

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

BOARD MEETING

Training Room 143, 12th Floor  
100 Church Street, New York, New York

October 29, 2015

9:23 A.M. to 10:22 A.M.

October 29, 2015

## MEMBERS PRESENT:

Robert Carver, Esq. - Citizen Member  
Hon. Ernest J. Cavallo - Citizen Member  
Joseph Gregory, Esq. - Fire Department  
Renaldo Hylton - Exec. Dir., Dept. of Buildings  
Elizabeth Knauer, Esq. - 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, Esq. - Citizen Member  
Douglas Swann - Citizen Member

## ALSO PRESENT:

Jim Macron, Esq. - Counsel to the Board, OATH/ECB  
Frances Shine - Secretary to the Board, OATH/ECB  
Rachel Amar - Special Assistant to the Commissioner, OATH  
James Armstrong, Esq. - Agency Attorney Interne, OATH  
**Kelly Corso, Esq. - Assist. Director of Adjudications, ECB**  
Dwayne Crispell - General Counsel Intern, OATH  
Fana Garrick - Public Affairs Assistant, OATH  
David Goldin, Esq. - Administrative Justice Coordinator,  
Mayor's Office  
Shamonda Graham - Department of Transportation  
Diana Haines, Esq. - Assistant General Counsel, OATH  
Vivienne Kahng, Esq. - Deputy Supervisor, Appeals,  
OATH/ECB  
Mark H. Leeds, Esq. - Special Senior Counsel, ECB  
Nancy Lin - Office of Management & Budget  
Carol Moran, Esq. - Deputy Commissioner of Hearings  
Division and Taxi and Limousine Tribunal, OATH  
Denis Ortega - IT Support, OATH  
Doris Stewart - Department of Transportation  
Peter Schulman, Esq. - Assistant Director of  
Adjudications, ECB  
Amy Slifka, Esq. - Deputy Commissioner, ECB  
Thomas Southwick, Esq. - Supervising Attorney, Appeals,  
ECB

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2                           (The Board Meeting commenced at 9:23  
3           A.M.)

4                           MS. AMY SLIFKA, ESQ., DEPUTY  
5           COMMISSIONER, OATH ECB: Amy Slifka, I'm the  
6           Deputy Commissioner of OATH ECB. The Commissioner  
7           is at another meeting today. So I'm going to be  
8           chairing this meeting. So, we'll start. Are there  
9           any corrections for the minutes for September 25,  
10          2015? Okay. Is there a vote to approve? Okay.

11                          HON ERNEST J. CAVALLO, CITIZEN MEMBER:  
12          I abstain.

13                          MS. SLIFKA: Two abstentions. And the  
14          rest of you -- okay. So now we're going to go  
15          forward with the quarterly report. Peter Schulman  
16          is going to present the ECB quarterly report.

17                          MR. PETER SCHULMAN, ESQ., DEPUTY  
18          SUPERVISING ATTORNEY, APPEALS, OATH/ECB: Good  
19          morning everyone. The quarterly report, as you're  
20          familiar with the report that sets forth the  
21          number of violations received by ECB, broken down  
22          by enforcement agency. It's also a quarterly  
23          comparison of the violations received, violations  
24          heard and decisions rendered by ECB.

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2                         We also look at the elapsed time between  
3           the hearing date to decision date; look at the  
4           decisions in total for each of the enforcement  
5           agencies; look at the most common issued  
6           violations by each agency. Finally, we'll look at  
7           the number of summonses being appealed, as well  
8           as a breakdown of the most common types of  
9           summonses that have been defaulted on during this  
10          quarter. This report covers the third quarter of  
11          calendar year 2015.

12                        So first, are violations received by ECB  
13          in the third quarter of calendar year 2015,  
14          compared with the second quarter of 2015.  
15          Department of Sanitation saw an eight percent  
16          decrease in the violations that were issued and  
17          received by ECB, down to 108,429. Department of  
18          Buildings, a two percent decrease, down from  
19          13,557 to 13,295. DOT, a 159 percent increase  
20          from 7,404 to 19,157.

21                        MR.CAVALLO: Do we know why?

22                        MS. SLIFKA: Yes. I believe it has to do  
23          with the fact that they're now issuing electronic  
24          NOVs. So they're able to process them and get

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2           them through the court faster. And I see Ms.  
3           Graham from DOT shaking her head that that's  
4           correct.

5                       MS. SHAMONDA GRAHAM, DEPARTMENT OF  
6           TRANSPORTATION: A lot of computers.

7                       MS. SLIFKA: Thanks.

8                       MR. SCHULMAN: Thank you. FDNY saw a ten  
9           percent decrease from 11,833 down to 10,684. DEP,  
10          a six percent increase from 3,975 in the second  
11          quarter to 4,201. Department of Health and Mental  
12          Hygiene, a 15 percent increase from 7,075 to  
13          8,120. Parks saw a 21 percent increase from 2,310  
14          to 2,805; again, probably because of the weather.  
15          The Police Department saw a 37 percent increase  
16          from 2,639 to 3,617. DoITT, a 77 percent decrease  
17          from 280 to 65. BIC, a 71 percent decrease from  
18          seven down to two. And Landmarks, a 60 percent  
19          decrease from 62 to 25.

20                      Next, we're going to compare the third  
21          quarter of 2015; again it is the third quarter of  
22          2015. So, Department of Sanitation remains pretty  
23          much the same. There was a .1 percent decrease  
24          that is it. Department of Buildings, a 16 percent

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2           decrease, down to 13,295. Fire Department, a 32  
3           percent decrease. DOT, a 98 percent increase,  
4           almost doubling. Department of Health and Mental  
5           Hygiene, a three percent decrease. DEP, a six  
6           percent decrease. NYPD, a 30 percent decrease.  
7           Parks, a 22 percent increase. DoITT, an 83  
8           percent decrease. Landmarks, a 47 percent  
9           decrease. DCA is a mathematical impossibility, as  
10          far as figuring out what the percentage increase  
11          is; but it's from zero to 17. BIC is a 93 percent  
12          decrease. Agency Code Missing is a seven percent  
13          increase and Miscellaneous Violations was an 86  
14          percent decrease. Overall, from third quarter  
15          2014 to 2015, there was a negligible decrease of  
16          .3 percent.

17                   Next are the total violations heard at  
18           ECB; a quarterly comparison between the third  
19           quarter 2014 to third quarter 2015. Sanitation  
20           saw a 15 percent increase. Buildings, a five  
21           percent decrease. Fire, a 25 percent decrease.  
22           Health and Mental Hygiene, a six percent  
23           increase. DEP, a ten percent decrease.  
24           Transportation, a three percent increase. Police

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2           Department, a 46 percent decrease. DoITT, a 109  
3           percent increase. Parks, a 15 percent decrease.  
4           Landmarks, a 32 percent decrease. BIC, a 17  
5           percent decrease. DCA remained the same at zero.  
6           Agency Code Missing, a 14 percent decrease. And  
7           Miscellaneous Violations, at 50 percent decrease.  
8           Overall, there was a three percent decrease from  
9           46,556 down to 45,059.

10                       Next are decisions rendered third  
11           quarter 2014 compared to the third quarter of  
12           2015. Sanitation saw a 16 percent increase in  
13           those decisions. Department of Buildings, a four  
14           percent decrease. Fire, a 24 percent decrease.  
15           Health and Mental Hygiene, a three percent  
16           decrease. DEP, a five percent decrease. NYPD, a  
17           47 percent decrease. DOT, a three percent  
18           decreases. Parks, a seven percent decrease.  
19           DoITT, a 288 percent increase. Landmarks, there  
20           was no change. BIC, a 60 percent decrease. DCA,  
21           again at zero; no change. Agency Code Missing or  
22           Invalid was a 29 percent increase. And  
23           Miscellaneous was an 83 percent decrease.  
24           Overall, there was a two percent decrease from

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2           37,443 decisions to 36,727 decisions rendered.

3                   The next we are looking at are the  
4           elapsed time from the last hearing date to the  
5           decision date. Again, we are continuing to get  
6           out 91 percent of decisions in ten days or less  
7           from the hearing date and 98.6 percent of  
8           decisions in 20 days or less from the hearing  
9           date. So that stayed the same; that was constant  
10          from the second quarter to the third quarter.

11                   Decisions rendered after a hearing. The  
12          percent of decisions dismissing summonses and  
13          decisions sustaining summonses remained about the  
14          same from the third quarter 2014 to the third  
15          quarter 2105. Dismissals increased by about four  
16          percent, while violations decreased by about four  
17          percent. So there was a little change there, but  
18          overall pretty consistent.

19                   Decisions rendered after a hearing is  
20          broken down by agencies. Sanitation, there were  
21          63 percent of decisions dismissed, resulting in  
22          dismissals; 37 in violation. Department of  
23          Buildings, 19 percent resulted in dismissals; 81  
24          percent in violations, with less than one percent

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2           was stipulated. Department of Transportation, 42  
3           percent resulted in dismissals; 58 percent in  
4           violations. FDNY, ten percent dismissals; 88  
5           percent in violations, with one percent  
6           stipulated. DEP, ten percent dismissals; 80  
7           percent in violation and ten percent stipulated.  
8           NYPD, 52 percent dismissals; 48 percent in  
9           violation. Department of Health and Mental  
10          Hygiene, 48 percent were dismissed after a  
11          hearing; 59 percent in violation. Parks, 49  
12          percent dismissed; 51 percent in violation.  
13          DoITT, 59 percent dismissed; 41 percent in  
14          violation. BIC, evenly split, one was dismissed;  
15          one was in violation. Landmarks, zero percent  
16          were dismissed; 14 were sustained. That was all  
17          of them. So it was a hundred percent in  
18          violation.

19                        Next are the most commonly issued  
20                        violations by agency for the third quarter of  
21                        2015. DOT, the most common was failure to  
22                        permanently restore a cut within the required  
23                        time. Then, opening of a street without a permit  
24                        and failure to comply with terms, conditions of

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2           DOT permits. Department of Buildings,

3           miscellaneous violations. Those are code category

4           B106 and B206: unlawful acts, failure to comply

5           with an Order of the Commissioner and work

6           without a permit. NYPD: vending violations,

7           vending in a bus stop, next to a hospital;

8           vending at a prohibited time and place and

9           failure to display license and/or plate.

10          Department of Sanitation: dirty sidewalk, dirty

11          area; failure to clean 18 inches into the street

12          and dirty area. DEP: failure to submit an annual

13          test report for a backflow preventer; failure to

14          install a backflow preventer and failure to keep

15          and have available for inspection a noise

16          mitigation plan. Fire Department: inspection and

17          testing violations; fire protection systems;

18          failure to prevent unnecessary or unwarranted

19          alarms and the failure to post permits and

20          recordkeeping. Department of Health and Mental

21          Hygiene, the most common: failure to eliminate

22          rodent infestation, shown by active rodent signs

23          first violations; failure to eliminate conditions

24          conducive to rodent debris and vegetation first;

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2           and failure to eliminate conditions conducive to  
3           pests, garbage can spillage. Landmarks was  
4           generally different types of work without or in  
5           violation after getting a certificate of  
6           approval. And DoITT: failure to clean, maintain  
7           public telephones, as per the requirement of the  
8           subsection; failure to provide working public pay  
9           telephones and operator services; and then  
10          miscellaneous violations of the rules pertaining  
11          to public pay telephones. Parks was unauthorized  
12          vending; unauthorized consumption of alcoholic  
13          beverages; and failure to comply with bicycle  
14          riding restrictions. BIC, as there were only two  
15          violations, there's only a top, which is idling a  
16          motor vehicle's engines over three minutes.

17                 The appeals agency, the appealed  
18          violations for issuing agency for the third  
19          quarter 2015. Department of Buildings had the  
20          most, 157; followed by Sanitation at 228; and  
21          then Fire at 107; and then the list goes down.  
22          There were a total of 750.

23                 And finally, the default in the third  
24          quarter of 2015. There were 78,013 defaults; 71

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2           percent of those were on summonses issued by the  
3           Department of Sanitation; followed by DOT and  
4           then DOHMH. The remaining 16 percent were for  
5           various other agencies. Any questions?

6                     MS. SLIFKA: Any questions? No? Okay,  
7           thank you.

8                     MR. SCHULMAN: Thank you.

9                     MS. SLIFKA: Okay. Alright. Next we're  
10          going to have a presentation of the proposed  
11          rules regarding the Amendment of Buildings  
12          Penalty Schedule by Diana Haines, as soon as we  
13          get the right date. Here we go. Okay, Diana.

14                    MS. DIANA HAINES, ASSISTANT GENERAL  
15          COUNSEL, OATH: Good morning. Our first rule  
16          proposal is based on the Department of Buildings  
17          presentation from August of this year, regarding  
18          halving the default penalties for DOB violations.  
19          Basically we would be halving one -- halving  
20          default penalties issued for aggravated one  
21          default penalty and aggravated two default  
22          penalties after the respondent files an  
23          acceptable certificate of correction, with  
24          Department of Buildings and then Department of

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2           Buildings would have to notify ECB of this. And  
3           just note that this reduction does not apply to  
4           daily penalties for immediately hazardous  
5           residential illegal conversions.

6                       MR. RENALDO HYLTON, EXECUTIVE DIRECTOR,  
7           DEPARTMENT OF BUILDINGS: I just want to clarify.  
8           The halving of default penalties are all default  
9           penalties, correct? All, not just the aggravated  
10          one and two but all?

11                      MS. SLIFKA: Could you -- could you  
12          identify yourself?

13                      MR. HYLTON: Renaldo Hylton, Buildings.

14                      MS. SLIFKA: Thank you.

15                      BOARD MEMBER HYLTON: It just includes  
16          the --

17                      MS. HAINES: Yes.

18                      MR. HYLTON: -- it includes --

19                      MS. HAINES: Yes, with the exclusion of  
20          the --

21                      MR. MEMBER HYLTON: -- of the --

22                      MS. HAINES: Right, the --

23                      MR. HYLTON: -- illegal conversions.

24                      MS. HAINES: -- immediately -- right.

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2                   MR.HYLTON: Yes, right.

3                   MS. HAINES: Correct.

4                   MR. HYLTON: Thank you.

5                   MS. SLIFKA: Any further questions?

6                   Okay. Is there a motion to approve? Okay. And it  
7                   looks like all approve and one abstention. Thank  
8                   you, Diana. And now Diana's going to present on  
9                   the proposed rules regarding the repeal of the  
10                  Park's Rules Penalty Schedule.

11                  MS. HAINES: And once again, this is  
12                  based on a proposal from the Department of Parks  
13                  and Recreation that was presented at last month's  
14                  meeting. OATH is looking to repeal the agency  
15                  penalties for its rules so that they can be  
16                  relocated to within the respective agency that  
17                  enforces the violations.

18                  And the purposes is behind this are:  
19                  One, that it would help clarify to the public  
20                  that OATH -- that ECB is a neutral third party  
21                  that hears and tries and cases brought by other  
22                  enforcement agencies and that we are not an  
23                  enforcement agency. Second, it's going to make it  
24                  easier for the public to find those penalties,

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2           which will be located, you know, within the  
3           respective agency's rules. Third, it replace-, it  
4           places the responsibility for determining the  
5           amount of the penalties on the enforcement  
6           agency. And finally, it will speed up the rule-  
7           making process, rather than having the initial  
8           rule-making process by the enforcement agency and  
9           then a secondary one here, where we propose the  
10          penalty. It could all be done, you know, in a, in  
11          a single turn.

12                         And just to note, the Department of  
13          Parks and Recreation will simultaneously be  
14          enacting their penalty schedule within its own  
15          rules.

16                         MS. SLIFKA: Any questions?

17                         MR. CAVALLO: Yes, I have a question.

18                         MS. SLIFKA: Just state your name.

19                         MR. CAVALLO: I'm sorry. I'm Ernest  
20          Cavallo, Citizen Member. There's all of this,  
21          this is going to help the public, etc. But in  
22          this age of Google, where you want to just find  
23          a, a regulation concerning the Parks Department;  
24          you put in New York City Parks Department, riding

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2           bicycle too fast or something like that and it  
3           pops up. So, where's the difficulty for the  
4           public? Has there been an enormous number of  
5           complaints that the public can't find the rules  
6           because they're not in the Parks Department's  
7           rules themselves?

8                   MS. SLIFKA:   Actually, that's the point.  
9           If you type in Google and you put the riding  
10          bicycle, it will direct you to the Parks  
11          Department rules.

12                   MR. CAVALLO:   Right.

13                   MS. SLIFKA:   And now the penalty  
14          schedule will be within their own rules. They  
15          don't know to go to the ECB rules to find the  
16          penalty schedule.

17                   MR. CAVALLO:   Why doesn't the Parks  
18          Department just incorporate the penalty schedule  
19          we already have into their website?

20                   MS. SLIFKA:   You'd have to talk to the  
21          Parks Department about that.

22                   MR. CAVALLO:   It seems to me that would  
23          be the better solution to having the public find;  
24          with a lot less legislative work on our part and

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2           the Legal Department. And my other problem with  
3           this is: Am I reading this correctly? We will no  
4           longer be voting on the penalties that the Parks  
5           Department chooses to impose?

6                     MS. HAINES:   As a Board, no.

7                     MR. CAVALLO:  No, I'm very opposed to  
8           that. Considering that our Chair thinks that we  
9           should be more transparent and not less  
10          transparent, although I can't think of a penalty  
11          schedule that was ever voted down by the Board;  
12          at least there is -- you can? Good, okay. At  
13          least there is a public record of what happened;  
14          who voted yes, who voted no, whether there was  
15          any discussion. There'll be no such record if  
16          it's just people in their offices making these  
17          rules.

18                    MS. SLIFKA:  Well --

19                    MR. CAVALLO:  And I don't see how that  
20          helps the public or gives the City of New York --  
21          forget the ECB, just the City as a whole a better  
22          reputation among the members of the public. I  
23          would like someone to address that.

24                    MS. SLIFKA:  There'll still be a CAPA

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2           process for Parks. So the public will be given  
3           notice and they will have an opportunity to speak  
4           to the rules, the public themselves -- not the  
5           Board. The people who it's going to impact will  
6           have an opportunity to speak to the rulemaking.

7                   MS. HAINES:   And in fact, it'll be done  
8           simultaneous when the rule is being enacted. So  
9           that you're not only getting the rule but you're  
10          getting what the penalty will be right at the  
11          same time; as opposed to hearing about, you know,  
12          sometime later on.

13                   MR. CAVALLO:   When the Board does things  
14          though, the Board does things as a totality, as a  
15          whole. Are the -- does this allow, for instance,  
16          the Parks Department to make penalties that are  
17          out of proportion to the other agencies?

18                   MS. SLIFKA:   I, I don't believe so.

19                   MR. CAVALLO:   That there will not be,  
20          you know, the similar kind of default penalties  
21          and things like that?

22                   MS. SLIFKA:   They still -- they still  
23          have the same type of restrictions that every  
24          other agency has; you know, public policy and

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2           things like that. And they still, again, as I  
3           said, the people still have the right to speak to  
4           these rules and they still have to go; the City  
5           Council weighs in on these things. And as Diana  
6           pointed out, when the rule about what you are or  
7           are not supposed to be doing is passed, they will  
8           then at that same point be able to know what the  
9           penalty is going to be.

10                   So, you know, I, I differ in the sense  
11           that I think it is still transparent. I actually  
12           -- it's, it's even to me a little bit more  
13           transparent because it's not this middle body  
14           that's interjecting on their behalf. They can  
15           speak on their own behalf, the citizens. It's  
16           just a different viewpoint.

17                   MR. MEMBER CAVALLO: Well, we all know  
18           the citizens really don't come out for the CAPA  
19           process and that the four citizen members here  
20           are the people who basically are the watchdogs  
21           for the public in general.

22                   MS. SLIFKA: But the rulemaking without  
23           the penalty is CAPA too. So basically all we're  
24           doing is the penalty. The rulemaking itself is

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2           coming from the Parks Department. So --

3                   MR.CAVALLO:   What will the Board be  
4           doing if we're not going to be doing these votes  
5           on penalty schedules, things like that in the  
6           future?

7                   MS. SLIFKA:   I, I can't speak to what  
8           the Board will be doing in the future. I can only  
9           address what's happening with this one rule right  
10          now.

11                   MR. CAVALLO:   It seems to me that the  
12          Board is losing power and losing an oversight and  
13          ability. And I don't think that's good for the  
14          public and I'm voting no.

15                   MS. SLIFKA:   Okay. Alright. Any other  
16          comments?

17                   MR. THOMAS D. SHEPTNER, CITIZEN MEMBER:  
18          Well, can you advance the argument as to how this  
19          will benefit the public?

20                   MS. SLIFKA:   Again, I still think it's a  
21          benefit to the public because you do not speak to  
22          the penalties; the public speaks to the  
23          penalties.

24                   MR. SHEPTNER:   Yes, that's accurate but

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2           only to a limited degree.

3                   MS. SLIFKA: I mean, basically --

4                   MR. SHEPTNER: Let me, let me just  
5           continue. And the reason I say that is because no  
6           one cares about a penalty in the abstract. They  
7           care about it when they've been cited for  
8           something years after the penalty has been -- the  
9           penalty schedule has been adopted. No one in the  
10          community is sitting around saying: Hey, I'm  
11          going to be picked up for violation A,B,C in the  
12          future, so I should go to this CAPA hearing.  
13          That's just not how the, the public is inclined  
14          to believe.

15                  MS. SLIFKA: I think we underestimate  
16          what the public can do. And I think in some  
17          respects we assume that we can speak for the  
18          public. I think the people, the citizens, they do  
19          care and they care by organizations they set up;  
20          for example, the Vendors Food Project or  
21          something.

22                  MR. SHPETNER: But, but --

23                  MS. SLIFKA: And what you read about in  
24          the paper all the time. So the public has

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2           advocates and they do care. The pedicabs have,  
3           have a voice. So, I'm just saying.

4                   MR. SHPETNER: You know, one of the  
5           things I, I find fascinating are the, the  
6           transcripts of the public hearings that Jim opens  
7           and closes after no one shows up. And if you did  
8           a review of them over the past several years that  
9           I've been here, I would, I would be willing to  
10          wager that fewer than five percent of them have  
11          any public participation of any kind. Meetings  
12          open at 2:30 and closed at 2:32.

13                   MS. SLIFKA: That has to do with our  
14          public hearings.

15                   MR. SHPETNER: I understand that.

16                   MS. SLIFKA: I don't under-, I don't  
17          know. You know, you're talking about the Parks  
18          Department, which is a huge Department.

19                   MR. SHPETNER: I am con-, I, I -- you're  
20          right that I'm conflating the two. But I just am  
21          suggesting in, in the, in the main that the  
22          participation by the public in those -- in these  
23          types of hearings is very limited.

24                   MS. SLIFKA: Okay. I would also argue

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2           that the Parks Department, it's their rules and,  
3           and they -- it's, it's their penalties, you know.  
4           It's their rules, their penalties. They see what  
5           happens and they determine what the penalties are  
6           based on the effect it has on the public.

7                       MR. HYLTON: I just think that one --  
8           Renaldo Hylton from the Buildings; one  
9           clarification. So is this the model then for the  
10          other agencies to follow? Is this just the --

11                      MS. SLIFKA: I think that is the way we  
12          --

13                      MR. HYLTON: -- a test case?

14                      MS. SLIFKA: I think that's the way we  
15          plan on seeing this going, correct.

16                      MR. HYLTON: Right. So would every  
17          agency then are going to be having to do what  
18          Park's doing and repeal their penalty schedule  
19          from DOB -- from ECB's rules and promulgate their  
20          own?

21                      MS. SLIFKA: I'm not in a position to  
22          say having. That's a higher pay grade than me. I  
23          think, you know, if you're asking me if that's  
24          what we would encourage? Yes, that's what OATH

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2           would encourage.

3                   MR. HYLTON:   So, if it's going to be  
4           done by rule or executive decision? Because if  
5           it's done by rule, then an agency would have some  
6           say in whether or not they want to go that route?

7                   MS. SLIFKA:   That's correct.

8                   MR. HYLTON:   So would that -- would that  
9           not kind of convolute the whole Board process  
10          then? Where some agencies would have rules for  
11          penalties in, at ECB and some would have it in  
12          their own?

13                  MS. SLIFKA:   I don't think that would be  
14          a problem because there are some agencies that  
15          have penalties that are set. There are some  
16          statutes that have penalties. There is no  
17          rulemaking for some particular sections of law.  
18          It's, it's a set -- it's a set penalty. So, I  
19          don't think that that would be a problem.

20                  MR. HYLTON:   No, I meant the Board  
21          process. So, it's -- if the Board -- if ECB will  
22          have some penalties in their own -- some  
23          agencies' penalties in their own penalty rules  
24          and some other agencies, some of the agencies

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2           such as Parks, in this case, will not have its  
3           penalty in ECB's rules; then isn't that going to  
4           make it even worse for the public to understand  
5           --

6                     MS. SLIFKA: I, I really don't think so.  
7           Right now --

8                     MR. HYLTON: -- where to go --

9                     MS. SLIFKA: -- the Health Department  
10           has the penalties in their rules and the Health  
11           Tribunal adjudicates those cases. It's not in the  
12           Health Tribunal's rules. It's in the Health  
13           Department rules. So, it has been done. There  
14           hasn't been any issues with it and DCA will also  
15           have the penalty schedule in their rules. So,  
16           there's precedent for this.

17                    MR. JORGE MARTINEZ, ESQ., DEPARTMENT OF  
18           HEALTH AND MENTAL HYGIENE: But -- I'm Jorge  
19           Martinez, DOH. But as it stand now, every agency  
20           has the option to keep their rules, their  
21           penalties to, you know, within the rules or to  
22           leave it off, right?

23                    MS. SLIFKA: Right.

24                    MR. MARTINEZ: So --

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2                   MS. SLIFKA: I didn't say you won't have  
3 the option. I said I'm not in a position, you  
4 know; at this point you have the option. The  
5 rules are such that you do have the option. So,  
6 I, I, I'm not saying one way or the other. I'm  
7 only addressing this particular set of rules at  
8 this particular point in time. Okay. Any other  
9 comments; questions?

10                  MR. CAVALLO: Yes, Ernie Cavallo,  
11 Citizen Member. Was this initiated by Parks or by  
12 ECB?

13                  MS. SLIFKA: I can't answer that  
14 question. I really don't know the answer to that  
15 question.

16                  MR. CAVALLO: Okay.

17                  MS. SLIFKA: So --

18                  MR. CAVALLO: Fair enough.

19                  MS. SLIFKA: Yes?

20                  MS. ELIZABETH KNAUER, ESQ., CITIZEN  
21 MEMBER: Elizabeth Knauer, Citizen Member. I  
22 apologize. I apologize for my lack of voice.

23                  MR. CAVALLO: Oh, dear.

24                  MS. KNAUER: I'm just -- I just wanted

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2           to raise an issue. I'm not really sure that I  
3           have a position on it one way or the other. But  
4           it, it's -- I'm just, it just strikes me as  
5           perhaps a strange position for the Tribunal to be  
6           in to when it's adjudicating a violation that the  
7           -- it is, it will, it will be constrained to  
8           apply a penalty that's been decided by another --  
9           that's already -- that's determined by another  
10          body. So that an ALJ, if, you know, an ALJ faced  
11          with a violation that as a matter of a law that a  
12          person is in violation will have to apply a  
13          penalty that hasn't been adopted by the Tribunal;  
14          it's, it's, it's been sort of imposed on it by  
15          the agency who is the prosecutorial body in that  
16          sense. So it's, it's sort of putting the  
17          prosecutor, if you want to use that analogy, in  
18          the role of determining the penalty. It's not the  
19          adjudicatorial body. I just wanted to raise that.  
20          It seems somewhat of an oddity to me. I'm not,  
21          I'm not sure that I have a strong position one  
22          way or the other.

23                   MS. SLIFKA:    Alright.

24                   MS. KNAUER:    I think it's worth thinking

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2           about.

3                   MS. SLIFKA:   Okay. Well, I could just  
4           speak for that it does occur at the Health  
5           Tribunal right now. They're imposing a penalty  
6           where if the rules are in, the Health Department  
7           rules. So, and it's been working. So, that's all  
8           I can say to that.

9                   MS. KNAUER:   When you say it's been  
10          working?

11                   MS. SLIFKA:   I, I mean the penalties are  
12          set and the hearing officers know what the  
13          penalties are and they impose the penalties based  
14          on the violation. It, it, it doesn't create any  
15          bit of a difference that it's in their rules, as  
16          being in our rules right now. It's still a  
17          schedule that they refer to and impose the  
18          penalties.

19                   MS. KNAUER:   It doesn't create a  
20          difference in logistics for the ALJ? I'm talking  
21          more of on a policy basis.

22                   MS. SLIFKA:   A petitioner has the right  
23          to recommend a penalty because they are the  
24          prosecuting agency.

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2                   MS. KNAUER: Well, no, under the current  
3 -- under our current regime, there's an ECB  
4 penalty schedule.

5                   MS. SLIFKA: They still make  
6 recommendations based on that penalty schedule.  
7 And they're making a recommendation to mitigate  
8 and such like that; so they are using the penalty  
9 schedule and making recommendations.

10                  MS. KNAUER: But the penalty schedule is  
11 set. It's not as though the petitioning agency  
12 says: Within this range, I recommend "X". There's  
13 a certain penalty set for each violation and  
14 level of violation that's, that is determined by  
15 the Board, not the agency. That's --

16                  MS. SLIFKA: Okay. I can see your point.  
17 Anything we want to --

18                  MS. HAINES: I mean, I would just  
19 reiterate that it is, you know, all penalties  
20 that are implemented in the City of New York are  
21 still subject to the CAPA process. And quite  
22 frankly, I think that, you know, if, if you are  
23 implementing a law, enacting a law, repealing a  
24 law, amending a law, that the proper time to

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2           amend or adjust that penalty would be at the time  
3           that you're implementing that law; as opposed to,  
4           you know, sometime down the line after the Board  
5           has met and, you know, makes that determination.

6                   MR. HYLTON:   Just one other  
7           clarification; Renaldo Hylton from DOB. Are there  
8           any other agencies now that appear before the  
9           OATH Tribunal? I know you said the Health  
10          Tribunal does.

11                   MS. SLIFKA:   Yes.

12                   MR. HYLTON:   Is that OATH?

13                   MS. SLIFKA:   Well, the Health Tribunal  
14          is part of OATH, yes.

15                   MR. HYLTON:   Is part of Oath. Alright,  
16          so are there any other agencies, except for  
17          Health, but maybe TLC, I'm not sure, that have --

18                   MS. SLIFKA:   Correct, TLC, that's a good  
19          point.

20                   MR. HYLTON:   Right. But are there any  
21          other tribunals that are doing this now? Taking  
22          their or we're taking -- ECB is taking this Parks  
23          penalty schedule out of its own rules, correct,  
24          because Parks has adopt-, already adopted?

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2                   MS. SLIFKA:  No, they'll do it  
3 simultaneously.

4                   MS. HAINES:  No, it's going to be a  
5 simultaneous.

6                   MR. HYLTON:  Simultaneously.  So, are  
7 there any other agencies that, that -- except for  
8 Health and TLC that ECB will be, will be  
9 imposing, a hearing officer will be imposing  
10 penalties that are promulgated inside that other  
11 agency's own rules?  Do you understand?

12                   MR. RUSSELL PECUNIES, ESQ., DEPARTMENT  
13 OF ENVIRONMENTAL PROTECTION:  Well, I, I --  
14 Russell Pecunies, DEP.  We have a complete  
15 revision of the air code that takes effect in  
16 May.  So we have to do a complete new air code  
17 penalty schedule.  And we were told that it should  
18 be done this way:  That we should -- that ECB will  
19 repeal the current air code penalty schedule and  
20 that we should promulgate the new schedule  
21 ourselves.  I mean, that came from OATH.  That's  
22 what we were told.

23                   MR. HYLTON:  So, it's like an OATH  
24 policy decision at this point?

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2                   MR. PECUNIES: I mean, that's -- I mean,  
3 if we would do it the way it's always been done,  
4 unless we were told to do it differently; I mean,  
5 this is, this is what we were told by OATH.

6                   MR. MARTINEZ: So, I'm sorry, it raises  
7 the question if an agency doesn't repeal, I mean,  
8 doesn't put its penalty code within its own area;  
9 ECB I guess directly anyway has the option to  
10 repeal those penalty provisions from its --

11                  MS. SLIFKA: But they have to present it  
12 to the Board. So, it's not likely that will  
13 happen. Yes, Madelynn Liguori?

14                  MS. MADELYNN Liguori, ESQ., DEPARTMENT  
15 OF SANITATION.: Madelynn Liguori, Sanitation.  
16 So, I'm a little confused. I think a month or two  
17 ago we had to move the meeting to approve a  
18 Department of Buildings penalty schedule  
19 regarding cooling towers. So if it was the  
20 Board's -- the OATH's position that the penalty  
21 schedule should not go in the OATH provision, why  
22 did that move forward and not go through just  
23 Buildings rules?

24                  MS. SLIFKA: I think at that point in

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2           time -- I can't speak to this totally, but the  
3           severity of the situation and we needed to start  
4           getting enforcement.

5                   MS. LIGUORI:   But couldn't the rules  
6           have been promulgated just as quickly by DOB? So  
7           you can have the substantial need for earlier  
8           implementation. Every agency could do that, so  
9           long as the Mayor signs off.

10                   MR. HYLTON:   I just wanted to -- can I  
11           speak to that a little bit?

12                   MS. SLIFKA:   Yes, please.

13                   MR. HYLTON:   So what that would have  
14           done and I understand that because it was  
15           presented to us also; what that would have done,  
16           it would have created half -- oh, not half, but a  
17           portion of the penalties in one rule and a  
18           portion in ECB's rules. So, it would have been a  
19           little less transparent for the public. So, we  
20           wanted to keep everything in one area, in one  
21           rule, all penalties in one rule until, until we  
22           were told otherwise. So, we didn't want to split  
23           the penalties in one rule and split them into  
24           others.

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2                   MR. PECUNIES:  Yeah.  And I think I would  
3           just add that from DEP's perspective, we're only  
4           doing this because we're doing an entire new  
5           penalty schedule for the air code.  And we're not  
6           proposing to move any of our other penalty  
7           schedules.  We have six or seven penalty  
8           schedules.  We're doing an entirely new one for  
9           the air code.  So that the existing one would have  
10          to be replaced either way.  So, we were told  
11          because you're doing a whole new penalty  
12          schedule, we, Oath will repeal the existing one  
13          and you promulgate the new one yourself.

14                   MR. CAVALLO:  Ernest Cavallo, Citizen  
15          Member.  So, are you saying that you were not  
16          given the option?  Or do you not know?  Are you not  
17          high enough?

18                   MR. PECUNIES:  I'm not sure that we  
19          asked for the option.  I mean, I just -- we were  
20          just told this is the way it's going to be done  
21          from now on.

22                   MR. CAVALLO:  Okay.  That answered my  
23          previous question as to where this came from.

24                   MS. SLIFKA:  Okay.  I think we've had

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2           enough conversation on this. Is there a motion to  
3           approve? Is there a motion? Okay. No motion to  
4           even vote?

5                     MR. CAVALLO:   About that.

6                     MS. SLIFKA:   Okay, alright. Then we will  
7           table this for this meeting and we will revisit  
8           it.

9                     MR. CAVALLO:   Wow.

10                    MS. SLIFKA:   Okay. Alright, now, we're  
11           going to have Russell Pecunies, request for  
12           C&D's.

13                    MR. PECUNIES:   Okay. Good morning.  
14           Again, Russell Pecunies, Assistant Counsel, DEP.  
15           So, first this month DEP has the usual 28  
16           requests for Cease & Desist Orders for failure to  
17           comply with requirements to install backflow  
18           prevention devices, the same as every month. So,  
19           I don't know if there are any questions on those.

20                    MS. SLIFKA:   Okay. Is there a motion to  
21           approve? Is there a motion to vote? Is there a  
22           motion to approve? Okay. Thank you. I think  
23           that's everyone; one abstention.

24                    MR. PECUNIES:   One abstention.

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2                   MS. SLIFKA:   Correct. Thank you.

3                   MR. PECUNIES:   Okay, I have four  
4 requests this month for Cease & Desist Orders  
5 pertaining to buildings that have been operating  
6 with expired certificates of operation using  
7 Number Six fuel oil, which has been banned since  
8 June 30th. In each of these four cases, the  
9 building's boiler has an expired C of O to use  
10 Number Six. They have been cited for that. The  
11 violation has been adjudicated and there is still  
12 no compliance. My information is that we are down  
13 to about 15 buildings at this point that are not  
14 either already in the Cease & Desist process or  
15 in these four. So, we really should be just about  
16 at the end of making these requests.

17                   MS. SLIFKA:   Okay.

18                   MS. KNAUER:   Elizabeth Knauer, Citizen  
19 Member. So notwithstanding today, it's starting  
20 to get cold out. I'm just curious about the  
21 number of residences this could affect if the  
22 Cease & Desist -- I mean, actually the buildings?

23                   MR. PECUNIES:   Well, we have not sealed  
24 anybody for not complying with this yet. We have

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2           I would say about 30 or 40 buildings that are  
3           still pending in the Cease & Desist process.  
4           There are a handful of them that are in default.  
5           Theoretically we could go seal those. But because  
6           we know from either inspection or getting fuel  
7           receipts that those buildings, even though the  
8           certification of operation is still expired and  
9           still says Number Six; we know they're not using  
10          Number Six anymore. So, we're not going to seal  
11          them if we know they're not using Six. We're  
12          going to continue to pursue them getting their  
13          certificate but not by sealing them.

14                   MS. KNAUER: And does that affect these  
15                   four buildings as well?

16                   MR. PECUNIES: These four buildings, as  
17                   far as we know, they're using Six. If we know --  
18                   if we know absolutely that they're not using Six,  
19                   then we're not putting them in for Cease & Desist  
20                   because we don't want to add to the caseload.

21                   MS. KNAUER: So is there a plan to deal  
22                   with residents if needed at that point?

23                   MR. PECUNIES: Residents? As a matter of  
24                   fact, several of the ones that are in the Cease &

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2           Desist process that have been getting  
3           adjournments are on temporary boilers. So,  
4           buildings can get a temporary boiler if they are  
5           in the process. For example, if they need to  
6           replace the existing boiler because it's so old  
7           it's sort of beyond redemption, they have to get  
8           a temporary boiler. And there are several  
9           buildings that are doing that right now.

10                   MS. SLIFKA: Any other comments?

11                   MS. KNAUER: Will, will DEP make sure  
12           that that happens; the temporary boiler is in  
13           place before any sealing?

14                   MR. PECUNIES: Well, we can't impose on  
15           the building that requirement. We would assume  
16           that in order to keep their tenants from  
17           freezing, that they would do that. Again, it  
18           would be a very, very extreme situation that  
19           would cause us to go and seal the boiler in a  
20           building in the winter where there was no  
21           alternative means of heat and hot water being  
22           supplied because the Red Cross would have to put  
23           the people up in a shelter. So, I mean, it would  
24           really be an egregious situation before we would

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2           do that. I can't really think of the fact pattern  
3           that would cause us to do that.

4                   MR. HYLTON:   And I'm going to say --  
5           Renaldo, DOB; that would also cause some action  
6           from HPD to step in, correct?

7                   MS. SLIFKA:   Right.

8                   MR. PECUNIES:   Mm-hmm, yeah.

9                   MR. CAVALLO:   Ernest Cavallo, Citizen  
10          Member. Correct me if I'm wrong, but we would  
11          have to vote on it anyway, wouldn't we?

12                   MR. PECUNIES:   There would be a  
13          recommendation from a hearing officer that would  
14          come through, yes.

15                   MR. MEMBER CAVALLO:   A recommendation to  
16          seal?

17                   MS. SLIFKA:   Correct. Okay. Is there a  
18          motion? Okay. All approved? How many approve?  
19          Everybody; one abstention?

20                   MR. PECUNIES:   Yup.

21                   MS. SLIFKA:   Okay.

22                   MR. PECUNIES:   And the last one is a  
23          request from the Bureau of Waste Water Treatment  
24          for a Cease & Desist Order. This is for NGJ47

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2           Inc., which is a metal plater that is located at  
3           71 West 47th Street in Manhattan. And this is the  
4           one that has the 54-page permit attached to it.  
5           So, this facility has a permit from DEP to  
6           discharge industrial waste water to the sewer  
7           system. And as part of that permit, they are  
8           required to file -- they are required to do  
9           monitoring of what they're discharging into the  
10          sewer. And they're required to submit to DEP a  
11          semiannual report stating what they're  
12          discharging to the sewer and showing that  
13          everything is within the parameters established  
14          in the permit.

15                        This establishment, despite repeated  
16          orders and violations issued, has not submitted  
17          their self-monitoring report that was due on July  
18          31st of last year. They have also failed to give  
19          DEP access to inspect the facility on June 11th  
20          of this year. And based on the respondent's  
21          default as to the violations that have been  
22          issued for not submitting their report and not  
23          giving access, DEP is asking the Board for an  
24          Order to Cease & Desist.

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2                   MS. SLIFKA:   Okay. Is there a motion?

3           Okay. All approve. One abstention?

4                   MR. PECUNIES:   Yup.

5                   MS. SLIFKA:   Okay, very good. Thank you,  
6           Mr. Pecunies.

7                   MR. PECUNIES:   Thank you.

8                   MS. SLIFKA:   Okay. And now Kelly Corso  
9           will introduce ECB's requests for a presealing.

10                   MS. KELLY CORSO, ESQ., ASSISTANT  
11           DIRECTOR OF ADJUDICATIONS, ECB:   Good morning.  
12           I'm Kelly Corso, Assistant Director for OATH/ECB.  
13           We have 30 presealing reports today, all of which  
14           are pretty noncontroversial. Twelve of the  
15           presealing reports pertain to backflow violations  
16           and 18 of the reports pertain to air code  
17           violations.

18                   So, I'll start with the back-code  
19           violations first -- backflow, sorry, violations  
20           first. In nine of these cases, the hearing  
21           officers recommended no sealing or other action  
22           based on the respondents establishing that the  
23           required backflow equipment was installed at the  
24           premises. In two of the three remaining backflow

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2           cases, the hearing officers recommended that the  
3           Cease & Desist proceedings be discontinued  
4           because DEP has confirmed that no backflow  
5           prevention devices are actually required at the  
6           cited premises. And in the remaining backflow  
7           case, the hearing officer recommends that the  
8           proceeding be discontinued because the respondent  
9           established that the waterlines at the premises  
10          had been sealed or capped and that a demolition  
11          permit has been obtained for the cited premises.

12                       For the air code cases, 17 of the 18 air  
13          code cases, in those cases the hearing officers  
14          recommended no further action because the  
15          respondents showed that they had obtained a valid  
16          operating certificates. And in the remaining air  
17          code case, the hearing officer recommended that  
18          the Cease & Desist proceeding be discontinued  
19          because DEP has confirmed that the equipment has  
20          been removed from the cited premises.

21                       MS. SLIFKA: Okay. Any questions? We're  
22          going to vote on all these together. Is there a  
23          motion and who approves? Okay. And all approve,  
24          one abstention. Okay. Is there a motion to go

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2           into executive session? Very good. We're going to  
3           go into executive session. If you're not a member  
4           of OATH, you'll have to leave the room. Thank  
5           you.

6                           [OFF THE RECORD]

7                           [ON THE RECORD]

8           MS. SLIFKA:   Okay, we're back in public  
9           session. All those in favor of affirming the  
10          appeals decisions from the October 8, 2015 and  
11          the October 22, 2015 appeals panel as presented;  
12          how many are for? Okay. Any abstentions? No.  
13          Okay. Alright, before adjourning I just want to  
14          make sure: Did everybody sign the attendance  
15          sheet?

16                          MR. SHPETNER:   I have to sign.

17                          MS. SLIFKA:   Okay. We have one more  
18          person that has to sign? We have two more over  
19          here.

20                          MR. PECUNIES:   Yeah, I haven't. I didn't  
21          either.

22                          MS. SLIFKA:   Okay, well, make sure you  
23          sign it. And I just wanted to mention because  
24          next month we have Thanksgiving -- it's coming so

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quickly -- the meeting will be on November 19th.  
Okay? Alright. So, is there a motion to adjourn  
the meeting? Thank you. This meeting is  
adjourned. Thank you.

(The public hearing concluded at 10:22  
A.M.)

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CERTIFICATE OF ACCURACY

I, Andrew Slawsky, certify that the foregoing transcript of the Environmental Control Board Meeting on October 29, 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: October 30, 2015

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