

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

BOARD MEETING

12 Floor Training Room 143

New York, New York

June 30, 2016

9:23 a.m. - 10:10 a.m.

June 30, 2016

## MEMBERS PRESENT:

Ernest J. Cavallo - Appointed Member  
Ellen Cooper, Esq. - Dept. of Sanitation  
Fidel F. Del Valle, Esq. - Chair, OATH  
Shamonda Graham - Dept. of Buildings  
Joseph Gregory, Esq. - Fire Department  
Elizabeth Knauer, Esq. - Appointed Member  
Jorge Martinez, Esq. - Dept. of Health & Mental Hygiene  
**Russell Pecunies, Esq. - Dept. of Environmental Protection**  
Matthew Smith, Esq. - Police Dept.  
Douglas S. Swann - Appointed Member

## ALSO PRESENT:

Simone Salloum, Esq. - Assistant General Counsel, OATH  
Frances Shine - Secretary to the Board, OATH  
Lt. Dan Albano, Esq. - Police Department  
Rachel Amar - Special Assistant to the Commissioner, OATH  
**Helaine Balsam, Esq. - Deputy General Counsel, OATH**  
Scott Bane - General Counsel Intern, OATH  
Rachel Beckman - General Counsel Intern, OATH  
Denis Brogan, Esq. - Assistant General Counsel, OATH  
John Burns, Esq. - First Deputy Commissioner, Supervising  
ALJ, OATH  
Candice Cho - Law Department  
**Kelly Corso, Esq. - Assistant Director of Adjudications,  
OATH**  
Melek Dunn - General Counsel Intern, OATH  
Fana Garrick - Creative Services Coordinator Public  
Affairs & Communications, OATH  
David Goldin, Esq. - Administrative Justice Coordinator,  
Mayor's Office  
Diana Haines, Esq. - Assistant General Counsel, OATH  
Jaime Kamen - General Counsel Intern, OATH  
Kevin Lawner - Staff Attorney, Appeals, OATH  
Mark H. Leeds, Esq. - Special Senior Counsel, OATH  
Nancy Lin - Office of Management & Budget  
Maria Marchiano, Esq. - Deputy Commissioner/Chief Clerk,  
OATH  
Jacob Meninga - General Counsel Intern, OATH  
Hassan Mirza - General Counsel Intern, OATH  
Ashford Morgan - Computer Service Technician, OATH  
Joanne Rattansingh - Assistant Director of Adjudications  
for the Hearings Division, OATH  
Tynia Richards, Esq. - Deputy Commissioner, General  
Counsel, OATH

June 30, 2016

Mariama Sidique - General Counsel Intern, OATH  
Sydney Schein - General Counsel Intern, OATH  
Peter Schulman, Esq. - Assistant Director of  
Adjudications, OATH  
Marisa Senigo - Assistant Commissioner Public Affairs &  
Communications, OATH  
Amy Slifka, Esq. - Deputy Commissioner, OATH  
Thomas Southwick, Esq. - Supervising Attorney, Appeals,  
OATH  
Doris Stewart - Department of Transportation  
Ariel Yoo - General Counsel Intern, OATH

June 30, 2016

## INDEX

FIDEL F. DEL VALLE, ESQ. Chair, OATH	5
HELAINÉ BALSAM, ESQ. Deputy General Counsel, OATH	6
ERNEST CAVALLO Appointed Member	7
ELIZABETH KNAUER, ESQ. Appointed Member	8
SHAMONDA GRAHAM Department of Buildings	9
RUSSELL PECUNIES, ESQ. Department of Environmental Protection	10
KELLY CORSO, ESQ. Assistant Director of Adjudications, OATH	23
LT. DAN ALBANO, ESQ. Police Department	27
MATTHEW SMITH, ESQ. Police Department	27

1 June 30, 2016

2 (The board meeting commenced at 9:23  
3 a.m.)

4 MR. FIDEL F. DE VALLE, ESQ., CHAIR,  
5 OATH: This is our monthly meeting. I believe we  
6 have a quorum. And are we recording?

7 MR. ASHFORD MORGAN, COMPUTER SERVICE  
8 TECHNICIAN, OATH: Yeah.

9 MR. DE VALLE: Good. Is there a motion  
10 to adopt last month's minutes?

11 MS. SHAMONDA GRAHAM, DEPARTMENT OF  
12 BUILDINGS: One abstention.

13 MS. ELIZABETH KNAUER, ESQ., APPOINTED  
14 MEMBER: Abstention.

15 MR. DOUGLAS SWANN, APPOINTED MEMBER:  
16 Two abstentions.

17 MS. ELLEN COOPER, ESQ., DEPARTMENT OF  
18 SANITATION: Three abstentions.

19 MR. DE VALLE: Okay --

20 MR. ERNEST CAVALLO, APPOINTED MEMBER:  
21 Abstain.

22 MR. DE VALLE: Okay, so, we're three  
23 abstentions, three minus. How many people are  
24 here altogether?

1 June 30, 2016

2 MS. ELIZABETH KNAUER: Four, there were  
3 four abstentions, I believe.

4 MS. AMY SLIFKA: Eight people here.

5 MR. DE VALLE: The minutes are adopted.

6 MS. ELIZABETH KNAUER: Five.

7 MS. AMY SLIFKA, ESQ.: Nine, nine.

8 MR. DE VALLE: Nine, okay. So that  
9 works. First item on the agenda is an Amendment  
10 to the Building Department's Penalty -- Penalty  
11 Schedule.

12 MS. HELAINE BALSAM, ESQ., DEPUTY GENERAL  
13 COUNSEL, OATH: Good morning, everybody. I'm  
14 Helaine Balsam, Deputy General Counsel for OATH.  
15 We have one proposed rule and two final rules for  
16 approval today. The first is a proposed rule  
17 which is based on a proposal that Buildings made  
18 back in April concerning adding five new charges  
19 to the DOB schedule relating to construction  
20 superintendents. Do we have any questions?

21 MR. DE VALLE: Is there a motion? All  
22 those in favor? Okay, it's unanimous.

23 MS. GRAHAM: One abstention.

24 MR. DE VALLE: There's one abstention.

1 June 30, 2016

2 Buildings. The next item?

3 MS. BALSAM: The next item is what we  
4 have been calling the Model Rules. These are, it  
5 is a repeal and reenactment of Chapter 3, which  
6 was the ECB Rules and most of those rules we have  
7 moved into Chapter 6, which will be the Hearings  
8 Division Rules and we are asking the Board to  
9 approve the move of those rules from 3 to 6,  
10 which was unique to ECB remains in Chapter 3. We  
11 have, at the Board's request, preserved the  
12 appeals panels. From the proposed rule to the  
13 final rule after the public hearing, there have  
14 been six changes. In four places, we changed  
15 board to tribunal for further clarity. The most  
16 important one I guess for you to, to, for me to  
17 point out is that we added a definition of OATH  
18 Hearings Division to Chapter 6, which would  
19 include not only the former Health Tribunal or  
20 the former Taxi and Limousine Tribunal, but also  
21 the former ECB Tribunal, although ECB as an  
22 entity still exists, and then we also define  
23 tribunal and said that that's the Hearings  
24 Division. Also on section 613(e), we added

1 June 30, 2016

2 "only," this is concerning motions to amend, so  
3 we wanted to clarify that there must be a motion  
4 to amend. ALJ's, I'm sorry, hearings officers  
5 will not be able to amend on their own motion.  
6 Any questions? Yes?

7 MR. ERNEST J. CAVALLO, APPOINTED MEMBER:  
8 Just a procedural, Helaine. When we add things  
9 like that, does that then require like a new  
10 hearing or a republication or, or --

11 MS. BALSAM: These are --

12 MR. CAVALLO: -- a new process?

13 MS. BALSAM: That would be the Law  
14 Department's call.

15 MR. CAVALLO: Okay.

16 MS. BALSAM: They have certified these  
17 changes and have not asked us to hold a new  
18 public hearing.

19 MR. CAVALLO: Thank you.

20 MR. DE VALLE: Law Department basically  
21 certifies that the action is or is not ultra  
22 vires.

23 MR. CAVALLO: Oh.

24 MS. BALSAM: Yeah?

1 June 30, 2016

2 MS. ELIZABETH KNAUER, ESQ. APPOINTED  
3 MEMBER: Elizabeth Knauer, citizen member, I  
4 just, and I apologize that I wasn't here at the  
5 last meeting and this might have been discussed,  
6 but I just wanted to hear from Buildings as to  
7 whether there are concerns in the -- in their  
8 comments have been addressed by the changes.

9 MS. BALSAM: Yes.

10 MS. SHAMONDA GRAHAM, DEPARTMENT OF  
11 BUILDINGS: The Department of Buildings is okay  
12 with the rules as is and all of our concerns have  
13 been addressed at this time.

14 MR. DE VALLE: Anything else? Is there  
15 a motion? There's a motion. Will all those in  
16 favor, please signify? It's unanimous. The next  
17 item?

18 MS. BALSAM: The next item on the agenda  
19 is a final rule, which is for the repeal of the  
20 Air Code penalty schedule which is at this moment  
21 ultra vires, the ECB Air Code penalty schedule,  
22 and for an amendment to Section 3-100, Chapter 3  
23 in Title 48 instructing the hearing officers to  
24 follow penalty schedules contained in agency

1 June 30, 2016

2 rules if there is no penalty schedule contained  
3 in ECB's rules.

4 MR. DE VALLE: Questions?

5 MR. CAVALLO: I have been opposed to all  
6 of these, just for the record, I will state my  
7 opposition to it. I think it's a bad government  
8 initiative. I think it takes one level of  
9 transparency out of the process, and that is the  
10 review by the few citizen members that are here  
11 on this board. It allows the agencies to make  
12 their own rules without any public oversight and  
13 I'm opposed to it. I also, last time, as you  
14 know, walked out when my motion to table such a -  
15 - the previous attempt to repeal some rules was  
16 ignored. So I will not be making a motion to  
17 table this, because I know what the result will  
18 be, but I remind the members that you do not have  
19 to second it or make a motion for it. It's not  
20 before us. We don't have to vote on it.

21 MR. RUSSELL PECUNIES, ESQ., DEPARTMENT  
22 OF ENVIRONMENTAL PROTECTION: I would just point  
23 out from DEP's standpoint, because this is our  
24 penalty schedule, that if this penalty schedule

1 June 30, 2016

2 is not repealed then we do have a situation where  
3 there are two Air Code penalty schedules in the  
4 rules because we have promulgated the new one and  
5 the new one has taken effect. So if the old one  
6 were to not be repealed, we would have two  
7 penalty schedules, which when people search for  
8 an Air Code penalty schedule, if they find the  
9 wrong one, or if they find both of them, could  
10 result in some confusion, although I think it's  
11 understood which ones the hearing officers are  
12 applying, just in general, to have two penalty  
13 schedules in the rules for the same code is not  
14 obviously an ideal situation.

15 MR. DE VALLE: Well, let me ask you,  
16 when DEP adopted that schedule, did they follow  
17 CAPA?

18 MR. PECUNIES: The --

19 MR. DE VALLE: The, the Civil --

20 MR. PECUNIES: For the new penalty  
21 schedule?

22 MR. DE VALLE: Yeah.

23 MR. PECUNIES: Yes, the new penalty  
24 schedule is in effect as of May 11th.

1 June 30, 2016

2 MR. DE VALLE: Was there a public  
3 hearing where the public could come?

4 MR. PECUNIES: There was a public  
5 hearing, yes, and there were no comments that I'm  
6 -- that I can remember.

7 MR. DE VALLE: And was there an  
8 opportunity for the public to submit written or  
9 oral comments?

10 MR. PECUNIES: It was, it was published  
11 and promulgated in full compliance with CAPA  
12 procedure.

13 MR. DE VALLE: And did the Commissioner  
14 review the results of those hearings or whatever  
15 comments came or didn't come?

16 MR. PECUNIES: Again, to my  
17 recollection, there were no comments to review.

18 MR. DE VALLE: And the, she signed the  
19 promulgation that was published in the City  
20 Record?

21 MR. PECUNIES: Yes, it was published in  
22 the City Record and all of the CAPA requirements  
23 were complied with.

24 MR. DE VALLE: Thank you.

1 June 30, 2016

2 MR. CAVALLO: Question. It was my  
3 understa- -- Ernest Cavallo, citizen member, it  
4 was my understanding that there was supposed to  
5 be a simultaneous repeal and then the institution  
6 of the new rules. Was I misled or am I mistaken,  
7 Helaine?

8 MS. BALSAM: Did -- it didn't happen.

9 MR. CAVALLO: But it was supposed to  
10 happen that way, right?

11 MS. BALSAM: It was supposed to -- it  
12 was supposed to and, to be perfectly honest, the  
13 delay was in the Law Department.

14 MR. CAVALLO: I think then the  
15 confusion is not our issue.

16 MS. BALSAM: Well, to the extent that  
17 the EC, the current penalty in the ECB rules  
18 contains incorrect penalties. There are  
19 penalties that are too high or too low based on  
20 the new Air Code, and I think that that is an  
21 issue, because we're materially misleading the  
22 public.

23 MR. DE VALLE: The Air Code is in the  
24 Administrative Code?

1 June 30, 2016

2 MS. BALSAM: Right. But the penalty --

3 MR. DE VALLE: Right.

4 MS. BALSAM: The, the ECB, hopefully  
5 former ECB penalty schedule is still in ECB's  
6 rules.

7 MR. DE VALLE: Okay.

8 MS. KNAUER: Elizabeth Knauer, citizen  
9 member. I think that Ernie's frustration, which  
10 I, I share is that now we're sort of put in the  
11 position that if we don't approve this, there is,  
12 there is this confusion that nobody wants, and I  
13 think, I think that's unfortunate that the policy  
14 of having or removing penalty schedules from ECB  
15 review has -- it, it, by virtue of the enactment  
16 of or the promulgation of the new Air Code  
17 penalty schedule in the, in the DEP rules, we're  
18 now forced into the position that we can't really  
19 judge that policy. It's more -- it's just an  
20 issue of whether we're going to have a -- have  
21 two penalty schedules or not. So, I just wanted  
22 to voice that my vote or abstention, I'm still  
23 thinking about it, is based on the facts as of  
24 now and not the overall policy. Because I, I do

1 June 30, 2016

2 think that while CAPA is an important process,  
3 that what, what I've seen from the CAPA review,  
4 the CAPA comments that have come in on rules that  
5 we've adopted, there are very few comments. It  
6 doesn't seem like the general public really is  
7 aware of these public hearings. The comments  
8 usually come from lar-, you know, if at all, from  
9 large companies or organizations that have  
10 multiple issues before ECB. But where I have,  
11 where I in the past have objected to certain  
12 penalties, it has been the imposition of really  
13 high penalties on individuals and I feel like  
14 there's nobody really to speak up for those  
15 individuals who, you know, are pretty much  
16 hypothetical at the point and time when are rules  
17 enacted or promulgated. So I just wanted to  
18 speak my piece and that's it.

19 MR. DE VALLE: Thank you.

20 MR. CAVALLO: I have a question.

21 Statutory, if there's two conflicting penalties,  
22 doesn't the law require to institute the lower of  
23 the two?

24 MR. DE VALLE: It would more logically

1 June 30, 2016

2 require the institution of the most recent of the  
3 two.

4 MR. CAVALLO: That's the other issue,  
5 okay, that would be another issue, yes.

6 MS. BALSAM: And I would also say the  
7 legal penalty because --

8 MR. CAVALLO: I'm sorry. What do you  
9 mean by that?

10 MS. BALSAM: I would also say the  
11 current legal penalty. Some of the penalties in  
12 the ECB Air Code penalty schedule --

13 MR. DE VALLE: Are statutory, are  
14 statutory based.

15 MS. BALSAM: Yeah, well, they're no,  
16 they're --

17 MR. DEL VALLE: They're ultra vires.

18 MR. CAVALLO: Well, all, all --

19 MS. BALSAM: They're too high, the, the  
20 penalties changed. So the, some of the penalties  
21 in the, in the ECB penalty schedule are too high  
22 or too low --

23 MR. PECUNIES: I don't --

24 MS. BALSAM: -- based on the new

1 June 30, 2016

2 statutory range in the current Air Code.

3 MR. DE VALLE: That's what I meant by  
4 statutory.

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

6 MR. PECUNIES: Right, and, and just  
7 again, Russell Pecunies with, with DEP, the, the  
8 existing, the schedule that still exists in  
9 OATH's rules does not match the new code. The  
10 numbering does not match. The statutory ranges  
11 don't match. There are many new provisions in  
12 the new code that are not in the old penalty  
13 schedule. So the penalty schedule that's in  
14 OATH's rules does not match the now current code  
15 really at all.

16 MR. DE VALLE: Thank you.

17 MR. DOUGLAS SWANN: Doug Swann, citizen  
18 member. I just wanted to, you know, say that,  
19 for the record, I concur with Ernie and Elizabeth  
20 and I, I think the CAPA process does allow the  
21 public to have representation, but, again, as we  
22 have seen those, those hearings are, are, the  
23 comments are very few and I think what the Board  
24 provides here on a month-to-month basis allows

1 June 30, 2016

2 true representation for the public and I would  
3 hate to see that -- well, it's unfortunate that  
4 that's going away.

5 MR. DE VALLE: Anything else? Anyone  
6 else? Is there a motion? Second? All those in  
7 favor? One, two, three, four, five, six, seven.  
8 Those opposed? Two. Abstained? One. Motion  
9 carries. Thank you.

10 MS. BALSAM: Thank you.

11 MR. DE VALLE: And I believe the next  
12 item on our agenda is DEP's request for Cease and  
13 Desist Orders.

14 MR. PECUNIES: Okay. Okay. Again,  
15 Russell Pecunies, with DEP legal. So this month,  
16 the Department of Environmental Protection is  
17 asking the Board to approve Cease and Desist  
18 Orders on a total of 54 requests involving  
19 failure to install backflow prevention devices.  
20 There are 25 that were dated from the May meeting  
21 and 29 that are dated for today, if I counted  
22 these correctly. In each of these cases, the  
23 building owner has been ordered to install  
24 backflow prevention devices at their building.

1 June 30, 2016

2 They have failed to do so. They have been issued  
3 a summons for not doing so, which has been  
4 adjudicated in violation and they are still not  
5 in compliance. So in each of these 54 cases, DEP  
6 is asking the Board to approve an Order to Cease  
7 and Desist.

8 MR. DE VALLE: Is there a motion? I  
9 think it's unanimous with one abstention.

10 MR. PECUNIES: One abstention.

11 MR. DE VALLE: Which is DEP.

12 MR. PECUNIES: Okay, alright. And now,  
13 under the Noise Code, DEP is requesting three  
14 Cease and Desist Orders. The first one, which is  
15 being brought back from the May meeting, although  
16 the cover memo was re-dated for today, involves  
17 Dell's Maraschino Cherries Company, at 175  
18 Dikeman Street, in Brooklyn. This is a company  
19 that makes maraschino cherries. They are,  
20 according to conversations that I've had with the  
21 complainants, apparently not connected to  
22 ConEdison Power for some reason, and they run  
23 this facility off of a very large generator, a  
24 Caterpillar generator, of which there is a

1 June 30, 2016

2 picture in the submission. This generator has  
3 been cited for creating unreasonable noise on  
4 four occasions, dating back to July of last year,  
5 and they have not corrected the condition. And  
6 due to the continuing failure to correct the  
7 excessive noise from the generator, DEP is asking  
8 for an Order to Cease and Desist.

9 MR. DE VALLE: Any questions? Motion?

10 MS. KNAUER: I'm abstaining from this  
11 one.

12 MR. DE VALLE: Okay. So it, is it  
13 unanimous with two abstentions.

14 MR. PECUNIES: Okay. The next one under  
15 the Noise Code is for Wise Espresso Bar Corp. at  
16 3120 Coney Island Avenue in Brooklyn. This  
17 location has been cited for loud noise from the  
18 kitchen exhaust on three occasions and due to  
19 their repeated violations and continuing failure  
20 to come into compliance, DEP is asking the Board  
21 to issue an Order to Cease and Desist.

22 MR. DE VALLE: Question? Motion? It's  
23 unanimous with one abstention.

24 MR. PECUNIES: Okay. And the last one

1 June 30, 2016

2 under the Noise Code is for, the corporate name  
3 is Kiki's Plan A Group LLC, which does business  
4 as Kiki's, a restaurant at 130 Division Street in  
5 Manhattan. They have been cited on four  
6 occasions for loud noise from the kitchen exhaust  
7 at the restaurant, and again, due to the  
8 continuing failure to come into compliance, the  
9 Department is asking the Board to issue an Order  
10 to Cease and Desist.

11 MR. DE VALLE: Questions? Motion?  
12 Again, I believe it's unanimous with one  
13 abstention.

14 MR. PECUNIES: Okay. And finally, under  
15 the Sewer Code, DEP is requesting two Orders to  
16 Cease and Desist. The first one, which is being  
17 brought back from the May meeting is for Saipan  
18 Restaurant at 702 Amsterdam Avenue in Manhattan.  
19 They have been repeatedly ordered and issued  
20 summonses for failing to install and maintain  
21 grease interceptors for a variety of sinks and  
22 drains at this location. The Notices of  
23 Violation have been adjudicated against them.  
24 They were ordered to appear for a mandatory

1 June 30, 2016

2 Compliance Meeting in March, which they failed to  
3 appear for. And due to the continuing failure to  
4 install the grease traps as required, DEP is  
5 asking the Board to issue an Order to Cease and  
6 Desist.

7 MR. DE VALLE: Questions? Motion? It's  
8 unanimous, with again, DEP abstaining.

9 MR. PECUNIES: Okay. And the last one  
10 which is new for this meeting is Good Vision  
11 Taste at 2007 Emmons Avenue in Brooklyn. They  
12 have been ordered to do two things and have been  
13 cited for not doing them. One is to install and  
14 maintain grease traps for the floor drains, and  
15 the other thing is to hire a BIC licensed waste  
16 hauler to come at least once a month to clean the  
17 existing grease traps. They do have some.  
18 They're required to install more, but the ones  
19 that they have, have been found repeatedly to be  
20 overloaded with grease. Again, a series of  
21 summonses and orders have been issued and they  
22 have failed to comply and in fact have apparently  
23 defaulted on most if not all of the summonses.  
24 They were ordered to attend a mandatory

1 June 30, 2016

2 Compliance Meeting in February, which they did  
3 not attend and, based on the continuing failure  
4 to comply, DEP is asking the Board to issue an  
5 Order to Cease and Desist.

6 MR. DE VALLE: Motion? Unanimous with  
7 one abstention.

8 MR. PECUNIES: Alright. Thank you.

9 MR. DE VALLE: Thank you. We will now  
10 have a report on presealing reports.

11 MS. KELLY CORSO, ESQ., ASSISTANT  
12 DIRECTOR OF ADJUDICATIONS, ECB: Good morning.  
13 I'm Kelly Corso, Assistant Director of  
14 Adjudications. We have 66 presealing reports for  
15 today's Board. 29 of these are discontinuances.  
16 These are cases where the Respondent did not  
17 appear for a hearing and DEP is recommending the  
18 C&D proceedings be discontinued based on a review  
19 of records or an inspection showing that the  
20 Respondent's come into compliance, that the  
21 Respondent's no longer on the premises, or that  
22 the premises is being demolished. Of the  
23 discontinuances, three of them are sewer cases;  
24 15 are backflow cases; 9 are Air Code cases; and

1 June 30, 2016

2 two are Noise Code cases. So that's 29 of the 66  
3 for today. The remaining 37 cases, the  
4 Respondents did appear for hearings for these.  
5 Out of the remaining 37, 34 of the cases were  
6 back, either backflow or Air Code cases. 27 of  
7 those involve backflow violations and seven  
8 involve Air Code violations, and all of these 34  
9 backflow and Air Code cases, the hearing officer  
10 recommended no sealing or other action be taken  
11 based on the Respondents' evidence of compliance  
12 that was presented at the hearings. And the  
13 remaining three cases are Noise Code cases. In  
14 two of these cases, the Respondents provided  
15 evidence of work that had been done to bring the  
16 cited equipment into compliance and based on that  
17 evidence, the hearing officers recommend no  
18 sealing or other action, provided that DEP's  
19 reinspection and further reinspections for a  
20 period of 180 days show no violation. In the  
21 final case, the final Noise Code case, the  
22 hearing officer recommended sealing of the  
23 violating equipment. The Respondent in this case  
24 is Prime 135 New York City LLC. This case began

1 June 30, 2016  
2 back in January of 2015 when the Respondent  
3 received a summons for noise from his kitchen  
4 exhaust equipment. This kitchen exhaust  
5 equipment is located at its restaurant, which is  
6 at 135 7th Avenue South in Manhattan. Since no  
7 one appeared for the Respondent at the hearing in  
8 March of 2015, the case went into default. The  
9 default order imposed a penalty and order of  
10 compliance forthwith. The Respondent did not  
11 comply with the order and DEP issued subsequent  
12 summonses for the same equipment in March and  
13 June of 2015, and the Respondent defaulted on  
14 both of those. DEP issued a final summons in  
15 October of 2015. A representative for the  
16 Respondent did appear for a hearing, and stated  
17 that the exhaust fan was going to be relocated to  
18 comply with the Air Code. The summons was  
19 sustained and the hearing officer ordered  
20 compliance forthwith. However, a subsequent  
21 inspection by DEP in October of 2015 showed the  
22 Respondent had still not complied. So on January  
23 28, 2016, the Board approved a Cease and Desist  
24 Order in this case. At the initial presealing

1 June 30, 2016

2 hearing on this case in February 2016 and in each  
3 of the subsequent presealing hearings in March,  
4 April and May of 2016, including the last hearing  
5 which was on May 17th, the Respondent's  
6 representative did not provide any evidence that  
7 the Respondent had attempted to come into  
8 compliance with the Noise Code. Based on the  
9 failure to present any evidence that it has  
10 attempted to comply with the Noise Code, the  
11 hearing officer recommends that the Respondent's  
12 kitchen equipment be sealed immediately.

13 MR. DE VALLE: Any questions? Motion?  
14 It's unanimous. Thank you. Is there a motion to  
15 go into executive session to review judicial  
16 matters.? Unanimous. Thank you. And we'll  
17 adjourn for a moment as we ask the members of the  
18 public who are not part of ECB or OATH to please  
19 wait outside.

20 [OFF THE RECORD]

21 [ON THE RECORD]

22 MR. DE VALLE: Is the tape back on?

23 MR. ASHFORD MORGAN: Yes.

24 MR. DE VALLE: Oh. We are now back in

1 June 30, 2016

2 public session and we have had reports from staff  
3 as to existing judicial cases regarding the  
4 Environmental Control Board and a report on the  
5 Appeals Panel recommendations on appeals. Is  
6 there a motion to accept the panel  
7 recommendations? And it's unanimous. Before we  
8 wrap up today's meeting, I want to acknowledge  
9 and thank Daniel Albano, who is here today.  
10 He's, I believe your service with the City ends  
11 tomorrow?

12 LT. DANIEL ALBANO, POLICE DEPARTMENT:

13 That's correct.

14 MR. DE VALLE: After, after, what 45  
15 years or something?

16 LT. ALBANO: Not quite that many, 33 and  
17 a half, almost 34 years when I, when I'll finally  
18 retire. Matt Smith from my office is going to be  
19 taking my place. Matt's an attorney with the  
20 Legal Bureau. Matt's, I think, has got over 20  
21 years with the Police Department, right?

22 MR. MATTHEW SMITH, POLICE DEPARTMENT:

23 19.

24 LT. ALBANO: 19, close enough.

1 June 30, 2016

2 MR. SMITH: Close enough.

3 MR. DE VALLE: Wow, you don't look that  
4 old. You don't look that old.

5 LT. ALBANO: Why thanks. I feel that  
6 old. I, I would like to thank everybody. This  
7 has been a great experience. I've grown as an  
8 attorney. I've learned from everybody in the  
9 room. I always compliment the writers on the  
10 documents that are presented to us, just the  
11 writing is fantastic. Makes some very dry  
12 subjects oftentimes interesting. And it's been a  
13 real, real great experience. So I'd like to  
14 thank everybody for that. I've really enjoyed  
15 it.

16 [Applause]

17 MR. DE VALLE: How long have you  
18 represented the Police Commissioner here?

19 LT. ALBANO: About ten years, at least  
20 ten years.

21 MR. DE VALLE: Is that all? Thank you  
22 very much, and I hope you enjoy whatever you're  
23 going to be doing on Saturday.

24 LT. ALBANO: I'm going to be playing

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

June 30, 2016

golf on Saturday.

MR. DE VALLE: Thank you. Is there a motion to adjourn? We are adjourned.

(The board meeting concluded at 10:10 a.m.)

June 30, 2016

1  
2  
3  
4

Environmental Control Board, 6/30/16

CERTIFICATE OF ACCURACY

I, Julia Zappi, certify that the foregoing transcript of the Board Meeting of the Environmental Control Board on June 30, 2016 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Certified By



Handwritten signature of Julia Zappi in cursive script, positioned above a horizontal line.

Date: July 1, 2016

GENEVAWORLDWIDE, INC

256 West 38th Street - 10th Floor

New York, NY 10018