

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

BOARD MEETING

12th Floor Training Room

100 Church Street

New York, NY

July 28, 2016

9:40 a.m. - 10:24 a.m.

July 28, 2016

MEMBERS PRESENT:

Ellen Cooper, Esq. - Dept. of Sanitation
Fidel F. Del Valle, Esq. - Chair, OATH
Shamonda Graham - Dept. of Buildings
Elizabeth Knauer, Esq. - Appointed Member
Harminderpal Rana, Esq. - Dept of Health & Mental Hygiene
Elisabeth Prael, Esq. - Fire Department
Russell Pecunies, Esq. - Dept of Environmental Protection
Thomas D. Shpetner, Esq. - Appointed Member

ALSO PRESENT:

Simone Salloum - Assistant General Counsel, OATH
Frances Shine - Secretary to the Board, OATH
Helaine Balsam, Esq. - Deputy General Counsel, OATH
John Burns, Esq. - First Deputy Commissioner, Supervising
ALJ, OATH
Heidi Chain - Finance Department
Kelly Corso, Esq. - Asst Director of Adjudications, OATH
Melek Dunn - General Counsel Intern, OATH
Fana Garrick - Creative Services Coordinator, OATH
David Goldin, Esq. - Administrative Justice Coordinator,
Mayor's Office
Diana Haines - Assistant General Counsel, OATH
Jonathan Jacobs - Business Integrity Commission
Dara Jaffee - Finance Department
Vivienne Kahng - Staff Attorney, Appeals, OATH
Mark H. Leeds, Esq. - Special Senior Counsel, OATH
Nancy Lin - Office of Management & Budget
Mariko Matsuyoshi - Data Analyst, OATH
Hassan Mirza - General Counsel Intern, OATH
Ashford Morgan - Computer Service Technician, OATH
Tynia Richards. Esq. - Deputy Commissioner, General
Counsel, OATH
Peter Schulman, Esq. - Assistant Director of
Adjudications, OATH
Amy Slifka, Esq. - Deputy Commissioner, OATH
Sydney Schein - General Counsel Intern, OATH
Thomas Southwick, Esq. - Supervising Attorney, Appeals,
OATH
Doris Stewart - Department of Transportation
Ariel Yoo - General Counsel Intern, OATH

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2 (The board meeting commenced at 9:40
3 a.m.)

4 MR. FIDEL F. DEL VALLE, ESQ., CHAIR,
5 OATH: All systems go. Good morning. Welcome to
6 another exciting meeting of the board of --
7 Environmental Control Board. Is there a motion
8 to adopt the minutes of the June 30th meeting?
9 One abstention. Oh, okay. So it's unanimous.
10 What the minutes say is what happened.

11 MS. ELIZABETH KNAUER, ESQ., APPOINTED
12 MEMBER: One abstention.

13 MR. DEL VALLE: One abstention. One
14 abstention. The first item on the agenda is a
15 resolution to say that we concur with the
16 Department of Finance's efforts to collect debt
17 that's owed to the City of New York that's a
18 consequence of several years of, of ECB hearings.
19 The outstanding debt right now I believe is in
20 the neighborhood of \$1.5 billion dollars. Some
21 of it obviously will never be collected because
22 some of those people are dead, if for no other
23 reason, and there's no estates and there's a
24 whole bunch of other reasons. But the, the

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2 feeling is that if they offer sort of an amnesty
3 waiving of penalties and interests and stuff like
4 that there, some folks will come in and take care
5 of business, then the Department of Finance can
6 clean its books and we can start fresh again
7 until we get to another 1.5 billion dollars and
8 we'll do the whole thing over. The authorizing
9 legislation, as will be explained in a second,
10 calls for, asks for a resolution from us
11 concurring that it's a good idea for the city to
12 offer a deal and to collect the debt. And it'll
13 be explained in a second.

14 MS. SIMONE SALLOUM, ESQ., ASSISTANT
15 GENERAL COUNSEL, OATH: Simone Salloum, Assistant
16 General Counsel with OATH, and as the
17 Commissioner explained, the Local Law 45 requires
18 that we pass this resolution in order for the
19 Department of Finance to establish this program.
20 I'll read the resolution and if anyone has
21 questions about specifics of the program, I
22 believe that our -- a representative from the
23 Department of Finance is here and can answer kind
24 of those more specific questions. So the

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2 resolution is that: Pursuant to local law 45,

3 which establishes the temporary program to

4 resolve outstanding judgments imposed by the

5 Environmental Control Board, the Board hereby

6 concur the Commissioner of Finance establish a

7 temporary program to resolve outstanding

8 judgments for a 90-day period to be effective

9 during the fiscal year that commenced on July 1,

10 2016. This temporary program will permit

11 respondents who are subject to default judgments

12 to resolve those judgments by payment of base

13 penalties without payment of default penalties

14 and accrued interest. It will also permit

15 respondents subject to judgments entered after an

16 adjudication and finding of violation to resolve

17 those judgments by payment of 75 percent of

18 imposed penalties without payment of accrued

19 interest. Does anyone have any questions - yeah?

20 MS. KNAUER: Hi, Elizabeth Knauer,

21 Citizen Member. I'm just wondering, I, I take it

22 that there was a previous amnesty back in 2009, I

23 think. So I just wondered what, you know, what

24 the success rate of that was for -- was there a

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2 lot of collection as a result of that?

3 MS. DARA JAFFEE, FINANCE DEPARTMENT: My
4 understanding, I don't know the success rate but.

5 MS. SALLOUM: Can you identify yourself?

6 MS. JAFFEE: Hi, I'm Dara Jaffee from
7 the Department of Finance from Legal Affairs.
8 It's my understanding that we collected about \$14
9 million but I can get a more exact number if you
10 want.

11 MS. KNAUER: \$14 million out, I mean,
12 what, in comparison to what amount of debt.

13 MS. JAFFEE: Whatever the existing debt
14 number was at the time. I don't know.

15 MR. DEL VALLE: My understanding is that
16 that was pretty dismal compared to the amount of
17 money that was owed, but I believe DOF this time
18 around is going to more aggressively advertise
19 the, the program and hopefully they'll collect a
20 little bit more than that, but it, one way or
21 another, at least it, it cleans up the books and
22 they can, they can discharge a lot of
23 uncollectible debt that, that it looks like, it
24 looks like the city is in the hole for 1.5

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2 billion dollars, when in reality we know that
3 that's not really true because a lot of that is
4 uncollectible stuff and it's businesses that
5 don't exist anymore and people that don't exist
6 anymore and a lot of the stuff like that there.
7 But last time around, it was nothing to brag
8 about from what I understand, but it's better
9 than nothing. It's \$14 million more in the piggy
10 bank than they had before.

11 MS. KNAUER: I, I'm just wondering if it
12 encourages people, you know, to wait it, after
13 this period ends and then there's additional
14 judgments or default judgments, it would
15 encourage people to just sort of wait for the
16 next one of these instead of paying the judgments
17 in a timely fashion.

18 MR. DEL VALLE: That's the same question
19 that always occurs to me when I hear about
20 amnesty programs, but --

21 MS. TYNIA RICHARD, ESQ., DEPUTY
22 COMMISSIONER, GENERAL COUNSEL, OATH: I think if
23 it were more used last time around, maybe there'd
24 be an argument, but since it seems that not a lot

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2 of people used it last time, I don't think a lot
3 of people are sitting around waiting for it to
4 come around.

5 MR. DEL VALLE: Well, this time, you
6 know, yeah?

7 MS. AMY SLIFKA, ESQ., DEPUTY
8 COMMISSIONER, OATH: Yeah, I just want to add
9 that it seems like the enforcement, Amy Slifka,
10 the enforcement agencies are taking a more
11 aggressive path also to see that these, these
12 debts are paid, because they're not going, the
13 Buildings Department is going to start looking at
14 this as far as issuing permits. So things are
15 changing within the enforcement agencies to make
16 sure that if you're found in violation or you
17 receive a violation and fail to show, you will
18 pay that penalty.

19 MR. DEL VALLE: Yeah, something,
20 something that's not part of this legislation
21 which was legislation earlier this year that
22 really didn't come across our table because it
23 was -- didn't really relate to us directly is new
24 legislation that says that certain people who --

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2 certain categories of people who have licenses or
3 need permits from the city who have not paid
4 their fines to the city, and there's a whole list
5 of categories that they fit into, within an
6 appropriate period of time cannot, will either
7 have licenses suspended or revoked or they will
8 be precluded from getting like a building permit
9 until such time as they, they take care of
10 whatever they -- was it they had to take care of.
11 So I think this is part of that package, although
12 it seems to be discrete, and hopefully that will
13 encourage people to do the right thing.
14 Preferably not do the violation in the first
15 place. Silly concept.

16 MS. SHAMONDA GRAHAM, DEPARTMENT OF
17 BUILDINGS: Language is on the front of the --
18 Shamonda Graham, Department of Buildings. The
19 language is on the front of the violation that
20 that was part of that. So the public is already
21 aware of it. So that's an effort of not just --
22 of many agencies to take.

23 MR. DEL VALLE: You're talking about the
24 new summons forms?

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2 MS. GRAHAM: Mm-hmm.

3 MS. KNAUER: You're right, I remember
4 that.

5 MS. GRAHAM: Mm-hmm.

6 MS. KNAUER: And the Department of
7 Finance is in favor of this?

8 MS. JAFFEE: Yes.

9 MR. DEL VALLE: It's their idea.

10 MS. KNAUER: Their idea, okay.

11 MR. DEL VALLE: Any other questions? Is
12 there a motion to tell the Department of Finance
13 that we think this is a lovely idea and they
14 should sally forth and do their thing? I think
15 it's unanimous. There is a proposed rule to
16 repeal -- for the repeal of littering, sweep out,
17 throw out charges from the sanitation penalty
18 schedule. And where is it now is the question.

19 MS. HELAINE BALSAM, ESQ., DEPUTY GENERAL
20 COUNSEL, OATH: Good morning. Helaine Balsam,
21 Deputy General Counsel for OATH. This proposed
22 rule is part of the Criminal Justice Reform Act
23 that was passed earlier this year. There are
24 several pieces of the Act. One of those pieces,

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2 Local Law 75 of 2016, made changes to the

3 Administrative Code regarding some of the

4 sanitation provisions. Section 16-118(1) which

5 covers littering, throw, sweep out, and throw

6 out, was split into two sections. So there's now

7 a section 16-118(a), which covers littering,

8 sweeping, and throw out, and there's a 16-

9 118(1)(b) which covers spitting. In addition,

10 there was a carve out made to noxious liquids

11 which is section 16-118(6), for public urination

12 which is a subset of noxious liquids. So these

13 new charges, the new ones and the littering,

14 sweep out, and throw out charges are going to

15 have new penalties. The first offense penalty is

16 a flat penalty of \$75. The second offense penalty

17 is a range from \$250 to \$350 and the third

18 offense penalty is \$350 to \$450. The default

19 penalties are capped at 150 percent of the base

20 fine. Without a rule setting the default

21 penalties, that would make the default penalties

22 the 150 percent of the higher end of those

23 ranges, because New York City Charter 1049(a)

24 says that upon default, the Board will impose the

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2 maximum penalty under the law. Because the
3 current charges for littering, sweep out, and
4 throw out in the penalty schedule do not reflect
5 these new penalties, we are asking to repeal
6 those charges and that's what this rule does. I
7 gave you a new copy this morning. The Law
8 Department will be certifying this rule. It's
9 just had a couple of grammatical changes and the
10 addition of a chart concerning what accessibility
11 options are available at the site of the public
12 hearing. Questions?

13 MS. KNAUER: Elizabeth Knauer, Citizen
14 Member, and, I'm sorry, I got a little bit lost
15 in what you were saying, but these penalties are
16 now in some other book code or --

17 MS. BALSAM: They are in the
18 Administrative Code.

19 MS. KNAUER: They're just in the
20 Administrative Code?

21 MS. BALSAM: That's correct.

22 MS. KNAUER: Okay.

23 MR. DEL VALLE: They pre-empted us.

24 MS. BALSAM: And I should actually say

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2 that 150 percent of \$75 is \$112.50, but we can't
3 program change, so the default is going to be
4 \$112. So --

5 MR. DEL VALLE: Oh well.

6 MS. BALSAM: Oh well.

7 MR. DEL VALLE: Got to get ConEdison to
8 figure out how to program our computers. I'm
9 sure they can do it to the tenth of a penny. Any
10 other questions? Discussion? Is there a motion?
11 Well considering everybody's making the motion, I
12 guess it's unanimous.

13 MS. BALSAM: Thank you.

14 MR. DEL VALLE: Thank you. Now, DEP
15 will present Cease and Desist Order motions.

16 MR. RUSSELL PECUNIES, ESQ., DEPARTMENT
17 OF ENVIRONMENTAL PROTECTION: Okay, thank you.
18 Good morning. I'm Russell Pecunies, Assistant
19 Counsel with the Department of Environmental
20 Protection. This month, DEP is requesting that
21 the Board issue Cease and Desist Orders in 28
22 cases involving failure to install backflow
23 prevention devices. In each of these cases, the
24 building owner has been ordered to install the

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2 device, and has also been issued a Notice of
3 Violation for failing to install the device,
4 which has been adjudicated in violation. They
5 have still failed to install the required device.
6 So in each of these cases, the Department is
7 asking the Board to issue an Order to Cease and
8 Desist. These should all have been dated for
9 today instead of June 30th. Because the batch for
10 the May meeting didn't get approved and had to be
11 moved over to the June meeting, these didn't get
12 re-dated so they have last month's date on them.
13 They should have today's date on them. So the
14 Department is asking the Board to approve these
15 28 requests collectively.

16 MR. DEL VALLE: Any questions? Motion?

17 It's unanimous with one ex- --

18 MR. PECUNIES: Okay, next.

19 MR. DEL VALLE: -- abstention.

20 Abstention.

21 MR. PECUNIES: Next, DEP is asking the
22 Board to approve a Cease and Desist Order in the
23 matter of Zion Farm LLC, which is the owner of a
24 restaurant located at 55 East 59th Street. This

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2 restaurant has some grease traps; however, upon
3 inspection, it was determined that the existing
4 grease traps are not properly equipped with the
5 required baffles and vents. In addition, it was
6 determined that a number of items of equipment in
7 the kitchen: three floor drains, a three-
8 compartment sink, two woks, and a one-compartment
9 sink all lacked required grease interceptors. A
10 series of orders and violations have been issued
11 to the respondent to correct these conditions.
12 There has still been no compliance. And in view
13 of the series of enforcement actions that have
14 been taken and the continuing failure of the
15 respondent to comply, the Department is asking
16 the Board to issue an Order to Cease and Desist.

17 MR. DEL VALLE: Questions? Motion?

18 It's unanimous with one abstention. A wok has a,
19 a grease interceptor?

20 MR. PECUNIES: Yeah, I have seen it
21 before. Apparently, it's a separate station
22 where they use the woks and the grease from that
23 separate wok station goes into a drain for that
24 section of the kitchen.

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2 MR. DEL VALLE: Hmm.

3 MR. PECUNIES: So --

4 MR. DEL VALLE: Must be one serious wok.

5 MR. PECUNIES: Yeah, I actually don't
6 know what this does business as. I don't know
7 what the restaurant's name is. I don't know if
8 it -- Okay, next, we have a request for a Cease
9 and Desist Order under the Noise Code for Fasta
10 NYC LLC, at 36 Saint Marks Place. This location
11 has been cited for noise from the kitchen exhaust
12 three times this year. They have not complied by
13 correcting the condition. In view of the repeated
14 violations and continuing failure to correct, the
15 Department is asking the Board to issue an Order
16 to Cease and Desist.

17 MS. KNAUER: I actually had a question
18 about this one. How many violations were there?
19 It seems, I think the, the affidavit only
20 described two, so I --

21 MR. PECUNIES: Normally, and in going
22 way back, the required number of violations that
23 need to be issued before we ask for a Cease and
24 Desist, was, is three. So for, for noise and air

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2 --

3 MS. KNAUER: Right.

4 MR. PECUNIES: -- conditions. That's
5 what we've been going with for a long time.

6 MS. KNAUER: Okay. Just, it, I think
7 that the, the affidavit in support only mentioned
8 two violations.

9 MR. PECUNIES: Well, the affidavit in
10 support only mentions the original violation --

11 MS. KNAUER: Right, right.

12 MR. PECUNIES: -- and the most recent
13 inspection that resulted in the violation. It
14 doesn't --

15 MS. KNAUER: Okay. So it doesn't
16 reflect all the different violations?

17 MR. PECUNIES: Yeah, it doesn't refer to
18 all of them.

19 MS. KNAUER: Okay, okay.

20 MR. PECUNIES: Mm-hmm.

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

24 MR. PECUNIES: Okay. The next one is a

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2 little bit of an unusual one because it involves

3 music from a commercial establishment. We usually

4 do not ask the Board for Cease and Desist Orders

5 for music from commercial establishments, because

6 it is so easy for them to replace the equipment,

7 and since these are equipment specific, one of

8 the ways that you can correct the condition is to

9 just replace the equipment. In the case of

10 music, all you have to do is unplug the amplifier

11 and put a different one in or take down the

12 speakers and put up different speakers, and

13 technically you've removed the offending

14 equipment. So we usually don't ask the board for

15 cease and desist orders for music. However, in

16 the case of Lucky Seven Restaurant and Bar at

17 1447-1457 Saint Nicholas Avenue, we have cited

18 them for excessively loud music from this

19 location four times in the last two years,

20 including three times this year. There are also

21 two violations that are more than two years old.

22 So they have a total of six violations. They have

23 not paid any of the penalties so they have nearly

24 \$20,000 in unpaid penalties. And at this point,

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2 instead of just continuing to issue summonses,
3 this one has gotten to the point where we felt it
4 was worth a try to at least have the Board issue
5 a Cease and Desist Order to try and get some kind
6 of response from this business to the fact that
7 they are continuing to plague their neighbors
8 with excessively loud music. So although we
9 usually don't request cease and desist orders in
10 this -- for this type of violation, in this case,
11 due to the long history of repeated violations
12 and the continuing failure to comply, we are
13 asking the board to issue a cease and desist
14 order.

15 MR. DEL VALLE: Any questions? Motion?

16 MR. PECUNIES: Okay. And finally, we
17 have a request under the Air Code for Acropolis
18 Gardens Realty at 2105 33rd Street in Queens.
19 The situation here is that they have a
20 Certificate of Operation for their boiler, which
21 has been expired for six years. They are, they do
22 have a certificate to use number four oil, which
23 is currently permitted. This is not one of the
24 ones that relates to the use of number six oil.

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2 However, we have cited them for having this
3 expired certificate four times. One of the
4 reasons that we've done that is that this is --
5 this particular building has been the subject of
6 repeated complaints regarding smoke from the
7 chimney. We have not yet been able to actually
8 catch the chimney smoking, but we've been doing
9 inspections in response to complaints, and so
10 when we go, we, we haven't been able to see the
11 smoke, but we issue them a violation because they
12 still haven't renewed the Certificate of
13 Operation for the boiler. And since we are still
14 getting complaints and they still have not
15 renewed the Certificate that has been expired
16 for, for over six years at this point, seven
17 years actually, it's from 2009, the Department is
18 asking the Board to issue an Order to Cease and
19 Desist, in the hope that that will provoke them
20 to renew the Certificate and by -- in order to
21 renew the Certificate, they will have to pass
22 certain emissions tests, so they would have to
23 fix the smoke problem that the neighborhood is
24 complaining about. So we are asking the Board to

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2 issue an Order to Cease and Desist.

3 MR. DEL VALLE: Any questions? Motion?
4 Unanimous with one abstention.

5 MR. PECUNIES: Thank you very much.

6 MR. DEL VALLE: I have a question.

7 MR. PECUNIES: Yeah?

8 MR. DEL VALLE: Relating to Lucky Seven,
9 can't the city take advantage of the nuisance,
10 nuisance abatement law for some, after a chronic
11 problem like that to simply padlock a premises?

12 MR. PECUNIES: I don't know that we
13 would have the authority to do that. The police
14 department might have the authority to do that.
15 I don't know since this is not generally the type
16 of noise complaint that NYPD responds to --

17 MR. DEL VALLE: I was thinking like --

18 MR. PECUNIES: -- whether they have done
19 any inspections here.

20 MR. DEL VALLE: I was thinking like the,
21 the Office of Special Enforcement getting into
22 that.

23 MR. PECUNIES: Yeah, I mean, we, we do
24 participate with them in, in the March details

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2 which focus on the night life heavy areas, but I
3 don't know if this is located in one of those
4 areas.

5 MR. DEL VALLE: It's kind of frustrating
6 for an outfit like that to be basically torturing
7 their neighbors like that consistently, that's
8 what --

9 MR. PECUNIES: Yeah, I also don't know
10 how they --

11 MR. DEL VALLE: That's broken windows.

12 MR. PECUNIES: -- how they renew the
13 liquor license with these noise violations
14 either, but --

15 MR. DEL VALLE: Hm, okay, yeah, just
16 wondering. Is there a motion to adjourn for
17 executive session so we can --

18 MS. SLIFKA: Wait, wait, wait.

19 MR. DEL VALLE: Whoop, I miss something?

20 MS. SLIFKA: Presealing reports.

21 MR. DEL VALLE: Oh, presealing reports.
22 I'm so eager for the executive session. My
23 favorite stuff.

24 MS. KELLY CORSO, ESQ., ASSISTANT

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2 DIRECTOR OF ADJUDICATIONS, ECB: Good morning,

3 I'm Kelly Corso, Assistant Director for

4 Adjudications for OATH. We have ten pre-sealing

5 reports today and one post-sealing report. The

6 ten sealing reports consist of cases involving

7 one Sewer Code violation, five backflow

8 violations and four Air Code violations. The

9 sewer case, DEP recommended that the proceedings

10 be discontinued, because the record has -- the

11 records have shown that the respondent has come

12 into compliance with the Sewer Code. On the

13 backflow and Air Code cases, the DEP recommended

14 and the hearing officers agreed that there would

15 be no sealing or other action based on the

16 evidence of the respondent's compliance that was

17 presented at the hearings. So that's the ten

18 presealing cases. The one post-sealing case we

19 have is -- pertains to a Noise Code violation and

20 the respondent in this case is New York Mart Mott

21 Street Inc., and the premises involved is located

22 at 128 Mott Street in Manhattan. This respondent

23 received a summons in October of 2014 for

24 operating a kitchen exhaust system in excess of

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2 42 dba. This summons resulted in a stipulation
3 and an order of compliance forthwith. An
4 inspection report following the issuance of the
5 summons showed that in August 2015 respondent had
6 not complied. The Board approved a Cease and
7 Desist Order for this in October of 2015, and the
8 respondent did not appear for the October pre-
9 sealing hearing and subsequently DEP sealed the
10 equipment. Since that time, there was a post-
11 sealing hearing on July 5th of this year, and at
12 the hearing DEP submitted an inspection report
13 from June showing that the old kitchen exhaust
14 equipment had been removed and new equipment was
15 installed and DEP's inspection also showed that
16 there was a noise reading taken and it showed the
17 new equipment was in compliance with the Noise
18 Code. And DEP is recommending and the hearing
19 officer agrees with that recommendation that
20 there be no further action and that the equipment
21 remain unsealed.

22 MR. DEL VALLE: Motion? Can I get a
23 motion? Unanimous with one abstention.

24 MS. CORSO: Okay.

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2 MR. DEL VALLE: Okay, thank you.

3 MS. CORSO: Thanks.

4 MR. DEL VALLE: Now we'll go into
5 executive session if we concur.

6 [OFF THE RECORD]

7 [ON THE RECORD]

8 MR. DEL VALLE: We are now back in
9 public session. Is there a motion or discussion,
10 is there any discussion on the appeals? Is there
11 a motion to accept the appeals? It's unanimous.
12 Is there a motion to go out and enjoy the
13 weather?

14 MR. DEL VALLE: Yes, I think we're
15 adjourned. Thank you.

16 (The board meeting concluded at 10:24
17 a.m.)

Environmental Control Board, July 28, 2016

CERTIFICATE OF ACCURACY

I, Lea Simmons, certify that the foregoing transcript of Environmental Control Board Meeting on July 28, 2016 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Certified By



Date: July 29, 2016

GENEVAWORLDWIDE, INC

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