

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

September 18, 2014

9:25 A.M. to 9:50 A.M.

September 18, 2014

MEMBERS PRESENT:

Suzanne Beddoe, Esq. - Chair, OATH
Robert Carver, Esq. - Citizen Member
Hon. Ernest J. Cavallo - Citizen Member
Renaldo Hylton - Exec. Dir., Dept. of Buildings
Elizabeth Knauer, Esq. - Citizen Member
Tayo Kurzman, Esq. - Fire Department
Emily Lally - Citizen Member
Madelynn Liguori, Esq. - Dept. of Sanitation
Jorge Martinez, Esq. - Dept. of Health and Mental Hygiene
Russell Pecunies, Esq. - Dept. of Environmental Protection
Thomas D. Shpetner - Citizen Member
Douglas Swann - Citizen Member

ALSO PRESENT:

Leslie Bailey - Law School Fellow, OATH
Helaine Balsam, Esq. - Deputy General Counsel, OATH
Denis Brogan - Assistant General Counsel, OATH
Kelly Corso, Esq. - Asst. Director of Adjudications, ECB
Arisleyda Fernandez - Facilities Assistant, OATH/ECB
Fana Garrick - Public Affairs Assistant, OATH/ECB
Shamonda Graham - Department of Transportation
David Goldin, Esq. - Administrative Justice Coordinator
Diane Haines - Assistant General Counsel, OATH
Mark H. Leeds, Esq. - Special Counsel, ECB
Jim Macron, Esq. - Counsel to the Board, ECB
Maria Marchiano - Senior Counsel/Assistant Commissioner,
OATH
Denise Ortega - IT Support, OATH
Nicole Rogers - Department of Transportation
Marisa Senigo - Assistant Commissioner for Public Affairs
& Communications
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 9:25
3 A.M.)

4 MS. SUZANNE BEDDOE, ESQ., CHAIRPERSON,
5 COMMISSIONER & CHIEF ADMINISTRATIVE LAW JUDGE,
6 OATH: Okay, good morning everyone. Good to see
7 everyone back, back in the saddle. Hope you had a
8 wonderful summer, as the fall sort of swiftly
9 approaches -- my favorite season. Anyway, let's
10 get started. Is there a motion to adopt the
11 minutes from our last meeting, August 28th?
12 Anyone abstaining?

13 ABSENTEE MEMBERS: Abstaining.

14 MS. BEDDOE: Abstaining? Okay. Those are
15 our absentee, our absentee members.

16 [CROSSTALK]

17 MS. BEDDOE: Okay. So without further
18 ado, let's get started. We are starting today
19 with a presentation by the Department of
20 Transportation regarding amendments to their
21 penalty schedule. Is Ms. Graham here? Who's
22 presenting?

23 MS. NICOLE ROGERS, DEPARTMENT OF
24 TRANSPORTATION: She's not here yet.

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2 MS. BEDDOE: Not here yet? Okay.

3 Alright. In that case, let's skip that. We'll
4 come back to it and let's go on to --

5 MR. PECUNIES: The Cease & Desist?

6 MS. BEDDOE: The Cease & Desist orders.

7 MR. RUSSELL PECUNIES, ESQ., DEPARTMENT
8 OF ENVIRONMENTAL PROTECTION: Okay, good morning.
9 This month DEP has 32 requests for Cease & Desist
10 orders. The first one is pursuant to the sewer
11 code. And it involves New York Commissary
12 Incorporated at 430 Carroll Street in Brooklyn.
13 This is not a restaurant but it is apparently
14 some type of, sort of industrial food preparation
15 establishment. DEP initially inspected this
16 business in September of last year, about a year
17 ago. And the inspector issued a Commissioner's
18 Order requiring the respondent to install three
19 grease traps. Later in September of last year,
20 the inspector was able to gain access to the
21 entire establishment and issued a superseding
22 Commissioner's Order requiring the respondent to
23 install 11 grease traps.

24 After a series of notices of violation

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2 have been issued and adjudicated, the respon-,
3 and, all of them in violation or in default, the
4 respondent still has not installed the required
5 grease traps. And based on that, DEP is asking
6 the board to issue an order to Cease & Desist.

7 MS. BEDDOE: Any questions on that
8 particular request? Okay. Russ, do you want to go
9 on with the others?

10 MR. PECUNIES: Continue with the rest?

11 MS. BEDDOE: Mm-hmm.

12 MR. PECUNIES: Okay. We have three
13 requests for Cease & Desist orders for expired
14 certificates of operation for boilers: 1050
15 Carroll Place in the Bronx, 14407 Sanford Avenue
16 in Queens, and 2820 Bailey Avenue in the Bronx.
17 These are all locations with expired certificates
18 of operation for using number six fuel oil.
19 They've all been adjudicated in violation. They
20 have all failed to convert. And so the DEP is
21 asking the board to issue an order to cease &
22 desist on each of these.

23 MS. BEDDOE: Any questions on the three
24 boiler requests? Renaldo, did you have something?

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2 MR. RENALDO HYLTON, EXECUTIVE DIRECTOR,
3 DEPARTMENT OF BUILDINGS: These are the number
4 six -- Renaldo, from buildings; these are number
5 six?

6 MR. PECUNIES: These are all number six.

7 MR. HYLTON: All are number six.

8 MR. PECUNIES: They're all -- any Cease
9 & Desist requests for boilers was because they
10 have a certificate to use six.

11 MR. HYLTON: Right.

12 MS. BEDDOE: Okay. Any other questions?
13 Okay. Russ?

14 MR. PECUNIES: And then we have the
15 usual 28 monthly requests for Cease & Desist
16 orders for failing to install backflow devices.

17 MS. BEDDOE: Okay. Any questions for
18 Russ on those 28 backflow prevention device
19 requests, the C&D requests? Okay. So, just to
20 recap, we have the one sewer code C&D for the
21 grease traps; we have the three boilers and the
22 28 regular backflow. Let us vote collectively on
23 those requests. Is there a motion to approve?
24 Anyone against? Any abstentions? Russ? Okay.

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2 Thank you.

3 MR. PECUNIES: Thank you.

4 MS. BEDDOE: Okay. Is Ms. Graham here
5 yet? Okay, terrific. Shamonda, please come up.
6 So, we're just going to return to our earlier
7 agenda item: Shamonda Graham from DOT on the
8 proposed modifications to their penalty schedule.

9 MS. SHAMONDA GRAHAM, NEW YORK CITY
10 DEPARTMENT OF TRANSPORTATION: Good morning
11 everybody, ladies and gentlemen of the board. I'm
12 Shamonda Graham from the New York City Department
13 of Transportation. I'm presenting on behalf of
14 Commissioner Maniscalco. The DOT is proposing
15 modifications to our penalty schedule in an
16 effort to support the Mayor's Small Business
17 First Initiative.

18 One of the things we noticed is we have
19 a penalty that basically charges a respondent a,
20 a fee that we don't believe is proportionate to
21 the infraction cited. So, the penalty that we're
22 referring to is our Code D1B, it's failure to
23 obtain a confirmation number for any protected
24 street permit obtained.

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2 Back in June of 2013, the DOT changed
3 the rule. We changed it purposely to make, to
4 make it clear that we expected anyone who
5 obtained a protected street permit to also obtain
6 a confirmation number.

7 However, what we found is that there's a
8 more egregious offense of not obtaining a
9 confirmation number prior to commencing a
10 backfill, which means that a person has actually
11 worked prior to notifying the Department.
12 Therefore, the Department is not there to
13 observe. That is very different from not
14 obtaining a confirmation number for a protected
15 street permit, where there was no harm done;
16 meaning no work done or the work was confined
17 solely to the sidewalk. So what we're asking is
18 that we reduce the penalty associated with Code
19 D1B. It is currently 750. We're asking it be
20 reduced to 250, with a default of 750.

21 Secondly, we're also asking for a new
22 code; so that we're able to capture the more
23 egregious offense of actually performing work
24 without our oversight. With that, we're referring

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2 to Section 2-11(f)(4)(i) in the restoration
3 section. And we're asking for a code and also a
4 penalty to capture the offense of failing to
5 obtain a confirmation number prior to the start
6 of a backfill. Those confirmation numbers are
7 required within two hours to the start time; so
8 that we can dispatch an inspector to the
9 location. Questions?

10 MS. BEDDOE: Okay. Any questions on
11 these? Elizabeth?

12 MS. ELIZABETH KNAUER, CITIZEN MEMBER:
13 Elizabeth Knauer, Citizen Member. I was just
14 wondering, the, the -- so the higher penalty
15 would be exclusively for where the confirmation
16 number isn't, isn't obtained prior to a backfill.
17 But what about just, you know, actually opening
18 the street? Is that not something that is of
19 concern to --

20 MS. GRAHAM: When, when a person opens
21 the street, the Department may monitor via just
22 regular inspections, meaning throughout the
23 course of the business day. However, when they're
24 restoring the street, we're a lot more concerned.

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2 Because we want to make sure that what they put
3 back is basically the proper material, the proper
4 strength. So, we -- though we monitor that, we
5 are not asking for a penalty for that; only a
6 penalty for when they begin restoration without
7 our oversight.

8 MS. KNAUER: Thank you.

9 MS. GRAHAM: You're welcome.

10 MS. BEDDOE: Okay. Any other questions
11 on these proposals? Okay. Is there a motion to
12 approve? Anyone against? Any abstentions? Okay.
13 Thank you.

14 MS. GRAHAM: Thank you, sorry I'm late.

15 MS. BEDDOE: No problem. Okay. Next up
16 we have Kelly Corso from ECB on our presealing
17 reports. Kelly?

18 MS. KELLY CORSO, ESQ., ASSISTANT
19 DIRECTOR OF ADJUDICATIONS, ECB: Good morning.
20 Very short and sweet this morning. We have 12
21 presealing reports today for the board. Two of
22 the reports pertain to the installation and
23 maintenance; failure to install and maintain
24 grease traps. In both of those cases, the ALJ

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2 recommended that the C&D orders be discontinued
3 because the DEP records show the respondents had
4 come into compliance. The remaining ten reports
5 pertain to failure to install backflow devices.
6 And in all those cases, the ALJs recommended that
7 there be no sealing or other action given the
8 respondents' compliance. And that's it.

9 MS. BEDDOE: Okay. Yeah, you were not
10 kidding: short and sweet. So, any questions on
11 those two grease trap and ten backflow reports?
12 Okay. Is there a motion to approve? Anyone
13 against? Abstentions? Russ. Okay. Thank you.
14 Well, we've sort of moved through this so
15 quickly, we are up to the part where we will need
16 to go into executive session to discuss our
17 appeals and litigation. Is there a motion to go
18 into executive session? Okay. So anyone who isn't
19 a member of ECB OATH will need to excuse us for a
20 few moments.

21 [OFF THE RECORD]

22 [ON THE RECORD]

23 MS. BEDDOE: Okay. So we are now in
24 public session. Okay. We are now in public

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2 session, having taken a vote to return to public
3 session and having ensured that there was no one
4 waiting to return to the meeting. We discussed
5 the appeals. And now let us take a vote with
6 respect to those decisions. All of those in favor
7 of affirming the appeals decisions from the two
8 panel meetings of September 11th; all in favor?
9 Anyone against? Any abstentions? Okay. So with
10 that, I believe our business is concluded for
11 this month. Next month we are also having I
12 believe an earlier meeting. What is the date?

13 MR. THOMAS SOUTHWICK, ESQ., SUPERVISING
14 ATTORNEY, APPEALS, ECB: October's okay. It's
15 November and December --

16 MS. AMY SLIFKA, ESQ., DEPUTY
17 COMMISSIONER/EXECUTIVE DIRECTOR, ECB: And
18 December.

19 MS. BEDDOE: It's November, I'm sorry.
20 I'm getting a little ahead of myself. Okay. So,
21 is there a motion to adjourn? Okay. Thank you
22 everyone.

23 (The public hearing concluded at 9:50
24 A.M.)

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CERTIFICATE OF ACCURACY

I, Andrew Slawsky, certify that the foregoing transcript of Environmental Control Board on September 18, 2014 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Certified By



Date: September 19, 2014

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