

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

July 30, 2015

9:17 A.M. to 9:52 A.M.

July 30, 2015

## MEMBERS PRESENT:

Lt. Dan Albano, Esq. - Police Department  
Robert Carver, Esq. - Citizen Member  
Fidel F. Del Valle, Esq. - Chair, OATH  
Joseph Gregory, Esq. - Fire Department  
Renaldo Hylton - Exec. Dir., Dept. of Buildings  
Elizabeth Knauer - Citizen Member  
Madelynn Liguori, Esq. - Dept. of Sanitation  
**Russell Pecunies, Esq. - Dept. of Environmental Protection**  
Thomas D. Shpetner - Citizen Member  
Douglas Swann - Citizen Member

## ALSO PRESENT:

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  
John Burns - First Deputy Commissioner, OATH  
John Castelli - Assist. Commissioner for Legislative  
Affairs, OATH  
Vanessa Caughman - Computer Service Technician, OATH  
Brandon Chiazza - Office of Management & Budget  
**Kelly Corso, Esq. - Assist. Director of Adjudications, ECB**  
Fana Garrick - Public Affairs Assistant, OATH  
David Goldin, Esq. - Administrative Justice Coordinator,  
Mayor's Office  
Shamonda Graham - Department of Transportation  
Mark H. Leeds, Esq. - Special Senior counsel, ECB  
Nancy Lin - Office of Management & Budget  
Vincent P. Maniscalco - Department of Transportation  
Maria Marchiano - Sr. Counsel/Assistant Commissioner, OATH  
Carol Moran - Deputy Commissioner of Health and Consumer  
Hearings and Taxi, OATH  
Teresita O'Neill - Assistant Director of Public Data  
Elisabeth Prael - Fire Department  
Brendan Saslow - Intern, OATH  
Doris Stewart - Department of Transportation  
Peter Schulman, Esq. - Deputy Supervising Attorney,  
Appeals, ECB  
**Amy Slifka, Esq. - Deputy Commissioner/Executive Director,  
ECB**  
Thomas Southwick, Esq. - Supervising Attorney, Appeals,  
ECB

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2 (The public hearing commenced at 9:17  
3 A.M.)

4 MR. FIDEL F. DEL VALLE, ESQ.,  
5 CHAIRPERSON, COMMISSIONER & CHIEF ADMINISTRATIVE  
6 LAW JUDGE, OATH: Good morning everyone.

7 ALL: Good morning.

8 MR. DEL VALLE: Welcome to this meeting  
9 of the Environmental Control Board. I think  
10 everyone should have gotten a copy of the minutes  
11 of the last meeting. If there's a motion to  
12 adopt, unless somebody has any corrections or  
13 whatever? Is there a motion? The minutes are  
14 adopted. Thank you.

15 First up is the quarterly review by Amy  
16 Slifka.

17 MS. AMY SLIFKA, ESQ., DEPUTY  
18 COMMISSIONER: Okay. Good morning everyone. For  
19 those of you who are new to these meetings and  
20 some of you are, the quarterly review is a report  
21 that sets forth the number of violations received  
22 by ECB, broken down by agency. And it's a  
23 quarterly comparison of violations received,  
24 violations heard and decisions rendered. And then

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2 we look at the elapsed time from the hearing to  
3 decision date; look at decision results for each  
4 of the issuing agencies and lastly look at the  
5 most commonly issued violations by agency. And  
6 also we look at how many cases are being  
7 appealed. So, let's begin.

8 Okay. So violations received by ECB. So  
9 for the DSNY, you can see that there's a 26  
10 percent increase from 93,071 in the third quarter  
11 to 117,525. For DOB, it's a one percent increase  
12 from 13,429 to 13,557. For DOT, it's a two  
13 percent increase: 7,277 to 7,404. FDNY, a nine  
14 percent increase: 10,833 to 11,833. DEP, a nine  
15 percent increase: 3,637 to 3,975. DOHMH, a  
16 significant increase: 54 percent, from 4,590 to  
17 7,075. And Parks, you know, that makes sense:  
18 from 740 to 2,310, a 212 percent increase. That  
19 probably has to do with weather: the nicer  
20 weather, more tickets are issued. NYPD, a 16  
21 percent increase: 2,268 to 2,639. DOITT, a 17  
22 percent increase: 240 to 280. BIC, a 75 percent  
23 increase, from four to seven. And Landmarks, a 15  
24 percent increase, from 54 to 62. So overall it

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2 looks like there's been an increase in issuance  
3 from the third quarter of 2015 to the fourth  
4 quarter of 2015.

5 So violations received by ECB comparing  
6 the fiscal year 2014 with fiscal year 2015. So  
7 for DSNY, we have a 14 percent increase: 368,577  
8 to 419,590. I'm having problems reading my  
9 numbers today. DOB, there's a 46,171 to 55,634.  
10 That's a 20 percent increase. FDNY, it's a five  
11 percent increase. DOT, it's a one percent  
12 increase: 33,843 to 34,266. Again, a one percent  
13 increase for DOHMH overall between fiscal year  
14 2014 and fiscal year 2015. DEP, a nine percent  
15 increase: 14,077 to 15,284. NYPD is a 35 percent  
16 decrease from 21,870 to 14,298. And for Parks,  
17 there's a decrease also: 7,272 to 6,569. For  
18 DoITT, it's a 55 percent increase from 801 to  
19 1,238. For Landmarks, it's a 71 percent increase  
20 from 120 to 205. And for BIC, it's a 43 percent  
21 decrease actually: 84 to 48. And for agency code  
22 missing, it's a decrease. And for the  
23 miscellaneous, it's an increase. Overall, there's  
24 been an increase of ten percent in issuance, in

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2 violations received between 2014 and 2015.

3 Okay. Total violations heard. So for  
4 DSNY, there's an increase of one percent: 66,614  
5 to 67,571. For DOB, there's really no significant  
6 difference, as you can see: 44,654 to 44,551. For  
7 FDNY, there's a decrease in total violations  
8 heard: 22,789 to 19,853. For DEP, there was a two  
9 percent increase. For DOHMH, actually there's a  
10 decrease in violations heard from 15,685 to  
11 14,186. NYPD, there's a decrease from 13,874 to  
12 10,027 and that's a 28 percent decrease.

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

14 Do you know why there's a decrease?

15 MS. SLIFKA: Well, a decrease in vi-,  
16 well, first of all, there's been a decrease in  
17 issuance you could see overall.

18 LT. ALBANO: Right.

19 MS. SLIFKA: And a decrease -- when we  
20 count violations heard, we also count  
21 adjournments. So it's probably far less  
22 adjournments too. We're trying -- we're working  
23 on having less adjournments.

24 LT. ALBANO: Go ahead.

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2 MS. SLIFKA: And, plus, you having your  
3 guys there on Wednesdays results in less  
4 adjournments too.

5 LT. ALBANO: Alright, good.

6 MS. SLIFKA: Okay? So for DOT, there was  
7 a decrease also: 10,661 to 8,932. For Parks,  
8 there was a decrease of 2,334 to 1,666. For  
9 DoITT, there was a 40 percent decrease. For  
10 Landmarks, there was an increase of 31 percent:  
11 64 to 84. And for BIC, there was a decrease from  
12 34 to 22, which is a 35 percent decrease. So  
13 overall on hearings, in violations heard, there  
14 was a five percent decrease: 195,284 to 184,631.  
15 Okay?

16 So for decisions rendered: so for DSNY,  
17 there's a six percent increase from 57,905 to  
18 61,494. And for DOB, there was a 13 percent  
19 increase from 25,465 to 28,719. FDNY, there was a  
20 five percent decrease: 17,714 to 16,818. For  
21 DOHMH, there was again a decrease of nine  
22 percent, from 13,566 to 12,378. NYPD, again  
23 there's a decrease: 10,700 to 9,041; it's a 16  
24 percent decrease. DEP, there's an increase

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2 actually: 7,669 to 8,660. DOT, a decrease: 6,880  
3 to 6,756. Parks, there's a decrease of one  
4 percent. DoITT, 581 to 550; again, a decrease of  
5 five percent. And for Landmarks, there was an  
6 increase of five percent. And BIC, there was a  
7 decrease of 48 percent.

8 So, hearings to decisions, we're getting  
9 91 percent of the decisions out in less than ten  
10 days. And 98.6 percent in less than 20 days.  
11 Although you recently passed this change in the  
12 amendment, where can give out same day decisions;  
13 we are offering same day decisions. Interestingly  
14 enough, most of the respondents are not waiting  
15 around for their decisions. They'd rather get it  
16 in the mail. But the option is there for the  
17 parties.

18 So decisions rendered after a hearing,  
19 comparing fiscal year 2014 and fiscal year 2015.  
20 You can see that in 2014, 56.1 percent were found  
21 in violation. In 2015, 59.7 percent were found in  
22 violation. So it's pretty much staying around the  
23 same: 42.9 percent dismissed in 2014 and 39.6  
24 percent dismissed in 2015. And there's been a

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2 slight decrease in people who are accepting  
3 stipulations prior to the hearings.

4 So for Sanitation, you have 41 percent  
5 in violation, 59 percent dismissed. For DOB, you  
6 have 80 percent in violation, 20 percent  
7 dismissed. For DOT, 62 percent in violation, 38  
8 percent dismissed. FDNY, 91 percent in violation,  
9 eight percent dismissed and one percent is  
10 stipulated. DEP, 78 percent in violation, 13  
11 percent dismissed; nine percent is accepting  
12 stipulations. NYPD, 44 percent in violation, 56  
13 percent dismissed. DOHMH, 60 percent in  
14 violation, 40 percent dismissed. Parks, 58  
15 percent in violation, 42 percent dismissed.  
16 DoITT, 56 percent in violation, 44 percent  
17 dismissed. BIC, a hundred percent dismissed.  
18 Landmarks, a hundred percent in violation. So, I  
19 think not too many cases there.

20 Most commonly issued violations for the  
21 second quarter 2015. For DOT, it's opening a  
22 street without a permit; failure to comply with  
23 the terms of conditions of the permit; and no  
24 raised plow steel plates or failure to

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2 countersink plates with roadway.

3 For NYPD, it's standing in a bus stop or  
4 next to a hospital, within ten feet of a drive,  
5 subway or crosswalk. Vendor on sidewalk less than  
6 12-ft. path or failure to display license indoor  
7 plates. For DOB, it's unlawful acts; failure to  
8 comply with a Commissioner's order. There are  
9 miscellaneous violations and work without a  
10 permit. DSNY, it's a dirty area; failure to clean  
11 18 inches into the street and again, dirty  
12 sidewalk, dirty area. For DEP, it's failure to  
13 submit your annual test backflow report; and it's  
14 failure to install backflow preventer and  
15 operating without renewing or you have an expired  
16 operating certificate.

17 FDNY, it's inspection and testing fire  
18 protection system; unwarranted, unnecessary alarm  
19 and posting the permits -- failure to post your  
20 permits. DOHMH, it's failure to eliminate rodent  
21 infestation; failure to eliminate conditions  
22 conducive to rodent debris, vegetation and  
23 failure to eliminate conditions conducive to  
24 pests in your garbage cans and spillage.

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2 For Landmarks, it's work with a  
3 certificate of approval; again, it's different  
4 types of violations, work without a certificate.  
5 Again, they're all dealing with different  
6 features of the architecture; and again, failure  
7 to have a permit for your flag, sign or banner.  
8 For DoITT, it's failure to provide working public  
9 pay telephone. Failure to maintain public pay  
10 telephone and required signs missing. And does  
11 anybody still use a public pay telephone? But  
12 anyway. Parks, it's unauthorized vending; failure  
13 to comply with signs and unauthorized consumption  
14 of alcohol. And for BIC, it's idling of motor  
15 vehicle over three minutes and conducted business  
16 using unregistered name.

17 So, and here's the appeals for the  
18 second quarter of 2015. You can see DSNY is 441;  
19 DOB 339. And then Fire is 74; Parks, 69; DOHMH,  
20 38; DOT, 33; DoITT, 30; NYPD, 8. And Parks is  
21 three.

22 LT. ALBANO: These are the respondents  
23 appealing?

24 MS. SLIFKA: These -- no, both parties.

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2 MR. DEL VALLE: No, they're both.

3 MS. SLIFKA: Correct. So, any other  
4 questions? Okay, thank you.

5 MR. DEL VALLE: Thank you.

6 MR. RENALDO HYLTON, EXECUTIVE DIRECTOR,  
7 DEPARTMENT OF BUILDINGS: Well, I have a  
8 question. I thought you were asking on that. On  
9 stipulations, it seems like really no one is  
10 taking stips. Do you know what -- if they're --  
11 or do you have any idea what might be causing  
12 people not to take stips?

13 MS. SLIFKA: I, I can't speak for your  
14 agency. What I think might be happening is they  
15 get the stip but they have to comply within 75  
16 days. Otherwise the penalty goes back up. And I  
17 think some of them feel they can't -- I'm just  
18 talking --

19 MR. HYLTON: Yeah, sure.

20 MS. SLIFKA: -- but I think that's a  
21 hard thing to do in some of these instances and  
22 comply within 75 days. So -- and so they go in  
23 for a hearing. That's my thoughts. And there's  
24 one more thing. Total number of defaults: 78,270.

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2 DSNY is most of the defaults: 76 percent;  
3 Buildings, six percent; and Fire, five  
4 percent. Thank you.

5 MR. DEL VALLE: Thank you. How's the  
6 subway?

7 MR. RUSSELL PECUNIES, ESQ., DEPARTMENT  
8 OF ENVIRONMENTAL PROTECTION: Cease and desist?

9 MR. DEL VALLE: Yeah.

10 MR. PECUNIES: Yeah. Okay, good morning.  
11 This month DEP has 26 requests for cease and  
12 desist orders for failing to install backflow  
13 prevention devices. Again, as every month, these  
14 are locations that have been served with  
15 Commissioner's orders and notices of violation to  
16 install these devices and have failed to do so.  
17 Most of them defaulted on the violations. Some of  
18 them have been found in violation after a  
19 hearing. So, DEP is requesting due to a  
20 continuing failure of these locations to comply  
21 with the Commissioner's order; that it's asking  
22 the Board to issue an order to cease and desist.  
23 MR. DEL VALLE: Is there a motion? It's  
24 unanimous with one abstention?

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2 MR. PECUNIES: One abstention. Thank  
3 you. And we also have nine requests for cease and  
4 desist orders based on failure to renew operating  
5 certificates for boilers. These are situations  
6 where DEP's records continue to show these  
7 locations having expired operating certificates  
8 to use Number 6 fuel oil, which was prohibited as  
9 of June 30th. In each of these cases, a notice of  
10 violation has been issued. The respondent has  
11 been adjudicated to be in violation. And as far  
12 as DEP's records indicate, there's still no  
13 paperwork been submitted or any other measures  
14 taken to convert from Number 6 to a permitted  
15 fuel oil or natural gas. So, in each of these  
16 nine cases, DEP is asking the Board to issue an  
17 order to cease and desist. I believe that one of  
18 them is the same building. There are two requests  
19 for one of the buildings because there are two  
20 separate installations in that building. I think  
21 it's 3400 Fort Independence Street.

22 MR. DEL VALLE: Is there a motion?  
23 Again, it's unanimous with one abstention.

24 MR. PECUNIES: Thank you.

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2 MR. DEL VALLE: That was quick. We've  
3 confounded him.

4 LT. ALBANO: Can we still buy Number 6?  
5 Can they still buy it here?

6 MR. PECUNIES: Yeah. Con Ed -- Con Ed  
7 uses it.

8 MR. DEL VALLE: Well, that's  
9 encouraging.

10 LT. ALBANO: Do they have an exception?

11 MR. PECUNIES: Power plants.

12 MR. DEL VALLE: The pre-sealing reports?

13 MS. KELLY CORSO, ASSISTANT DIRECTOR OF  
14 ADJUDICATIONS, ECB: Good morning. I'm Kelly  
15 Corso, Assistant Director of Adjudications for  
16 Environmental Control Board. And I'm presenting  
17 the C&D presealing reports this morning. We have  
18 15 reports for the Board this morning. One of the  
19 reports is an air code case. And 14 of the  
20 reports all pertain to backflow violations. One  
21 of the backflow violation reports actually  
22 recommends a sealing. So, I will speak about that  
23 one last.

24 I'm going to start with the air code

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2 case. This is a pretty simple case. The  
3 respondent got a violation for failure to have a  
4 valid operating permit for its boiler burner. And  
5 at the presealing hearing, the respondent's  
6 representative provided proof that they had  
7 obtained the permit and the boiler and burner was  
8 now in compliance with the air code. So the  
9 hearing officer recommends in that case no  
10 further action, given the respondent's  
11 compliance. Are there any questions on that case?

12 Okay. We have 11 -- I'm sorry, we have  
13 14 backflow cases. As I mentioned previously, 11  
14 of them, the respondents established that they  
15 had installed and tested the backflow devices at  
16 the cited premises. So, the hearing officers  
17 recommended there be no sealing on those. And in  
18 the 12th backflow case, the hearing officer  
19 recommended that there be no sealing or other  
20 action because a recent DEP inspection revealed  
21 that the backflow prevention device was no longer  
22 necessary at the premises. And in the 13th  
23 backflow case, the hearing officer recommended  
24 that there be no sealing or other action because

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2 the respondent's representative was able to show  
3 that the cited premises had been sold to a third  
4 party. Any questions on any of those?

5 Okay. The 14th backflow case contains a  
6 sealing recommendation from the hearing officer.  
7 So, I'll give you a little summary of the  
8 background. The case commenced in 2009 when DEP  
9 issued a Commissioner's order for the respondent  
10 to install a backflow prevention device in their  
11 water service pipes at a grocery store in  
12 Brooklyn. When the respondent failed to comply,  
13 DEP issued a summons in November of 2009. The  
14 respondent failed to appear for the hearing in  
15 January of 2010. And they defaulted and they have  
16 not paid the penalty.

17 In 2012, after reviewing their records  
18 and determining that the respondent had not yet  
19 complied, DEP requested that the Board issue a  
20 C&D order. And a C&D order was issued in October  
21 of 2012. Over the next 2-1/2 years or so, the  
22 respondent's representative -- his son came in  
23 for a number of presealing hearings. He kind of  
24 displayed a pattern of coming in, then not

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2 appearing, then calling and rescheduling and  
3 coming in again.

4 Throughout those 2-1/2 years, he was not  
5 able to show that much progress was made, despite  
6 the hearing officers giving him very specific  
7 instructions on what he was expected to report  
8 for the next hearing. There was no work; he was  
9 not able to show that any work was done. He kept  
10 saying they had an architect, then they didn't  
11 have an architect, things like that.

12 So at the June 23, 2014 presealing  
13 hearing, the hearing officer adjourned the  
14 hearing and he specifically stated that  
15 respondent was to provide a detailed schedule  
16 outlining the steps and timeline for the  
17 completion of the installation of the device and  
18 for someone to come with him that actually  
19 understood the issues and could explain the  
20 issues to the hearing officer. And the hearing  
21 officer told the respondent's son, who was the  
22 representative at the hearing, that this was a  
23 final adjournment and that the respondent may  
24 face a water shutoff if the respondent did not

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2 comply with the hearing officer's order.

3 At the last presealing hearing on July  
4 7, 2015, the respondent's son appeared with  
5 someone. However, this person did not know the  
6 issues in the case or the status of the project  
7 and no detailed schedule was produced. The  
8 hearing officer reported that neither of them  
9 seemed to know what still needed to be done or  
10 what the timeframe would be for installing the  
11 device. DEP recommended sealing the water and  
12 water shutoff, noting that they had concluded  
13 that no other businesses or residences would be  
14 affected. And based on that, the hearing officer  
15 found that the respondent had failed to show any  
16 basis for not shutting off the water and sealing  
17 it and recommended that the water be shut off and  
18 sealed.

19 MR. DEL VALLE: Any questions?

20 MR. HYLTON: Yes. What is the nature of  
21 the business?

22 MS. CORSO: Grocery store.

23 MR. DEL VALLE: Is there a motion to  
24 accept the recommendation? It's unanimous.

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MS. CORSO: Thank you.

MR. DEL VALLE: This is kind of quick. Is there a motion to go into executive session to review judicial issues? It's unanimous. Thank you. Will those folks who are not OATH ECB personnel please leave until the executive session is over?

[OFF THE RECORD]

[ON THE RECORD]

MR. DEL VALLE: We are back in public session. Is there a motion to accept the recommended appeals decisions? It is unanimous. They are accepted. Is there a motion to adjourn? We are adjourned. Thank you.

MR. PECUNIES: Thank you.

(The public hearing concluded at 9:52 A.M.)

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CERTIFICATE OF ACCURACY

I, Andrew Slawsky, certify that the foregoing transcript of Environmental Control Board on July 30, 2015 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Certified By



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Date: July 31, 2015

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