put in sections of law obviously. You'll  
3 need to put in computer codes. I know that the  
4 Buildings summons and sometimes the Fire  
5 summonses have a lot more information. You have  
6 block, lot. You have the type of property. You  
7 have the date of inspection, etc. So you can put  
8 in whatever fields you want in that real estate.

9 MR. HYLTON: I'm sorry. Renaldo from  
10 Buildings. But this form is not going to be used,  
11 the long-form, right? This is the short-form  
12 you're talking --

13 MS. BALSAM: Well, the idea is to use  
14 this as much as we can for the long-form as well.  
15 The problem with the long-forms is that IT, the  
16 computer needs to know how many pages to expect  
17 when it's filed. So we have to kind of work  
18 through those issues. But for now what we're  
19 presenting, because that's going to go live;  
20 Sanitation is working on their ticket. We wanted  
21 the Board to understand what it's going to look  
22 like. So, we're not married to any of it. It's a  
23 prototype for now, for the short-form.

24 MR. HYLTON: Okay.

1 May 28, 2015

2 MS. BALSAM: For the long-form, we'll  
3 work through all of the issues.

4 MR. HYLTON: Okay.

5 Chair DEL VALLE: I want to tell you.  
6 One of the reasons that this is laid out the way  
7 it's laid out is because this is essentially  
8 setting up for when eventually all the summonses  
9 will be generated in the field by handheld  
10 devices. And this makes it easier to transition  
11 to that format. Because the handheld devices will  
12 not be able to print something this big. If you'd  
13 noticed, the traffic enforcement agents when  
14 they're issuing parking tickets, they have a  
15 printer strapped to their leg. And to strap a  
16 printer to your leg that can print something this  
17 wide is going to require some very healthy folks.

18 MR. HYLTON: Strap it to your back.

19 MS. BALSAM: And so we have this one.

20 Hon. CAVALLO: Question?

21 CHAIR DEL VALLE: Yes.

22 Hon. CAVALLO: Ernie Cavallo, citizen  
23 member. Helaine, so if you have more than four  
24 violations on an inspection, you can't use this

1 May 28, 2015

2 form? Is that --

3 MS. BALSAM: No, you can.

4 Hon. CAVALLO: It'll just push  
5 everything --

6 MS. BALSAM: This field can expand. But  
7 it can only expand to the limitations of what the  
8 computer is expecting. So, you know, how many  
9 violations it is depends; which is one of the  
10 issues with the long-form. Because you could have  
11 an elevator ticket that has like 20 different  
12 conditions on it. So that's one of the reasons  
13 that we need to -- we work through the issue with  
14 the long-form. But most of the short-form  
15 tickets; well, actually all of the short-form  
16 tickets only have the one charge.

17 Hon. CAVALLO: Right.

18 MS. BALSAM: So for the short-form, it's  
19 not really a problem. There's just going to be  
20 the one charge. And I think Joe and then I'll --

21 MR. JOSEPH GREGORY, ESQ., FIRE  
22 DEPARTMENT: Yeah, Joseph Gregory, Fire  
23 Department. I notice you have in the section  
24 details of the violation, it has a compliance

1 May 28, 2015

2 date. And you changed that from cure date before?

3 Because the other one that I had --

4 MS. BALSAM: Again, this is agency real  
5 estate. So this is meant to be a more general  
6 version. If you want cure date, you can write  
7 cure date.

8 MR. GREGORY: Oh, you can write -- okay.

9 MS. BALSAM: Yeah, you can write cure  
10 date. Right?

11 MR. GREGORY: Okay.

12 MS. BALSAM: This is -- this is your  
13 area, where you get to put in your stuff.

14 MR. GREGORY: Okay.

15 MR. HYLTON: Except I think the cure  
16 date then should be prior or very prominently  
17 next to the hearing date information. Because you  
18 want people to know that they can cure in lieu of  
19 a hearing, if that's available.

20 MS. BALSAM: So the examples that I have  
21 for the Fire and Building Departments don't have  
22 the cure date up on the top. But it is in those  
23 fields; you can make it larger if you'd like to.

24 MR. HYLTON: We wouldn't be able to --

1 May 28, 2015

2 MS. BALSAM: The instructions about how  
3 to cure on the back of the notice of violation.  
4 And there is a statement I think taken from the  
5 DOB violation actually about you have a right to  
6 cure, etcetera, etcetera.

7 MR. HYLTON: Okay. I just think that the  
8 cure, that if you want to let the public know  
9 that they have a zero penalty option other than a  
10 hearing. So you should -- if there's a way to  
11 have a cure date in line with the hearing date,  
12 side by side and say see below, or something like  
13 that; it would be good for the respondent.

14 MR. GREGORY: Well, that was the same  
15 thing with the Fire Department. Because we're  
16 more interested in compliance, as far as that  
17 goes.

18 MS. BALSAM: Right.

19 MR. GREGORY: And rather than the  
20 penalty and assessing fines and so forth. So, one  
21 of the comments that we've had is that the cure  
22 date should be more prominent, as far as on the  
23 --

24 CHAIR DEL VALLE: Say there's three or

1 May 28, 2015

2 four violations like in the sample; would the  
3 cure dates be the same or would they be different  
4 for each violation?

5 MR. HYLTON: Yeah, the agencies would  
6 only issue, could not -- would not issue more  
7 than; I mean, different violations, some are  
8 curable, some are not.

9 CHAIR DEL VALLE: Right.

10 MR. HYLTON: If they're issuing two  
11 violations: one is curable, one is not; then they  
12 would separate the violations. So that they  
13 wouldn't have some -- because you have to  
14 adjudicate a ticket.

15 MS. BALSAM: For Buildings.

16 MR. GREGORY: Right.

17 MS. BALSAM: For Buildings. For Fire --

18 MR. GREGORY: For Fire, we had --

19 MS. BALSAM: -- you can have partial  
20 cures and it would be all be on one notice of  
21 violation.

22 MR. GREGORY: Right. It could be -- I  
23 mean, if they only cured -- if there was four  
24 violations and they only happen to cure three of

1 May 28, 2015

2 them; then there would be a partial cure.

3 CHAIR DEL VALLE: Mm-hmm.

4 MR. GREGORY: And then they would have  
5 to come to the hearing for the outstanding one.

6 MS. BALSAM: Right. I think that -- I  
7 think really the issue is, is, you know, the  
8 stuff in the center about the hearing date is  
9 really about OATH. And the stuff in the details  
10 of violation is really about the issuing agencies  
11 and what's available. In terms of the short-form  
12 NOVs, there's only one charge that's curable. So,  
13 I'm not --

14 MR. HYLTON: I understand.

15 MS. BALSAM: -- that concerned.

16 MR. HYLTON: I understand. But I think  
17 we need to be a little flexible here because it's  
18 not -- you know, in terms of separating; I know  
19 what you're trying to do is separating OATH and  
20 the agencies. But in this case it's benefitting  
21 the respondent and you should keep them in mind  
22 here. That if you -- that major separation could  
23 --

24 CHAIR DEL VALLE: Yeah, but my concern

1 May 28, 2015

2 is: I like the idea basically of where it says  
3 hearing date and you have an extra field that  
4 says cure date or something to that effect. But  
5 if you have like three violations and one is  
6 curable and two are not curable; I don't want to  
7 give a respondent the misimpression that if he  
8 cures one, he's curing the other two and he winds  
9 up defaulting on them or something like that.

10 MS. BALSAM: That is now, which is what  
11 is happening now.

12 CHAIR DEL VALLE: That's the only thing  
13 that I'm concerned about is that I don't want  
14 somebody to come in and say: Well, it said cure  
15 date and I cured it. But now you're telling me  
16 that on two and three I'm defaulting.

17 MS. BALSAM: You know, and there's also  
18 the instruction about the cure; which is that,  
19 you know, it has to be received etcetera,  
20 etcetera. And that's all on the back, going to be  
21 on the back of the --

22 MR. GREGORY: Are you going to go over  
23 the back also in your presentation? Are you going  
24 over the back?

1 May 28, 2015

2 MS. BALSAM: For the -- not, not for the  
3 no-cure ones. We're not doing the cure ones today  
4 because these are short-forms.

5 MR. GREGORY: Okay. Because that --  
6 alright.

7 MS. BALSAM: Yeah?

8 MS. KNAUER: I just -- I had a couple of  
9 questions on -- oh, Elizabeth Knauer, citizen  
10 member. I had a couple of questions on the  
11 warning.

12 MS. BALSAM: Okay?

13 MS. KNAUER: The first is it says that  
14 if you do not show up for your hearing but you  
15 don't have to necessarily show up. So I wondered  
16 if that could be expanded to encompass the notion  
17 of hearing by mail or --

18 MS. BALSAM: Well, showing up includes  
19 hearing by mail. I mean, it's an appearance --

20 MS. KNAUER: Right, I know.

21 MS. BALSAM: -- whether it's appearance  
22 by mail or by telephone, online or in person.

23 MS. KNAUER: But if they layperson would  
24 read that, it just suggests that you have to be

1 May 28, 2015

2 there at that day and time.

3 MS. BALSAM: So you would want it to be:  
4 If you do not show up for your hearing either in  
5 person, by mail, by telephone or online?

6 MS. KNAUER: Just to make that -- yeah,  
7 I think if there's a way to do that, to make it  
8 clear, I would suggest that. Because it actually  
9 might encourage people to do it by mail or phone,  
10 which I would think we want.

11 CHAIR DEL VALLE: I think that's a good  
12 point.

13 MS. KNAUER: And then where it says: If  
14 you don't show up for your hearing, the summons  
15 will be decided against you and penalties will be  
16 imposed. Should we clarify that those would be  
17 maximum penalties?

18 MR. HYLTON: Default penalties.

19 MS. KNAUER: Or default. I don't know if  
20 default and maximum is always the same?

21 MR. HYLTON: No.

22 MS. BALSAM: No.

23 MR. GREGORY: No.

24 MS. KNAUER: It's not?

1 May 28, 2015

2 MS. BALSAM: No.

3 MR. HYLTON: Yes, I think that's a good  
4 point.

5 MS. KNAUER: Because I think, you know,  
6 if people think: Well, I'm guilty, so I might as  
7 well not show up and I'll just -- the penalties  
8 will be imposed one way or the other.

9 MS. BALSAM: So higher penalties?

10 MS. KNAUER: Higher -- yeah. If we can  
11 clarify that, I think it would encourage people  
12 to come and then they won't be subject to default  
13 on all these. The other question I had, what it  
14 says: Your license may also be suspended or  
15 revoked. I would just, just suggest saying: Your  
16 license may also be suspended or revoked as  
17 applicable. Just so people don't think it's their  
18 driver's license.

19 CHAIR DEL VALLE: Well, it could be  
20 their driver's license.

21 MS. KNAUER: Well --

22 MS. BALSAM: Let must just say that that  
23 sentence has been here for years. And I don't  
24 think that anybody's ever been confused about it.

1 May 28, 2015

2 But --

3 MS. KNAUER: Okay. Alright, well, it's a  
4 suggestion.

5 CHAIR DEL VALLE: What I mean about the  
6 drive --

7 MS. BALSAM: And --

8 CHAIR DEL VALLE: Excuse me a second.

9 MS. BALSAM: I'm sorry.

10 CHAIR DEL VALLE: What I mean about the  
11 driver's license is that in New York State,  
12 anyone who has an outstanding court judgment, a  
13 civil judgment, which ultimately can result from  
14 any of these; you send a copy of that judgment to  
15 DMV, they will suspend your license until you  
16 satisfy the judgment.

17 MS. KNAUER: But that wouldn't occur  
18 just because you didn't show up for a hearing. It  
19 would have to be --

20 CHAIR DEL VALLE: This would be post-  
21 docketing and down the line if you haven't paid  
22 it. And it will actually be, not something that  
23 will be determined by OATH. It will be something  
24 that's partly determined by the Department of

1 May 28, 2015

2 Finance, whether they want to push it to that  
3 level of collection.

4 MS. KNAUER: But this is really meant to  
5 be referring to an operating license, right?

6 MS. BALSAM: Well, yeah, like a vendor  
7 license basically.

8 MS. KNAUER: Right, right, right, right.  
9 Well, it's just -- it's a suggestion. It's  
10 something that occurred to me.

11 MS. BALSAM: And also for abandoned  
12 vehicles tickets. I mean, we do actually notify  
13 Albany about the status of those vehicles.

14 CHAIR DEL VALLE: Maybe instead of  
15 saying your license, you say your licenses?

16 MS. KNAUER: Or your license to operate.  
17 But I guess it if it's --

18 Hon. CAVALLO: No.

19 MS. KNAUER: -- to the case of abandoned  
20 vehicle ticketing. I would just say -- I would  
21 suggest for saying as applicable.

22 Hon. CAVALLO: But that doesn't have  
23 meaning to a layperson. As application doesn't  
24 mean anything to them.

1 May 28, 2015

2 MS. KNAUER: I think it would suggest to  
3 somebody that has an operating license that it  
4 applies to them. But if you feel like nobody's  
5 ever been confused by that language, then okay.

6 MS. BALSAM: As far as I know, nobody's  
7 ever been confused and you know, nobody's ever  
8 said.

9 CHAIR DEL VALLE: I've got a funny  
10 feeling most people ignore it anyway, I'm sorry  
11 to say.

12 Hon. CAVALLO: They must.

13 MS. BALSAM: Alright, anything else on  
14 the front?

15 MR. RUSSELL PECUNIES, ESQ., DEPARTMENT  
16 OF ENVIRONMENTAL PROTECTION.: Yeah. Russell  
17 Pecunies, DEP. Just one observation and one  
18 comment. The observation: I notice that this  
19 summons does not say Environmental Control Board  
20 on it anywhere. Is that by design?

21 MS. BALSAM: Yes.

22 MR. PECUNIES: Okay. And the summons  
23 number, which on all of the existing NOV's that  
24 I'm familiar with is fairly prominently

1 May 28, 2015

2 displayed. It seems to be very non-prominently  
3 displayed on this form. Is that also -- is that  
4 by design? Or --

5 MS. BALSAM: Um, you know I think --

6 MR. PECUNIES: Usually the first thing  
7 you say, like on the existing short-form ticket  
8 is the big NOV number on the bottom.

9 MS. BALSAM: Which was on the bottom,  
10 right.

11 MR. PECUNIES: So, is that deliberately  
12 being sort of made less, more obscure? Or --

13 MS. BALSAM: I don't think it was  
14 deliberate. I think it's not as important as it  
15 used to be because everything's barcoded now. And  
16 you'll notice that the barcode is there --

17 MR. PECUNIES: Okay.

18 MS. BALSAM: -- and is in exactly where  
19 it is now. That was the only thing that our IT  
20 people said: Make sure it's barcoded and where it  
21 is. So, you know, in terms of whether or not it  
22 needed to be as large as it is now; from our  
23 standpoint now, it doesn't have to be as large.  
24 If you think it should be larger, we can make it

1 May 28, 2015

2 larger. I was more concerned with getting the  
3 hearing date.

4 MR. PECUNIES: Right.

5 MS. BALSAM: Making that more prominent.

6 MR. HYLTON: Well, that's true. But I  
7 mean, the first thing you look at, you're  
8 responding to a ticket; is you call 311, you call  
9 the agency. They're asking you for your NOV  
10 number or your summons number. You're looking at  
11 the very top of the form. And I think no one at  
12 home has a bar code -- the other thing. So you  
13 know, you put it up top in prominent big, big  
14 numbers. I don't think there's anything wrong  
15 with making -- displaying the number properly and  
16 bold for everybody to see.

17 CHAIR DEL VALLE: Like opposite to where  
18 it says agency logo.

19 MR. HYLTON: Right. I don't know the  
20 site.

21 CHAIR DEL VALLE: Or --

22 MS. BALSAM: Well, that's in a -- that's  
23 in a header. So I don't know how easy that is to  
24 program.

1 May 28, 2015

2 MR. HYLTON: Oh, I see, I see.

3 MR. GREGORY: Or if you put it above the  
4 barcode.

5 MR. GREGORY: You could put it  
6 prominently above the barcode.

7 CHAIR DEL VALLE: That's what I was  
8 thinking about. There are some documents that  
9 I've seen where they include the barcode. And I  
10 don't know if the computer prints it out at the  
11 same time that it prints out the barcode. I think  
12 it does is right at the same time that it's  
13 printing out the barcode, which is unique to each  
14 document; it also prints out in human letters  
15 what the bar-, what's represented in the barcode,  
16 which is the summons number. So this may be a  
17 matter of programming. I don't know if it's going  
18 to cost the City another \$500 million to do this  
19 stupid little thing, like some of the stuff I've  
20 heard?

21 MS. BALSAM: Well, the barcode I think  
22 has to stay where it is.

23 CHAIR DEL VALLE: No, the barcode --

24 MS. BALSAM: But the field summons

1 May 28, 2015

2 number could be -- could be moved anywhere.

3 CHAIR DEL VALLE: What I mean is as it  
4 prints the barcode, in some printing right --  
5 together with the barcode, underneath the barcode  
6 or above the barcode, actually put that, you  
7 know, the Arabic number digits as opposed to the  
8 bars. I don't know. It's -- I don't know if it's  
9 practical from an IT point of view or not? But I  
10 know I have seen it in some documents. I think  
11 I've seen it on some tax forms that I've used  
12 that have barcodes attached to them.

13 MR. HYLTON: I've seen them. I just  
14 think it's kind of weird to have it in the middle  
15 of the form.

16 MS. BALSAM: Mm-hmm.

17 MR. HYLTON: You know, usually you're  
18 looking for it at the ends as, you know: Where's  
19 my number? And it's kind of embedded in the  
20 middle here.

21 MS. BALSAM: Okay.

22 CHAIR DEL VALLE: Or maybe it should be  
23 printed in red; the actual summons number printed  
24 in red?

1 May 28, 2015

2 MS. BALSAM: That's costly.

3 CHAIR DEL VALLE: That's costly.

4 MR. HYLTON: That's costly?

5 MS. BALSAM: That, that's real costly. I  
6 mean, we could move it up; could we move it up to  
7 the top do you think?

8 MR. GREGORY: Top right.

9 MS. BALSAM: Well, I wouldn't say top  
10 right. I would say by the issuing agency --

11 MR. PECUNIES: Either if it was just  
12 more prominent or larger or some way to sort of  
13 make it more visible.

14 CHAIR DEL VALLE: Let's check it out. I  
15 like the idea of it being up on the top in bold  
16 because I think it's true that people, when they  
17 first look at it; I know when I get a parking  
18 ticket or whatever and I'm sitting at my computer  
19 to get rid of this stupid ticket, I'm scanning  
20 for the -- the only number that counts on that  
21 thing is the summons number.

22 Hon.CAVALLO: Ernie Cavallo, citizen  
23 member. Should it go under summons for civil  
24 penalty only? Should the line that says summons

1 May 28, 2015

2 number be under that? Or refer to the following  
3 summons number in all correspondence and the  
4 summons number come right under that and  
5 everything else shifted down?

6 MR. HYLTON: I like that. Right  
7 underneath the summons number -- the summons  
8 heading.

9 Hon. CAVALLO: Which says summons for  
10 civil penalty.

11 MR. HYLTON: Right, right.

12 MS. BALSAM: Yeah. Right. No, I  
13 understand. Madelynn?

14 MS. MADELYNN LIGURI, ESQ., DEPARTMENT OF  
15 SANITATION: Madelynn Liguori from Sanitation.  
16 I'm going to have to talk to my IT people. We  
17 were good with this format. And if we keep  
18 changing it up, I don't know how that's going to  
19 work with Novus. That's my only concern.

20 Hon. CAVALLO: It's a good concern.

21 CHAIR DEL VALLE: Have we been talking,  
22 do you know?

23 MS. BALSAM: Yeah.

24 CHAIR DEL VALLE: Oh, okay.

1 May 28, 2015

2 MS. BALSAM: Oh, yeah, that's why we  
3 have the reduced version. They needed -- they  
4 needed a reduced version for their little --

5 MR. HYLTON: Is it because you guys are  
6 doing electronic?

7 MS. LIGUORI: We have electronic for  
8 half of guys; our SEA's are all on handhelds and  
9 they have been for years.

10 CHAIR DEL VALLE: Printing -- printing  
11 the summons number in red is a bigger expense?

12 MS. BALSAM: In colored ink, it'd be  
13 colored ink -- as opposed to red ink; as opposed  
14 to black --

15 CHAIR DEL VALLE: Well, we have --

16 MR. HYLTON: But they do that now.

17 CHAIR DEL VALLE: -- red ink already for  
18 the warning.

19 MS. BALSAM: It's small.

20 MS. KNAUER: Yes.

21 MS. LIGUORI: Would it need to have red  
22 ink right on the warning?

23 MS. BALSAM: I think it does actually  
24 have red ink now.

1 May 28, 2015

2 MS. LIGUORI: Then it wouldn't a problem  
3 with red ink.

4 MS. BALSAM: Well, I don't know -- I  
5 don't know if the Novus ones have red ink.

6 MS. LIGUORI: Well, they do because we  
7 have pre-printed summonses. But going forward,  
8 we're not. So everything's going to have be in  
9 black and white.

10 CHAIR DEL VALLE: Okay. So much for that  
11 theory.

12 MR. HYLTON: Would you need another \$2  
13 million?

14 MS. BALSAM: I'll change the -- I'll  
15 change the warning to black and white. So, yes,  
16 Robert --

17 ROBERT CARVER, ESQ., CITIZEN MEMBER:  
18 One question.

19 MS. BALSAM: Robert Carver for the  
20 record

21 MR. CARVER: Rob Carver, yes, sorry.

22 MR. CARVER: Will the absence of the ECB  
23 name on the summons interfere with the ability to  
24 have a valid judgment? Because I'm thinking

1 May 28, 2015

2 typically in a civil lawsuit the judgment  
3 holder's name was on the summons. And here that  
4 this is not the case.

5 MS. BALSAM: Well, it is on the back. So  
6 --

7 MR. CARVER: Well, I know that it's on  
8 the back, just for writing your check out to,  
9 right?

10 MS. BALSAM: Well, no. It says if you do  
11 not admit the charge, the independent New York  
12 City Office of Administrative Trials and Hearings  
13 will decide your case. Actually, it doesn't say  
14 --

15 Hon. Cavallo: It doesn't say.

16 CHAIR DEL VALLE: Well, you said the  
17 judgment holder?

18 MR. CARVER: Yeah. Because I thought  
19 that it's under the ECB statute that we get a  
20 judgment docket; is that not correct?

21 MS. BALSAM: If it's served a certain  
22 way, yeah.

23 MR. CARVER: Oh, I see.

24 CHAIR DEL VALLE: It's not necessarily

1 May 28, 2015

2 locked into the ECB statute that we docket  
3 because we can docket summonses that are issued  
4 in a current; the way the current structure is  
5 hearings are divided into ECB Tribunal, Taxi  
6 Tribunal and Health Tribunal. At the end of the  
7 exercise this year, there will be no Health  
8 Tribunal and no Taxi Tribunal and no ECB  
9 Tribunal. It'll be just a Hearings Division. And  
10 the Hearings Division will be designated to hear  
11 cases that are returnable quote/unquote to the  
12 Environmental Control Board. The actual judgment  
13 holders will be the Department of Finance, as it  
14 is currently by the way. It's not an ECB  
15 judgment, despite what you hear in the press or  
16 in the City Council. It is a judgment that's held  
17 by the City of New York. That's why it's  
18 collected by the Department of Finance. And the  
19 Department of Finance is the one that does  
20 whatever they have to do to do collections.

21 Mechanically what happens is if somebody  
22 is found guilty or pleads guilty to a summons, up  
23 to about 45 days, we will collect the money. That  
24 is OATH will collect the money and then transfer

1 May 28, 2015

2 it to the Department of Finance. After 45 days,  
3 when it's converted into a judgment, we have  
4 nothing further to do with it. And the Department  
5 of Finance proceeds to do whatever it does or  
6 doesn't do to collect it. It's none of our  
7 business anymore.

8 So when you hear stories in the press  
9 that there are one and a half billion in ECB  
10 judgments outstanding, it's not quite accurate.  
11 There are essentially no ECB judgments  
12 outstanding. It's really all judgments held by  
13 the City of New York. They may have originated at  
14 a proceeding at ECB; but they're not ECB  
15 judgments. One of the issues that we've been  
16 struggling in misabusing people a lot of lately  
17 is that ECB is not an enforcement agency. It's an  
18 adjudicatory entity. It is to say the least  
19 highly inappropriate for us to be the enforcement  
20 agency and the adjudication agency at the same  
21 time. The whole concept of taking tribunals out  
22 of an enforcement agency is that adjudication is  
23 done by an impartial and neutral entity.

24 One of the scary things that is right

1 May 28, 2015

2 now before the City Council is there's  
3 legislation that takes the Parking Violations  
4 Bureau out of the Department of Finance and gives  
5 it to us. Only scary in the sense that it'll  
6 literally more than double our volume. Just as an  
7 optic, you walk into a Parking Violations Bureau  
8 and across the top it says: Department of  
9 Finance. It might as well say: Sheriff of  
10 Nottingham and come in and plead innocent. To the  
11 point, what we're endeavoring to do is to in fact  
12 and in image and the attorneys in the room are  
13 aware of this concept more than anybody else I  
14 think because we have to live with it every day;  
15 that the appearance of something is just as  
16 serious as the actual fact. And if it appears  
17 that we, OATH, ECB, are in bed with enforcement,  
18 it kills the whole concept that you're going to  
19 get a fair and neutral hearing.

20 But major piece of our exercise in the  
21 next two years is to absolutely divorce  
22 everything that OATH does from the mechanics of  
23 any other City agency. Part of the problem is as  
24 a result of when the consolidations occurred, it

1 May 28, 2015

2 was done very clumsily. And parts of agency's  
3 functions that really were not adjudicatory were  
4 pulled in together, like collecting money for  
5 summonses and revenue and that sort of thing.  
6 That's totally inappropriate for a judicial  
7 tribunal or a quasi-judicial tribunal.

8           You have a case in civil court and I get  
9 a judgment against you for whatever; it's not the  
10 civil court that collects the money. There's a  
11 process where you, the plaintiff collect the  
12 money either by doing an attachment or by  
13 garnishing wages or whatever it takes. But it's  
14 not the court that does that. It's not the  
15 business of the court. The court does not make  
16 money on finding you guilty. I want to make it  
17 clear that we don't make money by finding people  
18 guilty.

19           MR. CARVER: My notion that ECB was the  
20 judgment holder, which you're telling me is not  
21 correct; comes from reading Title. Every Title  
22 report gives you what they say: ECB judgments.

23           CHAIR DEL VALLE: Yeah, that's something  
24 we're -- that's not only in those reports. That

1 May 28, 2015

2 appears also in databases maintained by other  
3 City agencies, like the Department of Buildings,  
4 for example; that they have things called  
5 building violations. They got ECB violations and  
6 fines and stuff like that. That's stuff that has  
7 to be worked through, the granular stuff in the  
8 weeds that has to be cleaned up. And it creates a  
9 lot of misimpressions when you deal with the  
10 public.

11 I've made it a point of going out and  
12 finding out what people think and what their  
13 understanding of ECB is, City Council members,  
14 other people in government and never mind the  
15 general public. And you get an incredible  
16 feedback of misconceptions of stuff. They think  
17 for example that ECB does Sanitation policy or  
18 DEP policy or even certain Police Department  
19 policies. We don't. We don't do any of that  
20 stuff. We don't write the Sanitation rules or any  
21 of that stuff but people believe that.

22 I can't tell you how many times I've  
23 heard from somebody: You know, you guys are  
24 terrible. ECB is giving summonses to all these

1 May 28, 2015

2 little old ladies for recycling stuff in their  
3 little one-family homes or for not cleaning up  
4 the snow after it snows. And I tell them: ECB  
5 didn't give you any summonses. And that comes  
6 from the fact that when you get the summons form,  
7 it just says: Environmental Control Board. It  
8 doesn't say Sanitation Department or whomever in  
9 the world is issuing those summonses.

10 Even Buildings Department summonses  
11 issued to people who put up illegal signs; I get  
12 lobbyists calling me complaining about ECB giving  
13 their clients summonses for violating the law by  
14 putting up signs on the building. And I said: You  
15 know, please call the Buildings Department. We  
16 don't give you the summonses for that. We  
17 adjudicate it. We've got to make it clear to  
18 everybody in the City and beyond and by the City  
19 I mean even elected officials that we adjudicate.  
20 That's all that we do.

21 And part of the stuff that we're dealing  
22 with is a lot of legacy stuff. Once upon a time  
23 the Environmental Control Board literally had the  
24 Sanitation Department working for it. It had DEP

1 May 28, 2015

2 working for it and I don't know how many other  
3 agencies working under it. This was one of the  
4 Lindsay Administration's super agencies. And as  
5 time went by and they realized that model didn't  
6 make sense, they started chopping things out. And  
7 as they chopped things out, it was a lot easier  
8 to just do a surgical, clumsy cutout without  
9 taking care of the details.

10 And what we're endeavoring now to do is  
11 to get in there and clean up the details and get  
12 rid of a lot of anachronistic stuff that just  
13 doesn't make sense 40 years later. And this is  
14 just one step of what we're involved in doing. We  
15 have a task force working right now with the  
16 Mayor's Office of Operations and the Mayor's  
17 Office and pretty soon the City Council to get  
18 rid of a lot of this historic flotsam and make it  
19 clear to everyone what exactly is going on.

20 And part of it is having consistent  
21 procedural rules across the board with all 26  
22 City agencies that issue summonses that we hear.  
23 It just doesn't work that one set of summonses  
24 says: You have a return date in 15 days; another

1 May 28, 2015

2 one says you have a return date in 30 days. One  
3 agency gives us electronic summonses that we have  
4 within 24 hours. Another one gives us paper  
5 summonses that isn't in the system for four to  
6 five weeks later and somebody's trying to pay the  
7 summons and they can't; nobody knows how to pay  
8 the summons because nobody has a record of it.

9 That's all stuff that hopefully at the  
10 end of the exercise won't happen and everything  
11 will be automated and everything will be  
12 consistent. And everybody will be clear that when  
13 they come to a hearing, that they will be treated  
14 on the same basis as the complaining agency. The  
15 agency will be the petitioner. The member of the  
16 public will be the respondent. And they will  
17 stand equally before the hearing officer, with no  
18 special consideration or privileges to either  
19 one. And that's the goal. And this is just one  
20 little step in that process. End of speech.

21 Hon. CAVALLO: I have a question. Ernie  
22 Cavallo, citizen member. Can we go back to the  
23 top of the summons, the calling it of a summons?

24 MS. BALSAM: Yes.

1 May 28, 2015

2 Hon. CAVALLO: I've been thinking about  
3 it and I'm not sure how my colleagues on the  
4 bench would take an argument that we have no  
5 power to issue a summons; we only have power to  
6 issue a Notice of Violation. Did somebody run  
7 this by the Law Department, changing it from  
8 Notice of Violation to summons?

9 MS. BALSAM: So, let me just say that  
10 the Taxi and Limousine Commission only calls  
11 their paper summonses. So, I'm not really worried  
12 about it.

13 Hon. CAVALLO: Okay. No one has ever  
14 raised it?

15 MS. BALSAM: Yeah.

16 Hon. CAVALLO: Okay. I didn't want a  
17 two-year limbo while somebody adjudicates it up  
18 through appeals courts.

19 MS. BALSAM: No. And by the end of the  
20 year --

21 MR. CAVALLO: Because summons is much  
22 better.

23 MS. BALSAM: Yeah.

24 Hon. CAVALLO: Summons is much better

1 May 28, 2015

2 than Notice of Violation for the reasons that the  
3 Chair said, yes.

4 MS. BALSAM: And the new Hearings  
5 Division rules and many of which we're going try  
6 to make the ECB rules as close to the Hearings  
7 Division rules as we can, subject to the Charter  
8 provisions; the new Hearings Division rules says  
9 a Notice of Violation includes a summons and is  
10 also a charging instrument, blah, blah, blah. So  
11 we're going to propose making that change for ECB  
12 as well.

13 Hon. CAVALLO: Okay. Thanks, Helaine.

14 MS. BALSAM: So on the front, I'll have  
15 somebody research that issue, Rob, okay? Just in  
16 case. It can't hurt to be overly cautious. But as  
17 of now, what we have on the front is we will make  
18 the summons number more prominent, either to move  
19 it up to the top if that's feasible from an IT  
20 standpoint, or make it bigger in the middle.  
21 Okay? For the warning, we're going to add  
22 language referring to remote adjudications and  
23 change the end of the sentence: and higher  
24 penalties. We're going to actually have to change

1 May 28, 2015

2 that to may be imposed because there are some  
3 charges that are flat penalties, so the default  
4 is actually the same as the hearing penalties.

5 CHAIR DEL VALLE: And I think may be  
6 imposed is better altogether. Because once a  
7 hearing officer may look at the actual document  
8 itself, they may find a defect on its face and  
9 dismiss it as a consequence and nothing may be  
10 imposed.

11 MS. BALSAM: Right.

12 CHAIR DEL VALLE: Unlikely, but it does  
13 happen.

14 MS. BALSAM: Alright, moving to the  
15 back. I gave you --

16 MR. HYLTON: Just before --

17 MS. BALSAM: Yeah, I'm sorry.

18 MR. HYLTON: Just one quick question,  
19 just to clarify. So I'm trying to envision what's  
20 going to be when a respondent appears or is  
21 noticed to appear at ECB or is going to be OATH  
22 --

23 MS. BALSAM: OATH Hearings Division.

24 MR. HYLTON: -- Hearings Division.

1 May 28, 2015

2 MS. BALSAM: OATH Hearings Division.

3 MR. HYLTON: So -- right.

4 MS. BALSAM: Which ECB will be a part  
5 of.

6 MR. HYLTON: I understand. So our forms  
7 in the interim, which I don't believe our long-  
8 forms would be; I don't know will be completely  
9 ready for January 1st I suppose. You said by the  
10 end of the year. Should our forms be saying: OATH  
11 Tribunal.

12 MS. BALSAM: Hearings Division.

13 MR. HYLTON: OATH Hearing -- Office of  
14 Administration Trials and Hearings Division.  
15 That's the way our forms should be printed?

16 CHAIR DEL VALLE: The short answer is  
17 yes.

18 MR. HYLTON: Okay. So, considering the  
19 inventory of forms that we have, the agencies  
20 might have a big issue with revamping these  
21 forms.

22 MS. BALSAM: Stickers on them. That's  
23 how we've always done it in the past.

24 MR. HYLTON: Well, but stickers are a

1 May 28, 2015

2 problem also, right? Stickers are peel-able. You  
3 know, mechanically you have to have an inspector  
4 travel with a whole bunch of stickers to put on  
5 and three sets of forms. It is a problem for  
6 agencies, trying to do this this quickly.

7 CHAIR DEL VALLE: A lot of this stuff,  
8 it really doesn't matter what -- that they use an  
9 old form, as long as we know where it's going and  
10 what it's doing. A lot of this is basically to  
11 educate the public as to what, what's going on.

12 MR. HYLTON: Okay.

13 CHAIR DEL VALLE: And what their rights  
14 are.

15 MR. HYLTON: Right. I --

16 CHAIR DEL VALLE: Those rights are not  
17 going to change. And where the documents are  
18 going, it's really not going to change  
19 substantively. Unless you have like a hundred  
20 billion of these forms that'll last for the next  
21 20 years, they can probably be used until they're  
22 used up.

23 MR. HYLTON: Alright. I just beg for  
24 more time. Because I don't think the end of the

1 May 28, 2015

2 year is going to be so feasible for these  
3 agencies because we have to redo the forms and  
4 order it and get the others out of inventory and  
5 get it distributed again and so on.

6 MS. BALSAM: Well, you get --

7 CHAIR DEL VALLE: Well, actually we  
8 order it -- we order it for most of the agencies.

9 MR. HYLTON: Okay, yes, for these forms.  
10 But as you're saying, you're thinking of going  
11 long; the other agency, we don't use these forms.  
12 And so in respect to the issue --

13 MS. BALSAM: Well, this is really more  
14 about the electronic versions.

15 MR. HYLTON: Oh, I see, alright.

16 MS. BALSAM: Right? I mean, that's --  
17 these are --

18 MR. HYLTON: Okay, so we have time then  
19 you're saying DOB that is, because we are not  
20 going electronic at the end of the year.

21 MS. BALSAM: Right.

22 MR. HYLTON: Alright. Okay, thank you.

23 MS. BALSAM: Alright, so anything more on  
24 the front? Okay. So, I gave you a new copy of the

1 May 28, 2015

2 back. It has one slight change from what was  
3 distributed in your package. We added a line  
4 above reasonable accommodation that says: To view  
5 the law or rule you were charged with, go to; and  
6 that has the link that's actually on the  
7 NEWYORKCITY.GOV website to the laws and rules of  
8 the City of New York. So any comments or  
9 questions on the back? This is again not cures.  
10 These are -- this is the no cure back.

11 MS. KNAUER: Sorry. Elizabeth Knauer,  
12 citizen member. I have one question. Actually, I  
13 guess it's really a question on the front but it  
14 makes note of it on the back. It says at the top:  
15 Note, if the charge on the front of the summons  
16 state you must appear in person, then you have to  
17 appear in person. Where is that going to appear?

18 MS. BALSAM: That's in the agency real  
19 estate.

20 MS. KNAUER: Okay.

21 MS. BALSAM: That's up to the agency to  
22 make that determination.

23 MS. KNAUER: And then a very minor thing  
24 but I just feel like it can cause annoyance for

1 May 28, 2015

2 some people is where it says how you can make  
3 payment in person and it says: checks, money  
4 orders and credit cards are accepted. Given that  
5 there's a whole line underneath that, can you  
6 note which credit cards are accepted? So people  
7 don't show up with a card that's not. I mean, I  
8 think for -- I think DOF --

9 MS. BALSAM: I don't even know what  
10 credit --

11 MS. KNAUER: -- only takes MasterCard  
12 and Visa for parking tickets, for example. So if  
13 somebody shows up with Amex, they're going to  
14 have to go out and --

15 Hon. CAVALLO: Or Discover.

16 MS. KNAUER: Yeah. So, I would just  
17 suggest mentioning which credit cards are  
18 accepted; so people don't have to go out and get  
19 another form of payment once they have shown up.

20 CHAIR DEL VALLE: Or debit card for that  
21 matter.

22 MS. BALSAM: Yeah, Joe.

23 MR. GREGORY: Alright, Joseph Gregory,  
24 Fire Department. Just, I mean, it doesn't affect

1 May 28, 2015

2 us. But for the reasonable accommodation, it says  
3 if you have a disability and require  
4 accommodation on the day of your hearing, call  
5 the phone number listed below. There are six  
6 phone number listed. So maybe you might want to  
7 specify if they have to do the 1-844 or if  
8 they're going to have to call each one of the  
9 individual --

10 MR. GREGORY: Well, there's no call  
11 number for the individual.

12 MS. BALSAM: There should be only one  
13 phone number. You have six phone numbers?

14 Hon. CAVALLO: There's no phone numbers  
15 here.

16 MR. GREGORY: Oh, I'm sorry.

17 Hon. CAVALLO: Just this.

18 MS. BALSAM: There's addresses but  
19 there's only one phone number.

20 MR. GREGORY: I'm sorry. You're right,  
21 you're right. I'm sorry.

22 MS. BALSAM: Yeah.

23 MR. GREGORY: I'm sorry.

24 CHAIR DEL VALLE: You scared them.

1 May 28, 2015

2 MR. GREGORY: Yeah, sorry.

3 MS. BALSAM: Like, wait a minute. Are  
4 there --

5 MR. GREGORY: No, you're right. Sorry.

6 TOM SHPETNER, CITIZEN MEMBER: I don't  
7 know that it matters but do we intend to have the  
8 vendor multiple offense schedule contained here?  
9 I mean, it's just that it just sort of sits there  
10 as sort of an outlier?

11 MS. BALSAM: Well, so this is -- this is  
12 a form that's going to be used by a lot of  
13 agencies. We wanted the back to be uniform. It's  
14 actually, for anybody that's using the paper  
15 short-form tickets now, it's already there. So, I  
16 think if an agency wanted to take that out on  
17 their electronics, I don't think that's a problem  
18 as long as it's not an agency that issues a  
19 hundred tickets. So --

20 MR. SHPETNER: It just sort of seemed  
21 funny that it was there.

22 MS. BALSAM: Yeah, I know, I know.

23 MR. SHPETNER: But I don't object to it  
24 being there. I just --

1 May 28, 2015

2 CHAIR DEL VALLE: You're right. It looks  
3 like it's out of place. The thing is that there  
4 are multiple agencies that issue vendor  
5 summonses, such as Parks Department, Police  
6 Department. It's really popular with the Police  
7 Department.

8 MS. BALSAM: Health Department.

9 CHAIR DEL VALLE: Health Department, and  
10 like that. But the back of the summons is more  
11 customizable than the front for agencies because  
12 there are idiosyncrasies of different agency  
13 rules. For example, you mentioned before the in-  
14 person requirement. For reasons I don't  
15 understand, the TLC has a lot of rule violation  
16 stuff that requires the respondent to appear in  
17 person. I'm not sure why but that's their call.  
18 It's their rules. So that piece is customizable  
19 because of the idiosyncrasies of their rules. A  
20 lot of the back is idiosyncratic to a particular  
21 agency's operations.

22 MS. KNAUER: Sorry, Elizabeth Knauer  
23 again. But why is -- why is -- what is the  
24 utility of having this here, even for an agency

1 May 28, 2015

2 that issues vendor violations? Won't they be  
3 putting what their penalty they're charging as  
4 the penalty on the front?

5 CHAIR DEL VALLE: It's because the --

6 MS. KNAUER: So, I mean, and this might  
7 be confusing to somebody, like why, why is --

8 MS. BALSAM: So the answer to that is  
9 no. Because if it's a multiple offense schedule,  
10 then they will write on the front: multiple  
11 offense schedule.

12 MS. KNAUER: And the person has to  
13 figure out how much they owe?

14 MS. BALSAM: Well, they come in and have  
15 a hearing.

16 CHAIR DEL VALLE: The problem is the  
17 inspector on the street or the cop on the street  
18 who's issuing the vendor the summons has no idea  
19 whether this guy's had multiple offenses before.

20 MS. KNAUER: So those wouldn't be --

21 CHAIR DEL VALLE: And that's only  
22 something that they'll after it goes through the  
23 process when it gets to --

24 MS. KNAUER: Uh-huh.

1 May 28, 2015

2 CHAIR DEL VALLE: -- whomever's  
3 presenting the summons at the hearing will have  
4 that information.

5 MS. KNAUER: So those wouldn't be ones  
6 that you could just pay by mail or plead --

7 MS. BALSAM: Actually they can; the  
8 vendors can pay by mail and some of them do know  
9 how many priors they have and they send in  
10 payment.

11 MS. KNAUER: Okay.

12 MS. BALSAM: And if they get it wrong,  
13 they get a bill.

14 CHAIR DEL VALLE: Or they get a refund.

15 MS. BALSAM: Or they get a refund.

16 MS. KNAUER: Okay.

17 CHAIR DEL VALLE: We actually give them  
18 refunds.

19 MS. KNAUER: Okay, okay. Got it.

20 CHAIR DEL VALLE: As much as it  
21 horrifies the Office of Management and Budget, we  
22 actually give people refunds.

23 MS. BALSAM: I've just been informed by  
24 Amy Slifka, the Deputy Commissioner for ECB, that

1 May 28, 2015

2 the paying the --

3 MS. SLIFKA: The credit cards can change  
4 from year to year or month to month. It depends  
5 on the rate that DOF is getting. So if we put in  
6 a specific credit card one month or it might be  
7 good for six months; they might have changed the  
8 credit cards they're accepting. So it might be  
9 difficult to --

10 MS. KNAUER: Okay.

11 MS. SLIFKA: Get an exact credit card.

12 MS. BALSAM: But I thought it was a good  
13 idea. Apparently, it's just not going to work.

14 MR. DEL VALLE: I thought it was a good  
15 idea too.

16 MS. SLIFKA: I did too.

17 CHAIR DEL VALLE: Oh, well, hmm. And  
18 actually I think they charge you -- they charge  
19 you --

20 MS. BALSAM: They charge a service fee.

21 CHAIR DEL VALLE: -- the service fee for  
22 using a credit card.

23 Hon. CAVALLO: Should it say that then?

24 MS. KNAUER: You mean at -- even at --

1 May 28, 2015

2 CHAIR DEL VALLE: Well, I know they -- I  
3 know it says that when you bring it up online and  
4 you go: Harrumph, yeah, it's worth the two bucks.

5 MS. BALSAM: Do they charge the service  
6 fee?

7 MS. SENIGO: No, yes, they do charge a  
8 service fee.

9 MS. BALSAM: Do they charge a service  
10 fee if you use a credit card even if you're  
11 paying at the window?

12 MS. SENIGO: I don't know if they pay at  
13 the window.

14 MS. SLIFKA: No, yes, they do.

15 MS. SLIFKA: I mean, I don't know if  
16 it's at the window.

17 MS. SLIFKA: Yes at the window it does  
18 say that.

19 MS. SLIFKA: Online, they definitely  
20 charge the service fee and it does say that.

21 MS. KNAUER: I guess that sort of leads  
22 me to wonder why the credit cards change? Because  
23 if the City is not paying the service fee, no  
24 matter what it is --

1 May 28, 2015

2 MS. SENIGO: They are paying the service  
3 fee.

4 MS. SLIFKA: They do charge and --

5 MS. KNAUER: The person is paying the  
6 service fee.

7 MS. BALSAM: The service fee is  
8 different for different cards. But the City just  
9 charges one rate for the service fee.

10 MS. KNAUER: Oh, okay. Okay, I see.

11 MR. HYLTON: The cheaper rate, I'm sure.

12 CHAIR DEL VALLE: I hope so.

13 MS. BALSAM: It's somewhere in the  
14 middle. There was a big debate about what rate to  
15 charge. Okay. So, we can't make the change about  
16 the credit cards. Anything else about the back,  
17 great.

18 MR. SHPETNER: I have some minor things.

19 MR. GREGORY: Are you --

20 MS. BALSAM: Yeah?

21 MR. GREGORY: Oh, I'm sorry, go ahead.

22 MR. SHPETNER: I just have some minor  
23 things I'll give you, teeny stuff.

24 MS. BALSAM: Oh.

1 May 28, 2015

2 MR. SHPETNER: There's no closed parent  
3 after mid-max on the vendor multiple offense  
4 schedule.

5 MS. BALSAM: Oh, I thought I changed  
6 that. Thank you.

7 MS. SLIFKA: Yeah.

8 MR. SHPETNER: There's just two or  
9 three. I'll just give them to you afterwards.

10 MS. BALSAM: Okay. Okay. Joe?

11 MR. GREGORY: Are you planning to go  
12 over the cure section at any point?

13 MS. BALSAM: Not now.

14 MR. GREGORY: Okay.

15 MS. BALSAM: But yeah, when, when you  
16 guys are going electronic, yeah.

17 MR. GREGORY: Okay.

18 MS. BALSAM: So --

19 MR. GREGORY: So wait until --

20 MS. BALSAM: I mean, I sent it -- I sent  
21 it to you. If you have comments on it --

22 MR. GREGORY: I'll send you the comments  
23 later.

24 MS. BALSAM: You can certainly send it

1 May 28, 2015

2 to us, yeah, sure.

3 MR. GREGORY: Okay, alright.

4 MR. HYLTON: We sent you comments.

5 MS. BALSAM: I think you did, yeah.

6 MR. GREGORY: And you mentioned the  
7 long-form that --

8 MS. BALSAM: Well, theoretically if it  
9 all works out and that's something that we have  
10 to work through, it'll look a lot like this.

11 MR. GREGORY: So you haven't draf-, you  
12 haven't created the long-form yet have you?

13 MS. BALSAM: I have. It's going to look  
14 like this.

15 MR. GREGORY: Oh, okay.

16 MS. BALSAM: But it's going to have  
17 different, a lot of different information in the  
18 agency real estate because the long-form agencies  
19 have a lot of different information that needs to  
20 be in that agency real estate. But the idea is to  
21 have the framework on the outside at least, other  
22 than the details, be the same for everybody.

23 MR. GREGORY: Okay.

24 MS. BALSAM: So anybody that's getting a

1 May 28, 2015

2 ticket will know where they need to look on the  
3 ticket for their hearing date.

4 MR. GREGORY: Okay.

5 MS. BALSAM: Right?

6 MR. GREGORY: So you'll -- okay, because  
7 I haven't; have you seen the long-form?

8 MR. HYLTON: I'm seen a version. I think  
9 this is -- yeah, I've seen the long-form version.

10 MR. GREGORY: Okay, because we have not  
11 at the Fire Department.

12 MS. BALSAM: Oh, I thought we sent it to  
13 you. But I will send it to you.

14 MR. GREGORY: Okay.

15 MS. BALSAM: Okay, so a vote?

16 CHAIR DEL VALLE: With changes we've  
17 discussed, is there a motion to adopt this as a  
18 prescribed ECB summons? I think it's unanimous.  
19 Thank you.

20 MS. BALSAM: Thank you.

21 Hon. CAVALLO: Thank you.

22 MR. CARVER: Thank you.

23 CHAIR DEL VALLE: I'd like to add, this  
24 is an aside actually; but one of the things that

1 May 28, 2015

2 what we've discovered in these new processes over  
3 the last five months or so is that even within  
4 ECB Tribunal stuff, there are hearing officers  
5 that essentially specialize on Sanitation  
6 summonses and just do Sanitation summonses or  
7 Building summonses or in the other contexts,  
8 Health Department summonses and like that.

9 Part of what we're doing right now is  
10 cross-training all the hearing officers; so all  
11 the hearing officers probably by the end of the  
12 summer will be able to hear summonses issued by  
13 any agency. The object of the exercise there  
14 being is if you're a small business and you may  
15 have a Health Department summons, a Sanitation  
16 Department summons, a Buildings Department  
17 summons; you can go in front of one hearing  
18 officer and deal with all of them simultaneous-,  
19 at the same time; rather than having to come on  
20 different dates and appear before different  
21 hearing officers.

22 Because some agencies have higher volume  
23 than other agencies, we sometimes have an entire  
24 day dedicated to summonses issued from one

1 May 28, 2015

2 agency. So if you come in on Buildings Department  
3 day but you also have a Sanitation summons you  
4 want to take care, you're kind of stuck. The idea  
5 will be a hearing officer will be able to deal  
6 with whatever summonses you have in front of you.  
7 And that will also include the hearing officers  
8 that are now we have segregated because of  
9 historical legacy anachronisms in doing just Taxi  
10 cases or doing Health Department cases.

11 That's part of the concept of having a  
12 consistent Hearings Division, where essentially  
13 any summons that's written to any business or  
14 member of the public can come and get it taken  
15 care of one way or the other. That said and I'll  
16 be glad to talk to anybody about it later; good  
17 old fashioned requests for cease and desist  
18 orders by DEP.

19 MR. PECUNIES: Russell Pecunies,  
20 Assistant Counsel, DEP. This month DEP first has  
21 a request for a cease and desist order relating  
22 to failure to install a grease trap. This is for  
23 Gifford's Lane Pizza Corp, 15 Gifford's Lane in  
24 Staten Island. The establishment was ordered to

1 May 28, 2015

2 install a grease trap in August of last year.  
3 They have been issued a series of Notices of  
4 Violation for failing to comply with that order.  
5 They have defaulted on all of those Notices of  
6 Violation I believe. Did I hit something here? I  
7 guess I did.

8 CHAIR DEL VALLE: It looks like we wound  
9 up in the Apple store. If it's going to take too  
10 long, I think we can continue regardless of the  
11 Apple commercial in the background or turn it  
12 off. Okay. Alright. Actually, I can see better.  
13 The reflection was pretty intense now that I  
14 notice it's off. I'm sorry.

15 MR. PECUNIES: Okay, so I'm sorry about  
16 that. I think I was pretty much done with the  
17 first one. Again, they've been ordered to install  
18 a grease trap. They have still not done so,  
19 despite the issuance of several Notices of  
20 Violation; all of which they have defaulted on.  
21 Based on the continuing failure to comply, DEP is  
22 asking the Board to order -- to issue an order to  
23 cease and desist. Yeah?

24 MR. DOUG SWANN, CITIZEN MEMBER: Doug,

1 May 28, 2015

2 Swann, citizen member. I'm just curious. How  
3 extensive is the grease interceptor? What exactly  
4 is it?

5 MR. PECUNIES: What -- I'm sorry?

6 MR. SWANN: What exactly is the grease  
7 trap interceptor?

8 MR. PECUNIES: Oh, okay. So for  
9 restaurants, commercial establishments that  
10 generate in their normal course of business  
11 what's called FOG -- fats, oils and grease; in  
12 order to keep them out of the sewer, it's simply,  
13 it's installed on the sink and it's a grease,  
14 called a grease interceptor. It intercepts --

15 MR. SWANN: So, is it part of the  
16 plumbing system?

17 MR. PECUNIES: Yeah. It's part of the  
18 plumbing system. It intercepts grease before it  
19 goes down the drain. Periodically, it has to be  
20 cleaned out and they have to get a carter to come  
21 over and take it away.

22 MS. KNAUER: Elizabeth Knauer, citizen  
23 member. Does the Department have any sense of why  
24 the entity has just defaulted continuously? Has

1 May 28, 2015

2 there been any correspondence attempts?

3 MR. PECUNIES: I mean, it's a  
4 corporation. So these tickets would have been  
5 served in Albany. And I believe BDWT serves them  
6 in addition, either by mail or in person. I don't  
7 really have any information specifically on why  
8 they're not being responsive.

9 MS. KNAUER: But if a cease and desist  
10 order is issued; it will be served on them in  
11 person?

12 MR. PECUNIES: I'm sorry?

13 MS. KNAUER: If we issue a cease and  
14 desist order; it will be served on them in  
15 person, correct?

16 MR. PECUNIES: It will be served  
17 personally by one of our inspectors and depending  
18 on what the state of the rule is right now,  
19 either by certified mail or by regular mail.

20 CHAIR DEL VALLE: Okay.

21 MR. PECUNIES: So that's it -- that's it  
22 on that one if we want to do that one separately?

23 CHAIR DEL VALLE: Is there a motion on  
24 that one? Or do you have more?

1 May 28, 2015

2 MR. PECUNIES: I have the two other  
3 types. So if we'd want to do them altogether,  
4 that's fine or I have boiler ones and backflow  
5 ones as well.

6 MR. HYLTON: Separate.

7 CHAIR DEL VALLE: Want to do it  
8 separately? Okay. Is there a motion on this one?  
9 It is unanimous with one abstention.

10 MR. PECUNIES: Abstained. Okay. I have  
11 eight requests for cease and desist orders  
12 relating to expired certificates of operation for  
13 boilers that are still using Number Six fuel oil.  
14 The deadline for abandoning or stopping the use  
15 of Number Six fuel oil is June 30th. So it's  
16 about a month away. There are still people who  
17 have certificates that are effective through the  
18 end of June. So as certificates are expiring and  
19 people are not converting, we are still in the  
20 process of issuing NOV's and cleaning up sort of  
21 now the last remnants of that population. So we  
22 may still have requests for cease and desist  
23 orders for a little while longer.

24 But we have eight this month. These are

1 May 28, 2015

2 all locations that have expired certificates to  
3 use Number Six. They've been issued a Notice of  
4 Violation, which has been adjudicated in  
5 violation and they have still not abandoned the  
6 use of Number Six and initiated the process to  
7 renew the certificate for another fuel. So for  
8 that reason, DEP is asking the Board to issue  
9 orders of cease and desist in these eight cases.

10 CHAIR DEL VALLE: Is there a motion?  
11 Again, it's unanimous with one abstention. I have  
12 a question.

13 MR. PECUNIES: Yeah.

14 CHAIR DEL VALLE: Is it legal for  
15 anybody to buy Number Six fuel in the City of New  
16 York now?

17 MR. PECUNIES: After June 30th, it is  
18 not legal to sell it, supply it or to use it.

19 CHAIR DEL VALLE: June 1st?

20 MR. PECUNIES: June 30th.

21 CHAIR DEL VALLE: June 30th.

22 MR. HYLTON: But you can buy --

23 CHAIR DEL VALLE: So after June 30th, we  
24 could also -- the City could also hit the

1 May 28, 2015

2 suppliers if they're supplying it?

3 MR. PECUNIES: We would -- if we do find  
4 buildings that are still using it after June  
5 30th, then we will also find out who's supplying  
6 them the fuel and we will go after the suppliers  
7 as well.

8 CHAIR DEL VALLE: Thank you.

9 MR. HYLTON: Russell, one more follow up  
10 question to that. What's your universe of  
11 buildings that are probably still not going to be  
12 in compliance on June 30th?

13 MR. PECUNIES: It's down into the low  
14 hundreds at this point.

15 MR. HYLTON: That's still a lot.

16 MR. PECUNIES: I think it's under 300 at  
17 this point. Again, some of them still have valid  
18 certificates that are expiring in June.

19 MR. HYLTON: Right.

20 MR. PECUNIES: So those people can keep  
21 using it until whatever date, whatever expiration  
22 date is on their certificate. And we can't do  
23 anything to go after them until after that  
24 certificate expires.

1 May 28, 2015

2 MR. HYLTON: Yeah.

3 MR. PECUNIES: So, you know, we will  
4 still issue -- be issuing tickets in June and  
5 July to these people. We would then have to wait  
6 for those tickets to be adjudicated before we  
7 could do anything in terms of a cease and desist  
8 order. So there'll be again a residual population  
9 that will decline eventually to zero. But it's  
10 still going to be a while 'til we get to zero.

11 MR. HYLTON: But my sense is that you're  
12 not going to be able to turn people's heat off in  
13 the winter, alright? And so I'm wondering --

14 MR. PECUNIES: Well, that is one of the  
15 problems with the fact that they made it June  
16 30th that it expires. Because there are people,  
17 if you have an expiration date of June 30th and  
18 you are just going to not convert; then we can  
19 just first issue you a ticket in July. And then  
20 by the time that gets adjudicated, we're into the  
21 fall sometime. And then the Commissioner is going  
22 to have to make a decision on how we go about  
23 enforcing those in terms of, you know, sealing  
24 people that don't comply when we get there.

1 May 28, 2015

2 MR. HYLTON: Right. And that's my thing  
3 is that, you know, you're just -- by the time  
4 you're ready to do that, it's going to winter.  
5 And I just wondered with Number Six oil, they're  
6 usually huge buildings, right?

7 MR. PECUNIES: A lot of them are big  
8 buildings.

9 MR. HYLTON: Huge pre-heaters and all  
10 that stuff; it's not so easy to convert. I'm  
11 wondering if there's a proactive campaign going  
12 on there?

13 MR. PECUNIES: Well, actually it's not  
14 hard to convert to four. And it's really not that  
15 big of a deal to convert to four; which is all  
16 you have to do at this point. So --

17 MR. HYLTON: Okay. Alright.

18 MR. PECUNIES: But yeah, that, when we  
19 get -- if we get to the point next winter where  
20 we have people that are still using six, you  
21 know, the Commissioner is going to have to decide  
22 how we address those hopefully very few residual  
23 cases.

24 CHAIR DEL VALLE: I understand that for

1 May 28, 2015

2 them of them it's just a matter of replacing the  
3 burners.

4 MR. HYLTON: Yes.

5 CHAIR DEL VALLE: And not the whole  
6 boiler system.

7 MR. HYLTON: But the oil tank -- I don't  
8 mean to prolong, but the oil tank systems are not  
9 the same.

10 MR. PECUNIES: Usually, if you're  
11 converting to four, you do have to replace the  
12 burner. There's a thing that sort of liquifies  
13 Number Six, that you don't need with other fuels  
14 --

15 MR. HYLTON: Pre-heater.

16 MR. PECUNIES: -- that you remove. But  
17 you also do usually have to clean the tank out.  
18 And when you clean the tank out, sometimes you  
19 find that the tank needs to be replaced.

20 MR. HYLTON: Right.

21 MR. PECUNIES: And that's where it can  
22 become a big expense. But if the tank is okay,  
23 converting to Number Four is not that big of a  
24 financial burden.

1 May 28, 2015

2 MR. HYLTON: Alright.

3 MR. PECUNIES: Okay? And finally we have  
4 28 requests for cease and desist orders for cases  
5 where buildings have failed to comply with  
6 Commissioner's orders to install backflow  
7 prevention devices and Notices of Violation have  
8 been adjudicated. In violation for failing to do  
9 that and the buildings are still not in  
10 compliance, so again we generally have 28 of  
11 these every month. So --

12 CHAIR DEL VALLE: Is it the same 28  
13 guys?

14 MR. PECUNIES: No. Actually, it's -- the  
15 backlog is still considerable. We only bring you  
16 28 because in terms of scheduling hearings,  
17 that's about as much as this schedule can bear.  
18 But we could bring you a lot more than that,  
19 which we don't.

20 CHAIR DEL VALLE: Alright. Is there a  
21 motion? And again it's unanimous with one  
22 abstention.

23 MR. PECUNIES: Yeah, thank you.

24 CHAIR DEL VALLE: I was wondering how

1 May 28, 2015

2 popular these backflow preventer guys were?

3 MR. PECUNIES: It's very popular with  
4 plumbers.

5 CHAIR DEL VALLE: Requests for pre-  
6 sealing reports?

7 MS. KELLY CORSO, ESQ., ASSISTANT  
8 DIRECTOR OF ADJUDICATIONS, ECB: Good morning,  
9 I'm Kelly Corso, Assistant Director of  
10 Adjudications for ECB. We have 16 requests for  
11 this morning's report. Ten of them pertain to  
12 backflow violations. In each of the backflow  
13 cases, the hearing officer recommends that  
14 sealing or further action be taken. This  
15 recommendation in each case is based on the  
16 respondents providing proof that an approved  
17 backflow prevention device was installed and  
18 tested at the premises, bringing the premises  
19 into compliance with the water code.

20 Five of the reports pertain to air  
21 cases. In each of these cases, the hearing  
22 officer recommends no further action be taken.  
23 This recommendation is based on the respondent  
24 providing proof in each case that a valid

1 May 28, 2015

2 operating certificate had been obtained to bring  
3 the cited premises into compliance with the air  
4 code.

5 And the final report pertains to a  
6 violation of the noise code. At the hearing, the  
7 respondent provided proof that work had been done  
8 to bring the cited kitchen exhaust equipment into  
9 compliance with the noise code. Based on that  
10 proof, the hearing officer recommends that it  
11 remain unsealed if the initial re-inspection and  
12 further re-inspections for a period of 180 days  
13 show no violation. And that's it.

14 CHAIR DEL VALLE: Motion?

15 MR. PECUNIES: Abstain.

16 CHAIR DEL VALLE: It's unanimous with  
17 one abstention. Thank you. Is there a motion to  
18 go into executive session? And we will go into  
19 executive session. Thank you.

20 [OFF THE RECORD]

21 [ON THE RECORD]

22 CHAIR DEL VALLE: We're on? Is there a  
23 motion to affirm the appeals decisions from May  
24 7, and May 21, 2015? I believe it's unanimous

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

May 28, 2015

and they're affirmed. If anybody hasn't signed the attendance sheet;and I think that includes me.

Hon, CAVALLO: It's right here.

CHAIR DEL VALLE: And is there a motion to adjourn? Thank you very much.

Hon. CAVALLO: Thank you.

MR. PECUNIES: Thank you.

(The public hearing concluded at 10:47 A.M.)

1

May 28, 2015

2

May 28, 2015

CERTIFICATE OF ACCURACY

I, Andrew Slawsky, certify that the foregoing transcript of Environmental Control Board on May 28, 2015 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Certified By



---

Date: May 29, 2015

GENEVAWORLDWIDE, INC

256 West 38th Street - 10th Floor

New York, NY 10018