

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

November 20, 2014

9:20 A.M. to 9:40 A.M.

November 20, 2014

MEMBERS PRESENT:

Robert Carver, Esq. - Citizen Member
Hon. Ernest J. Cavallo - Citizen Member
Fidel F. Del Valle, Esq. - Chair, OATH
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

ALSO PRESENT:

Helaine Balsam, Esq. - Deputy 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
Peter Schulman, Esq. - Deputy Supervising Attorney,
Appeals, ECB
Frances Shine - Secretary to the Board, 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 9:20
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: I'd like to welcome
9 everybody here. This is my inaugural meeting of
10 the board. This is not my first board meeting of
11 the board. But this is the first one of this
12 board and every board has its own unique
13 idiosyncrasies as to how it operates. So, if I
14 stumble at all today, I apologize. I've got the
15 agenda here. I think all of you do. And I think
16 we should get started.

17 So I'm calling the meeting to order. And
18 the normal first thing on the agenda is to adopt
19 the minutes of the previous meeting. I assume
20 everybody got a copy of them. And does anybody
21 have any comments or corrections to make on it?
22 Is there a motion to adopt them? It looks like
23 it's by acclamation. I'll abstain as well because
24 I wasn't here.

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2 And we'll move on to a proposed rule, an
3 amendment to DOT's penalty schedule.

4 MS. DIANA HAINES, ASSISTANT GENERAL
5 COUNSEL, OATH: Good morning everybody.

6 ALL: Good morning.

7 MS. HAINES: This is a proposed rule for
8 -- rule change to the DOT, which was initially
9 proposed by Lt. Dan Albano at last month's
10 meeting. Since then it has received approve --
11 certification from both the Mayor's Office of
12 Operations, as well as the Law Department. And
13 essentially it's two rules that are -- that stem
14 out of the Mayor's Vision Zero Action Plan to
15 reduce traffic fatalities in New York City.

16 So the first rule stems out of Local Law
17 29, which adds Section 19-190 to the
18 Administrative Code and that's entitled: Right of
19 Way. It's two parts: Part A provides that if the
20 driver of a motor vehicle fails to yield to a
21 pedestrian or a bicyclist who has the right of
22 way, the driver will be subject to civil
23 penalties of not more than \$100. And that is
24 either in addition to or as an alternative to the

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2 penalties imposed for committing a traffic
3 infraction.

4 And Part B of that rule indicates that
5 if a driver who violates Subsection A causes
6 contact with a pedestrian or a bicyclist and
7 thereby causing physical injury or damage, the
8 driver is subject to a fine of up to \$250. And
9 once again that's either in addition to or as an
10 alternative to the penalties imposed for a
11 misdemeanor. Are there any questions on that one?

12 Okay, then moving along. Local Law 50
13 adds Section 19-191 to the Administrative Code.
14 And that's entitled: Civil Penalties for Leaving
15 the Scene of an Incident without Reporting. And
16 the civil penalties there relate to a violation
17 of the Vehicle and Traffic Law, specifically
18 section 600. And that section obligates a motor
19 vehicle operator who either knows or has reason
20 to know that property damage or personal injury
21 has been caused by an incident with that
22 operator's motor vehicle to stop and share the
23 identifying information with the person
24 sustaining the damage or the injury or with a

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2 police officer, to a police station or a judicial
3 officer.

4 And here, there's four levels of civil
5 penalties associated with failure to comply.
6 First is if there's property damage sustained,
7 the operator is liable for civil penalties of not
8 more than \$500. Second, if there's physical
9 injury; if there's physical injury the driver is
10 liable for civil penalties of not less than
11 \$1,000 and not more than \$2,000. If there's
12 serious physical injury, the driver is liable for
13 not less than \$2,000 and not more than \$10,000.
14 And again if the incident involves death, once
15 again the driver is liable for not less than
16 \$5,000 and not more than \$10,000 in civil
17 penalties. And as mentioned at the last month's
18 meeting, we are seeking the maximum penalties as
19 well as the maximum default penalties on that
20 rule. Are there any questions?

21 MR. THOMAS D. SHPETNER, CITIZEN MEMBER:

22 I just have one quick question. Has Local Law 50
23 taken effect yet? Do we know? Because there's
24 some language in here about when these all take

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2 effect. But if Local Law 50 goes live, then
3 they're effect- they're effective now. Do we
4 happen to know? I mean, it's just interesting and
5 I'm not sure if it matters.

6 MS. HAINES: Yeah, I believe that it
7 has. Mr. Albano?

8 LT. DAN ALBANO, ESQ., POLICE DEPARTMENT:
9 Yeah, what's Local Law 50? Is it the 25-mile-an-
10 hour speed limit? Or is it the --

11 MR. SHPETNER: It's a whole new part of
12 the Administrative Code about leaving the
13 incident -- leaving the scene of an incident
14 without reporting apparently.

15 LT. ALBANO: No, that's, that's -- this
16 is what we're talking about. So if it's --

17 MR. SHPETNER: Okay. So -- okay, because
18 the language in here is sort of confusing in
19 Section -- this is Section Three on page four. So
20 if the rule's going to take effect immediately
21 except for Section Two; or will it take effect on
22 the same date as Local Law Number 50. But if it's
23 adopted thereafter, the Two takes effect
24 immediately. I didn't understand the interplay of

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2 those two.

3 LT. ALBANO: Yeah, I think the problem
4 is the penalties have to go through the CAPA
5 process. And that's, that's -- this is part of
6 that.

7 MR. SHPETNER: That's fine. So it's a
8 procedural question.

9 MR. DEL VALLE: And, and, and the
10 penalties don't actually go into effect until
11 it's published 30 days --

12 LT. ALBANO: Right.

13 MR. DEL VALLE: -- after the City
14 Record. That's fine. Did you identify yourself
15 for the record?

16 MS. HAINES: Diana Haines, Assistant
17 General Counsel for OATH.

18 MR. DEL VALLE: Thank you.

19 LT. ALBANO: Look, if I -- if I could
20 just add is that the failure to yield, the bottom
21 one, where, where a motorist fails to yield for a
22 bicyclist or pedestrians in the crosswalk; that's
23 already in the VTL, as many of these others --
24 sections are, are in the VTL. And we're enforcing

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2 them currently under Vehicle and Traffic Law and
3 probably will continue to, at least for the basic
4 offense of failure to yield; continue to use the
5 traffic reg -- the VTL, because the officers are
6 familiar with that and have already written about
7 eight -- on the average of 8,000 summonses a year
8 for that violation. So it's safe. Leave it, leave
9 sleeping dogs lie and not try to retrain
10 everybody on a new section of law and a new
11 summons that has the same effect of the VTL.

12 MR. SHPETNER: Got it.

13 MR. DEL VALLE: Do you know which has
14 heavier penalties -- the VTL or this?

15 LT. ALBANO: This is going to have
16 heavier penalties. And I think that, that was the
17 reason behind the Administration's push for it.
18 But we already have a tool that is well-used and
19 in place. So we want the officers to continue
20 using that tool.

21 MR. JORGE MARTINEZ, ESQ., DEPARTMENT OF
22 HEALTH AND MENTAL HYGIENE: Jorge Martinez,
23 Department of Health. I think this question was
24 raised last time. But why are the default amounts

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2 the same as the penalty amounts?

3 MS. HAINES: Mr. Albano, do you want me
4 to address that? Or --

5 LT. ALBANO: Yeah, okay.

6 MS. HAINES: Okay. Well, I mean, I think
7 that if you -- if you look at, you know, your
8 average violation here; the default penalties are
9 set higher almost as a deterrent that, you know,
10 even after a violation is committed there's some
11 kind of incentive to correct. You know, if you
12 have a viola- a building's violation or a fire
13 violation; you know, there's, there's still a
14 threat of potential danger. Whereas here, once
15 the violation is committed the damage is done.
16 So, I, I think it's, it's an incentive to not
17 commit the violation to begin with. I think it's
18 also a big push by the Mayor just to really
19 enforce these traffic codes.

20 MR. MARTINEZ: Okay.

21 MR. DEL VALLE: Yes?

22 HON. ERNEST J. CAVALLO: Ernest Cavallo,
23 Citizen Member. I forgot whether we discussed
24 this or not. But are the terms "physical injury"

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2 and "serious physical injury" defined? Or is it
3 left up to an officer responding?

4 LT. ALBANO: No, serious physical injury
5 is defined in the Penal Law. And, and I think the
6 statute makes reference to the Penal Law.

7 MR. CAVALLO: Oh, okay.

8 LT. ALBANO: But a physical injury is
9 not and it's not defined in the Penal Law either.

10 MR. CAVALLO: Mm-hmm. Alright. Because I
11 deal with the no-fault law and the properties
12 damage and the thing where they have serious
13 physical injury and things like that. So --

14 LT. ALBANO: Is that a different
15 definition of serious physical injury than in the
16 Penal Law?

17 MR. CAVALLO: Probably. Probably. So,
18 I'm not sure what -- how it's all going to play
19 out.

20 MR. DEL VALLE: There's also another
21 definition of serious physical injury; how it
22 relates to automobile accidents. I forgot what,
23 what --

24 MR. CAVALLO: That's what I'm talking

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2 about -- the no-fault law.

3 MR. DEL VALLE: Yeah, and --

4 MR. CAVALLO: It is --

5 MR. DEL VALLE: In any case, as I
6 recall, the legislation has the EMT's on the
7 scene basically making the call as to whether
8 it's a serious physical injury or not. And I
9 don't recall what their criteria is for making
10 that declaration. It might be just anything from:
11 Okay, we got to take him to the hospital and let
12 the doctor figure out it; to, you know it's, it's
13 an -- this guy's got his arm off or something
14 like that, that doesn't require a medical expert
15 to figure it out. But in my -- one of my prior
16 incarnations, somebody could be literally dancing
17 a jig after the accident and then all of a sudden
18 a year-and-a-half later, there's a lawsuit saying
19 that they're paralyzed. And when I say that, I'm
20 being a little sarcastic.

21 Alright. Any other questions? Do we call
22 for a vote? Is there a motion -- a motion to
23 adopt?

24 LT. ALBANO: I don't know, can I vote on

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2 this? I can't, I have to stay out of it.

3 MR. SHPETNER: This is transportation.

4 MR. DEL VALLE: It'll pass anyway I
5 think since everybody else raised their hands. I
6 think it's by acclamation.

7 LT. ALBANO: Thank you.

8 MR. SHPETNER: Yes, stay out of it.

9 MR. DEL VALLE: One negative vote. Any
10 abstentions? Do we still have the requests from
11 cease and desist?

12 MS. PEGGY KUO, GENERAL COUNSEL, OATH:
13 Yes.

14 MR. DEL VALLE: Okay. We have DEP's
15 request for cease and desist orders.

16 MR. RUSSELL PECUNIES, ESQ., DEPARTMENT
17 OF ENVIRONMENTAL PROTECTION: Okay. Okay. Good
18 morning. Russell Pecunies, Assistant Counsel,
19 DEP. Because of the tight turnaround between the
20 board meetings, we were not able to get together
21 the usual number of cease and desist requests for
22 the backflow failure to comply. We have 21 this
23 month instead of the usual 28. And for the same
24 reason, we weren't able to get the paperwork

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2 together for the air or noise requests. So, we'll
3 bring those in December. So for this month, we
4 just have 21 backflow related cease and desist
5 requests.

6 MR. DEL VALLE: Questions? Motion to
7 approve? I think this time it's by acclamation. I
8 was wrong the last time. I think they are
9 approved. Thank you.

10 MR. PECUNIES: Thank you. You got that I
11 abstained of course.

12 MR. DEL VALLE: And I believe it's time
13 for our executive session. Are there -- anyone
14 who wants --

15 [OFF MIC CONVERSATION]

16 [OFF THE RECORD]

17 [ON THE RECORD]

18 MR. DEL VALLE: We are back in public
19 session on the record. We have just had a
20 discussion of litigation that is in progress. And
21 we'll ask if there is a motion to adopt the
22 appeals decisions? And again I think it's
23 unanimous. Is there a motion to adjourn? Son of a
24 gun, we are adjourned.

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MR. SHPETNER: Thank you.

MR. DEL VALLE: Thank you very much.

(The public hearing concluded at
approximately 9:40 A.M.)

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CERTIFICATE OF ACCURACY

I, Andrew Slawsky, certify that the foregoing transcript of the Board Meeting of the Environmental Control Board on November 20, 2014 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Certified By



Date: November 21, 2014

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