

Corrected

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

BOARD MEETING

Office of Administrative Trials and Hearings
OATH Multi-Purpose Training Room
100 Church Street, 12th Floor, New York, New York

October 10, 2024

09:38 AM to 10:38 AM

MEMBERS PRESENT:

**Asim Rehman, Esq. - Commissioner & Chief Administrative
Law Judge, OATH; Chairperson**
Shamonda Graham - Department of Buildings (DOB)
**Joseph Gregory, Esq. - New York City Fire Department
(FDNY)**
Elizabeth Knauer, Esq. - Appointed Member (Water)
Madelynn Liguori, Esq. - Department of Sanitation (DSNY)
**Russell Pecunies, Esq. - Department of Environmental
Protection (DEP)**
**Harminderpal Rana, Esq. - Department of Health & Mental
Hygiene (DOHMH)**
Matthew Shneid, Esq. - Appointed Member (Real Estate)
**Matthew Smith, Esq. - New York City Police Department
(NYPD)**
Douglas Swann - Appointed Member (Air)
Lisa Urban, Esq. - Appointed Member (General)

ALSO PRESENT:

Sola Best, Esq. - Assistant General Counsel, OATH
Rachel Amar, Senior Advisor to the Commissioner, OATH
Hayden Bedsole - Intern, DEP
Sola Best, Esq. - Assistant General Counsel, OATH
Cindy Chen - OMB
Kelly Corso, Esq. - Assistant Commissioner, Hearings
Division Adjudications, OATH
Madeline Halimi, Esq. - Parliamentarian, Assistant General
Counsel, OATH
Karin McAvoy - Administrative Coordinator, OATH
Frank Ng - Deputy General Counsel, OATH
Latisha Pender - DOT
Peter Schulman, Esq. - Deputy Commissioner, Appeals, OATH
Frances Shine - Secretary to the Board, OATH
Steven Villegas - Intern, DEP

1 (The board meeting commenced at 09:38 a.m.)

2 COMMISSIONER ASIM REHMAN: Morning everyone.
3 We're collected for our October 10th, 2024, Environmental
4 Control Board meeting. I'd like to call today's meeting to
5 order. Thank you all for being with us. Madeline, would
6 you please conduct roll call to verify forum?

7 ASSISTANT GENERAL COUNSEL HALIMI: Commissioner
8 Asim Rehman.

9 COMMISSIONER REHMAN: Present.

10 ASSISTANT GENERAL COUNSEL HALIMI: Shamonda
11 Graham?

12 MS. SHAMONDA GRAHAM: Present.

13 ASSISTANT GENERAL COUNSEL HALIMI: Joseph
14 Gregory?

15 [silence]

16 ASSISTANT GENERAL COUNSEL HALIMI: Elizabeth
17 Knauer?

18 MS. ELIZABETH KNAUER: Present.

19 ASSISTANT GENERAL COUNSEL HALIMI: Madelynn
20 Liguori?

21 MS. MADELYNN Liguori: Present.

22 ASSISTANT GENERAL COUNSEL HALIMI: Russell
23 Pecunies?

24 MR. RUSSELL PECUNIES: Present.

25 ASSISTANT GENERAL COUNSEL HALIMI: Harminderpal

1 Rana?

2 MR. HARMINDERPAL RANA: Present.

3 ASSISTANT GENERAL COUNSEL HALIMI: Matthew

4 Shneid.

5 MR. MATTHEW SHNEID: Present.

6 ASSISTANT GENERAL COUNSEL HALIMI: Thomas

7 Shpetner.

8 [silence]

9 ASSISTANT GENERAL COUNSEL HALIMI: Matthew Smith?

10 MR. MATTHEW SMITH: Here.

11 ASSISTANT GENERAL COUNSEL HALIMI: Douglas Swann.

12 MR. DOUGLAS SWANN: Present.

13 ASSISTANT GENERAL COUNSEL HALIMI: Lisa Urban?

14 MS. LISA URBAN: Here present.

15 ASSISTANT GENERAL COUNSEL HALIMI: Jared

16 Whittington.

17 [silence]

18 ASSISTANT GENERAL COUNSEL HALIMI: We have a

19 quorum 10 out of 13.

20 COMMISSIONER ASIM REHMAN: Thank you very much.

21 We'll start with going over some minutes. Let's start with

22 the August 1st, 2024, meeting. Does anyone have any edits

23 or corrections to the August 1st, 2024, minutes?

24 [silence]

25 I have a ministerial suggested edit. Under

1 agenda item number one, there's a notation in the minutes
2 that says that the motion was erroneously passed. Then it
3 goes on with saying, a new vote will proceed. Before it
4 says a new vote will proceed there's an open bracket. I'm
5 just suggesting we move that open bracket up to right
6 where it says the motion was erroneously passed because
7 that language, the motion was erroneously passed was not
8 actually discussed. It's an internal notation.

9 All I'm saying is let's move the bracket up and
10 then add a sentence that says the motion was passed.
11 Historically we took a vote, the motion was passed, and
12 then opened brackets saying by the way, it actually didn't
13 pass and we will [inaudible 00:01:54] any questions,
14 concerns? Make sense? That's my one comment. Objections to
15 that edit? No. Okay. With that change can I have a motion
16 to adopt the August 1st, 2024, minutes? Okay, we see a
17 motion from Elizabeth. A second? Okay, second. Madeline,
18 can we vote, please?

19 ASSISTANT GENERAL COUNSEL HALIMI: Is there any
20 objections to the motion adopting the minutes August 1st,
21 2024 [unintelligible 00:02:22] meeting?

22 MR. HARMINDERPAL RANA: Abstain.

23 COMMISSIONER ASIM REHMAN: Okay, one abstention.

24 [background conversations]

25 ASSISTANT GENERAL COUNSEL HALIMI: We have four

1 abstentions, but we have enough to pass those minutes
2 based on who was here today and who was here last time.
3 Besides the abstentions, seeing no objections and noting
4 the abstentions, the motion is approved.

5 COMMISSIONER ASIM REHMAN: Thank you. All right.
6 We'll now move to vote on the June 13th, 2024, board
7 minutes. Again, these were adopted at the last meeting in
8 error, so we're just going to re-vote. Does anyone have
9 any edits to the content of the June 13th minutes? I do,
10 the lawyer in me also just had a light ministerial edit.
11 If we go to agenda item three, technically, it says 'we
12 return to public session', but it's lacking the language
13 that says we went into executive session, which we
14 [unintelligible 00:03:42] just adding a note at the start
15 of agenda item three that the board went into executive
16 session, and that will round it out with leaving executive
17 session. Any objections? Okay. [unintelligible 00:03:55]

18 ASSISTANT GENERAL COUNSEL HALIMI:
19 [unintelligible 00:03:57]

20 COMMISSIONER ASIM REHMAN: Can I have a motion to
21 adopt the June 13th, 2024, meeting minutes? I see a motion
22 from Matthew. A second? Second from Harminderpal.

23 ASSISTANT GENERAL COUNSEL HALIMI: Okay. Are
24 there any objections to the motion approving the June
25 13th, 2024, ECB meeting minutes?

1 MS. LISA URBAN: I abstain.

2 MS. ELIZABETH KNAUER: I choose to abstain as
3 well.

4 COMMISSIONER ASIM REHMAN: That's Lisa and
5 Elizabeth abstaining. Anyone else?

6 ASSISTANT GENERAL COUNSEL HALIMI: Okay. Based on
7 the attendance from last time, I have enough to pass.
8 Seeing no objections and hearing no objections, the motion
9 is approved.

10 COMMISSIONER ASIM REHMAN: Good. Thank you,
11 everyone. Okay. We're now going to move on to the
12 introduction of a resolution regarding the board's
13 delegation to hearing officers' authority to remit civil
14 penalty under Administrative Code Section 244(b). This is
15 a matter that we previously discussed, and I'll turn it
16 over to Acting General Counsel, Frank Ng, to explain
17 what's in front of us today and set the background.

18 ACTING GENERAL COUNSEL NG: Good morning, Chair,
19 good morning, board members. I have two sets of handouts
20 [unintelligible 00:05:10].

21 [pause 00:05:12]

22 ACTING GENERAL COUNSEL NG: One is the resolution
23 for the committee, and then the e-mail resolution is
24 [unintelligible 00:05:40] you would have received it
25 before, in reference to the meeting, you would have

1 received the October 10th version, and the August 17th,
2 Frank is circulating as a courtesy counsel.

3 COMMISSIONER ASIM REHMAN: The October 10th
4 should be on the e-mail.

5 ACTING GENERAL COUNSEL NG: Correct. It's a
6 recap. On August 17th, 2023, the board had passed a
7 resolution directing the hearing officers to impose a zero
8 penalty in administrative code 24-244B cases, those
9 involve sound production device violations where the
10 respondent was no longer in violation of the hearing. On
11 June 13th, 2024, a New York Supreme Court justice held
12 that the resolution was impermissible as it mandated
13 action by the hearing officers and nullified the
14 resolution.

15 The resolution is at this point not in effect,
16 and we would want to pose the new resolution that would
17 provide the hearing officer with the discretion to remit
18 and hold in part, the penalty relating to section 224-244B
19 if found not in violation of the hearing. The difference
20 is that the board delegates their authority to remit and
21 hold on part for this new resolution, whereas the prior to
22 not allow the hearing officer [unintelligible 00:07:35]
23 resolution, and this would not be rulemaking. We do
24 believe this is legitimate.

25 COMMISSIONER ASIM REHMAN: Just to add, if it's

1 not clear from what Frank was already saying, the October
2 10th, 2024, version corrects the issues that the court
3 found with the August 17th, 2023, issues. We think that
4 [unintelligible 00:08:05].

5 ACTING GENERAL COUNSEL NG: Yes.

6 MR. MATTHEW SHNEID: Now we're giving them the
7 authority to have a zero or other penalty?

8 ACTING GENERAL COUNSEL NG: Yes. They can choose
9 to remit, not remit, or have a range in between those two
10 [unintelligible 00:08:21].

11 MS. LISA URBAN: This is only in cases where the
12 commission and the board [unintelligible 00:08:26]

13 MS. ELIZABETH KNAUER: Sorry, just as a reminder,
14 the reason that the court found the prior resolution to be
15 inappropriate was because it thought it should have been
16 subject to rulemaking [unintelligible 00:08:48] directive?

17 ACTING GENERAL COUNSEL NG: Correct, because it
18 did provide for discretion, it was a mandatory action
19 based on certain circumstances, and that would require
20 [unintelligible 00:09:00]. [unintelligible 00:09:01] One
21 of the key pieces being [unintelligible 00:09:04] at the
22 end of the August 17th, 2023.

23 MS. LISA URBAN: The discretionary basis of this
24 new resolution would solve [unintelligible 00:09:13] the
25 issue the court raised.

1 ACTING GENERAL COUNSEL NG: It would. Basically,
2 you are delegating your entire authority to either impose
3 a zero penalty, a full penalty or something
4 [unintelligible 00:09:26] and just to inform the board of
5 current [unintelligible 00:09:32] 445th, first offense,
6 the 82nd and 1,000 [unintelligible 00:09:39] however just
7 to check the data. We've had this year, one violation in
8 January one violation in March [unintelligible 00:09:54]
9 April and [unintelligible 00:09:57] for the whole of 2024,
10 we've had five violations.

11 MS. MADELYNN LIGUORI: That's because of the
12 reduction in the amount [unintelligible 00:10:06]

13 COMMISSIONER ASIM REHMAN: Correct. That might be
14 reason [unintelligible 00:10:13]

15 [crosstalk]

16 COMMISSIONER ASIM REHMAN:[unintelligible
17 00:10:15] we don't know the [unintelligible 00:10:16] one
18 could surmise that changes in the structure of the program
19 have led to such cases being introduced to them.

20 MS. LISA URBAN: Okay, strictly [unintelligible
21 00:10:28]

22 MR. MATTHEW SHNEID: How are we going to know if-
23 - one of things you were trying to protect against and we
24 were concerned about was an establishment getting multiple
25 violations before we get notice of and possibly a citizen

1 claim taking advantage? Are we going to get a report in
2 the next meeting, or can we get a report in the next
3 meeting or two to see how this all plays out?

4 ACTING GENERAL COUNSEL NG: [unintelligible
5 00:10:54]

6 MR. MATTHEW SHNEID: [unintelligible 00:10:55]
7 what I think we're concerned about, what I personally was
8 concerned about is we're seeing a lot of violations on
9 individual establishments in short order where they're
10 getting giant fines and they didn't even have knowledge of
11 these fines. I'm asking the question if we can understand
12 how this plays out. If you just gave us these reports
13 about the fines and the money going forward, if we see how
14 our recommendations [unintelligible 00:11:16] on the
15 future with the administrative agents.

16 COMMISSIONER ASIM REHMAN: There's a few
17 different separate issues there. If this resolution
18 passes, we can see-- since it is a manageable number of
19 cases, we may, I don't want to promise, I need to talk to
20 a team, but we may be able to determine how often hearing
21 officers apply this once they're informed about it. That
22 is one issue. There's a separate issue which people have
23 raised concerns about, which is the phenomena of
24 businesses and respondents receiving multiple summons on
25 the same day for what might have been activity over three

1 different incidents, as opposed to within 10 days of the
2 first incident, getting summons, et cetera, spread out
3 over time. That will be dealt with by this. That is an
4 issue more of the requirements of the program regarding,
5 are there deadlines around which these elements have to be
6 served within a certain period of time after the alleged
7 violation. Those are things that will go through either a
8 ruling process or legislation outside of the enforcement
9 agency level or city council level.

10 MS. ELIZABETH KNAUER: I do think this helps
11 address that concern in the sense that the hearing officer
12 would have discretion to impose a zero or lesser penalty
13 if at the time of the hearing, is established is in
14 compliance. Even though they've been issued all of the
15 summons in [unintelligible 00:12:51] they wouldn't
16 necessarily have to pay penalties on them if they show
17 that they're in compliance.

18 COMMISSIONER ASIM REHMAN: That's a fair point.
19 That's correct.

20 MS. ELIZABETH KNAUER: It could help solve that
21 problem by giving the discretion of the hearing officer to
22 recognize the mitigating--

23 COMMISSIONER ASIM REHMAN: That's actually
24 correct, that's right, and maybe that's he was-- I may
25 have misunderstood the point but thank you.

1 MATTHEW SHNEID: I think we're going to find out
2 pretty soon if you can track the things that I see in your
3 tube, what we have, previous data, whether or not it's
4 being methodical. We'll see if it's changing, based on the
5 current data, we're not even seeing any of these cases, we
6 will look into whether we can capture how many times we
7 see the hearing officers applying what would be their new
8 appropriate passage [unintelligible 00:13:40]

9 MS. SHAMONDA GRAHAM: If I understand correctly,
10 the hearing officer has discretion which he or she is not
11 required to impose a zero penalty which likewise means
12 that they could, if they chose, to impose it, do I
13 understand that correctly?

14 COMMISSIONER ASIM REHMAN: That's correct. It can
15 [unintelligible 00:13:57]

16 MS. SHAMONDA GRAHAM: I know the hearing officer
17 has to have their discretion, but I have concern about
18 decisions being made not consistent. Is there anything in
19 place which influenced [unintelligible 00:14:17] tell them
20 how to decide. I am worried that in one incident, a person
21 may have a penalty and then a different respondent
22 [unintelligible 00:14:29] what circumstances
23 [unintelligible 00:14:32] are there any steps being taken
24 to avoid that?

25 COMMISSIONER ASIM REHMAN: That's a fair concern.

1 The law gives the authority to do just what you were
2 saying. The authority is there and so, it would be the
3 case that if we were all sitting and reviewing all these
4 cases, would we also have issues around consistency or
5 not? We're just taking that same power that the board has
6 here and giving that to hearing officers to decide. Are
7 there current structures in place that could help deal
8 with that, I'm not aware of it. We have to leave it to the
9 discretion of our hearing officers, that's to decide
10 today, if that's a concern, like that would be a reason
11 not to pass the resolution. The other thing that we're
12 seeing, and we can keep an eye on it, is suggest a
13 resolution and resolutions can be told later. If such
14 concerns arise in the future, we could revisit this and
15 that comes back to Matt's point about trying
16 [unintelligible 00:15:29] cases.

17 MATTHEW SMITH: Obviously when the appeal
18 process, [unintelligible 15:00:36] and use them prior case
19 [unintelligible 00:15:41]

20 DEPUTY COMMISSIONER SCHULMAN: This resolution,
21 the board still retains the authority as well. On appeal,
22 the board could still re-admit if it chose to. Hearing not
23 [unintelligible 00:15:54].

24 MS. SHAMONDA GRAHAM: I have a bit of concern
25 about that because if we, as a board, when the matter

1 comes up, we have to look at the hearing officer's
2 decision based on the information that was presented to
3 the hearing officer at the time and credibility told and
4 not what [unintelligible 00:16:13] I still have some
5 concerns. I'm opening to look at it, watching the numbers,
6 but I don't necessarily think that satisfy decision
7 [unintelligible 00:16:28]

8 MR. RUSSEL PECUNIES: I think first thing is that
9 between the resolution, the council passed with the \$50
10 penalty, that what we've seen is that this has basically
11 eliminated the financial incentive for the citizens to
12 submit these complaints in the first place, which is why
13 they've basically gone down to almost nothing. In terms of
14 qualifying for the zero penalty in most of these cases,
15 what you would have to show to the hearing officer is that
16 you took the speaker and moved it inside. It's not a
17 major-- you wouldn't have to hire a contractor to do it,
18 you just literally have to pick up the speaker and put it
19 in your store instead of having it out on the sidewalk.

20 I don't think this is going to be a major,
21 difficult finding for the hearing officers to conclude one
22 way or another. Either they're going to find the
23 respondent's statement credible, that they put the speaker
24 inside or they're not. That means we don't [unintelligible
25 00:17:44]

1 MS. SHAMONDA GRAHAM: That's my exact point, they
2 can find the credible and it comes to the board, if we
3 routinely decline to overturn credibility findings, unless
4 we have a sample [unintelligible 00:17:59]

5 COMMISSIONER ASIM REHMAN: Lisa [inaudible
6 00:18:02]

7 MS. LISA URBAN: This is specific just to these
8 noise violations, do the hearing officers have this kind
9 of discretion for [unintelligible 00:18:11]

10 COMMISSIONER ASIM REHMAN: [unintelligible
11 00:18:15] no.

12 MS. LISA URBAN: How come we're giving it to them
13 for this?

14 COMMISSIONER ASIM REHMAN: The law only gives it
15 to us for this.

16 MS. LISA URBAN: In other situations, they
17 already have it?

18 COMMISSIONER ASIM REHMAN: In terms of the board
19 authority to remit to zero and [unintelligible 00:18:30]
20 my colleagues, to see if we have that authority as the
21 board outside of the noise.

22 DEPUTY COMMISSIONER SCHULMAN: Outside, well, the
23 noise code gives the board the authority for all the noise
24 code [unintelligible 00:18:41] the reason is the board did
25 not see a reason to delegate that authority for any of the

1 other types of violations, which is generally issued by
2 DEP. DEP has gone in and done an inspection
3 [unintelligible 00:18:58] determined [unintelligible
4 00:18:58] fixed penalty for those.

5 COMMISSIONER ASIM REHMAN: It's not in the
6 [unintelligible 00:19:04] air code [unintelligible
7 00:19:04]

8 DEPUTY COMMISSIONER SCHULMAN: It's not in the
9 air code [unintelligible 00:19:06] it's a noise code, but
10 there are the noise code provisions that are issued by
11 DEP.

12 COMMISSIONER ASIM REHMAN: Then I think at the
13 historical matter, Lisa, there was a specific discussion
14 around these cases because of the circumstances last year
15 [unintelligible 00:19:19] it's an interesting question of,
16 should this be broader and extended to other provisions?
17 My own personal view is since we're doing this now, we're
18 talking about monitoring it, maybe we keep it limited and
19 monitor it and then see if it's something that we want to
20 expand to other provisions of the noise [unintelligible
21 00:19:37] but that's just one point of view.

22 MS. LISA URBAN: I'm just wondering if this opens
23 the door to something else that we don't necessarily want
24 that door open to, or if it could be an objectionable
25 because this is the only one that surprised

1 [unintelligible 00:19:56] theory.

2 COMMISSIONER ASIM REHMAN: That's a fair
3 question. Is the fact that it's narrow itself, going to
4 make it subject to scrutiny? Any concerns?

5 ACTING GENERAL COUNSEL NG: Probably to extend
6 that, the board has discretion to review, if this requires
7 an additional resolution or another avenue in the future
8 [unintelligible 00:20:26]

9 COMMISSIONER ASIM REHMAN: Any other comments?

10 MS. ELIZABETH KNAUER: I think that the reason
11 that we embarked on this concept was a particular reason
12 that applied specifically to these [unintelligible
13 00:20:43] complaints and therefore I think there's a
14 rational reason to address these types of violations,
15 specifically as opposed to general [unintelligible
16 00:20:56] violations. There's a good decision.

17 MR. RUSSELL PECUNIES: Yes.

18 MS. SHAMONDA GRAHAM: If this is likely to
19 resolve in [unintelligible 00:21:14] the number of
20 [inaudible 00:21:20] that citizens have or you guys hope
21 to enforce [inaudible 00:21:25] because in some cases, I
22 know that this is largely driven by the citizen and you
23 have a small concern that cases, wherever it does it, the
24 enforcement would you guys go out to because you proceed
25 with the complaint?

1 MR. RUSSELL PECUNIES: We respond to 311
2 complaints; these are not 311 complaints. These are people
3 wandering up and down Roosevelt Avenue with their phones
4 taking a video of every business that has a speaker
5 outside that nobody's complained about. These are two
6 completely different-- it's two [inaudible 00:22:03] what
7 we enforce with our inspectors and the way the citizens do
8 the enforcement is two completely different.

9 MS. SHAMONDA GRAHAM: Understood, but my point
10 is, if DEP did get a complaint, which you're not going to
11 get again, your inspectors would go out and [inaudible
12 00:22:19]

13 MR. RUSSELL PECUNIES: As we normally do, and if
14 we found a violation, the business would be informed that
15 they were in violation and would therefore have the
16 opportunity to move the speaker off the street, which
17 means they would not get another violation in the future.
18 What the citizens were doing was that they would go back
19 to the same business every day, they would video it every
20 day and they would not tell the business and then they--
21 because we don't have the bandwidth to review the noise
22 complaints because we're getting a hundred thousand
23 [unintelligible 00:22:52] complaints a year, these go to
24 the citizens to self-enforce and the citizens would self-
25 enforce by putting 20 summons in the same envelope and

1 sending it to the business meaning that the business was
2 going to be subject to 20 times 440 with no notice that
3 they were ever in violation in the first place.

4 MS. SHAMONDA GRAHAM: Understood.

5 COMMISSIONER ASIM REHMAN: All right, any other
6 comments or questions? I have a motion for a vote
7 [inaudible 00:23:29] solution and motion Elizabeth second
8 from Joseph, okay. Please take a note.

9 ASSISTANT GENERAL COUNSEL HALIMI: Are there any
10 objections to the motion of [inaudible 00:23:40]
11 resolution? Seeing none, [unintelligible 00:23:45] motion
12 is approved where the resolution is [unintelligible
13 00:23:47]

14 COMMISSIONER ASIM REHMAN: Okay. Thank you
15 everyone, that's a very informed discussion, we appreciate
16 it, that's what we're here for. Okay, we'll now turn it
17 over to [unintelligible 00:23:58] for discussion regarding
18 cease and desist orders and as, hopefully, all of you
19 recall, this is part of a package of cease and desist
20 orders relating to oil that we've been discussing in the
21 last few minutes. Russ, I assume that in today's
22 discussion on that [crosstalk] [unintelligible 00:24:19]

23 MR. RUSSELL PECUNIES: There's one
24 [unintelligible 00:24:19]

25 COMMISSIONER ASIM REHMAN: Good. I think it's

1 through. Thank you.

2 MR. RUSSELL PECUNIES: I can do that one first,
3 2009 or I can do the nine first and, okay.

4 COMMISSIONER ASIM REHMAN: Your choice.

5 MR. RUSSELL PECUNIES: Why don't we do the sewer
6 related one first? This month [unintelligible 00:24:35]
7 has a request to the board to issue an order to cease and
8 desist for Hutong NYC LLC at 731 Lexington Avenue in
9 Manhattan. Hutong is a Chinese restaurant that is located
10 in a large office building. This is a large office
11 building. They're located on the ground floor according to
12 their website, which I looked at, you can experience the
13 splendor of 1920s Shanghai by going there.

14 They were issued an order a little bit more than
15 two years ago to install a number of grease
16 interceptors[unintelligible 00:25:27], which are on the
17 second page of the package. Those are laid out in item 1
18 A, 1 B, 1 C, and 1 D. This was based on an inspection that
19 was done in July of 2022, pursuant to which they were
20 issued a commissioner's order. The commissioner's order is
21 on the fourth page and fifth page of the attachment. When
22 there was no compliance with the commissioner's order, a
23 series of summonses were issued in December 2022, May
24 2023, November 2023, February 2024.

25 In response to the February summons, during the

1 inspection, the restaurant stated that they were seeking
2 proposals from companies to have the grease traps
3 installed. Another inspection in May resulted in another
4 summons being issued, and they reiterated that they were
5 still looking for a contractor, to come into compliance.
6 They were still not in compliance in September, so yet
7 another summons was then issued and they were notified
8 that they were required to come-- well, actually no. That
9 was actually the last summons was returnable, and go to
10 the page where the summons are, they were found in
11 violations on the initial summonses and then I believe on
12 the last two they [unintelligible 00:27:47] three in
13 violation, then I think the last two that were up the
14 hearings most recently on September 5th, the last two have
15 defaulted.

16 Since we've issued this series of violations for
17 not complying with the order, they clearly are aware that
18 they need to comply with the order since they've
19 represented twice that they were looking for someone to
20 hire to comply with the order, and they are still, as of
21 this date, not in compliance, he is requesting that the
22 board issue an order to cease and desist.

23 COMMISSIONER ASIM REHMAN: Any questions?

24 MS. ELIZABETH KNAUER: I presume that if the
25 order actually to be executed [inaudible 00:28:49] that

1 that would [inaudible 00:28:53]

2 MR. RUSSELL PECUNIES: Yes, it's been
3 [unintelligible 00:28:56] only be to the restaurant.

4 COMMISSIONER ASIM REHMAN: Let's deal with this
5 one individually. If we have a motion to vote on the cease
6 and desist order relating to Hutong New York LLC, and we
7 have a motion for that due the second, Madeline, okay?

8 ASSISTANT GENERAL COUNSEL HALIMI: Are there any
9 objections to the motion [unintelligible 00:29:24] cease
10 and desist order for Hutong New York, LLC? Seeing none,
11 hearing none [unintelligible 00:29:29]

12 COMMISSIONER ASIM REHMAN: Thank you Russell,
13 we'd like to move on to [unintelligible 00:29:32]

14 MR. RUSSELL PECUNIES: Do you want me to do the
15 names, respondent name and addresses for the record?

16 COMMISSIONER ASIM REHMAN: I think so, yes.

17 MR. RUSSELL PECUNIES: DEP also has nine requests
18 for cease and desist orders. This is the last batch of
19 three, we've had several of these at each of the last two
20 board meetings. These relate to buildings that have
21 expired certificates of operation to use number 4 fuel
22 oil. The use of number 4 fuel oil in boilers is no longer
23 permitted as of July, 1st of 2027, each of these buildings
24 has an expired permit to use number 4 oil. Since the
25 permits are good for three years, they can no longer renew

1 the permits to use number 4 oil.

2 Each of these buildings has been given between
3 two and four summonses for having an expired permit for
4 the boiler. These cease and desist orders, will be an
5 attempt to get these buildings off of number 4 oil and to
6 switch to number 2 oil or, if they can, natural gas but we
7 don't think any of them are going to do that. Again, there
8 have been two previous factors of these, so I don't know
9 if anybody was not at either of those meetings, but there
10 was a presentation in June, and I can just run through the
11 respondents and the premises.

12 We have Creston Bills placed 26 LLC, which is at
13 2298 Creston Avenue in the Bronx, Audubon Property Group
14 LLC, which is at 520 Audubon Avenue in Manhattan, GTTG
15 Broadway at 3544 Broadway in Manhattan, 140th Street LLC
16 at 619 West, 140th Street in Manhattan. Andrew M. New
17 Claire, who is the owner of 476 Clinton Avenue in
18 Brooklyn, 115-123 West 29th Street Court for 115 West 29th
19 Street in Manhattan.

20 Mid-Bronx Senior Citizens Council Inc. at the
21 1125 Grand Concourse in the Bronx. I should probably say a
22 word about that one. I'll just circle back to that one
23 quickly in a minute. Pan Am Equities at 132 East 45th
24 Street in Manhattan, and Zed Chin Realty, LLC 515 West
25 170th Street in Manhattan, just to circle back on the Mid-

1 Bronx Senior Citizens Council, because of the name, we did
2 a little extra research to find out what they actually do
3 at this location. This is not an apartment building like
4 the rest of them, this is an old historic building that
5 has in the past been used as a senior citizen's residence
6 but is currently being used as an art space and cultural
7 center for the Bronx community.

8 No one is living here anymore. There are
9 historical reasons why it wound up being owned by
10 something called the Mid-Bronx Senior Citizens Council,
11 but it is not a senior citizen's residence in any way.
12 Thank you. Any questions for us?

13 MS. LISA URBAN: You're going to seal the
14 boilers, which basically means that these buildings are
15 not going to keep, right?

16 MR. RUSSELL PECUNIES: If we had to seal on any
17 of these, the building would have to resort to getting a
18 temporary boiler, but just to clarify, in terms of
19 sequence of events, if we vote for the cease and desist
20 order, they receive the order, that's not an automatic
21 sealing.

22 MS. LISA URBAN: No, they would have a hearing.

23 MR. RUSSELL PECUNIES: That is a knowledge
24 through a period hearing in which they could.

25 COMMISSIONER ASIM REHMAN: Now this actually

1 comes to the question I had for us, since many of these
2 have inspections-- notations that the inspections from
3 January, from months ago, there is a possibility, despite
4 the records that you have at DEP, that someone has
5 remedied the situation, they just haven't told anyone,
6 maybe. At a hearing, they'd be able to say, wait, we did
7 fix something.

8 MR. RUSSELL PECUNIES: Yes. Also at a hearing,
9 they would be able to tell the hearing officer that they
10 had hired a contractor to do the necessary work, in which
11 case it would be normal for these to be given adjournments
12 in order to come into compliance. The purpose is to get
13 them into compliance and so far, we've had the hearing
14 date on the first batch that was approved in June. There
15 have been a mixture of people that have shown up and
16 gotten adjournments, people that have rescheduled their
17 hearing dates, and a few of them have defaulted.

18 Now we have to consider what to do about the
19 defaults but this, we feel, is the best way to have some
20 kind of leverage to get these buildings to come into
21 compliance. As you can see from the second page on the
22 bottom of the violation history, the permit expiration
23 dates on many of these buildings are not recent.

24 COMMISSIONER ASIM REHMAN: I do see that.

25 MR. MATTHEW SHNEID: I have a question.

1 COMMISSIONER ASIM REHMAN: Yes, Matt.

2 MR. MATTHEW SHNEID: I don't know what we're
3 doing here, but I just have a related question. I assume
4 that as we go forward with this and the process of
5 transforming fuel, we're going to start to get hundreds,
6 not thousands of these, is that what we expect?

7 MR. RUSSELL PECUNIES: I wouldn't expect that
8 many. I think in the presentation that was at the June
9 meeting, there were a couple of thousand, more or less,
10 people that have permits still to use number 4. Many of
11 those people have perfectly fine current permits which
12 will expire sometime between now and July 1st of '27. When
13 they renew, they will not be able to renew again to use 4,
14 so they will have to convert at that point.

15 If they don't, if they let their permits expire,
16 then what we could do is go through the process of giving
17 them summonses before it would ever come to the board. I
18 would anticipate that over the next 3 years, there may be
19 a trickle of these that come to the board. These three
20 groups, totaling about 40, were just buildings that they
21 identified as priority because of the length of time that
22 they've had expired.

23 COMMISSIONER ASIM REHMAN: Got it. I think we
24 talked last time; you informed us that for all of those
25 current buildings that are operating under valid permits

1 with number 4, who will eventually have to convert, it
2 sounds like the agency is doing the outreach.

3 MR. RUSSELL PECUNIES: Absolutely they are.

4 COMMISSIONER ASIM REHMAN: We've got a two-year
5 runway here. They are being made aware that they will not
6 be able to renew again to use 4, and that when their
7 permits expire they will be required to convert to 2. Good
8 questions. Yes.

9 MR. DOUGLAS SWAN: I have more of a general
10 question. Inspectors, are they assigned specific
11 inspectors to each borough, how does that work?

12 MR. RUSSELL PECUNIES: Boiler inspections is a
13 specific unit and I believe that the boiler inspection
14 unit does inspections throughout the five boroughs, they
15 may be divided up into squads in certain areas or certain
16 boroughs. Boiler inspections are done by a specific unit
17 that has specific training to do boiler inspections. The
18 inspectors that do, that respond to boiler complaints or
19 something like that are a separate group. The boiler
20 inspections is a separate unit within the bureau. Why do
21 you ask that?

22 MR. DOUGLAS SWAN: Why? Sometimes I look at the
23 violations and [audio cut] where they are, they're
24 clustered in certain areas, I'm just curious, how that--

25 MR. RUSSELL PECUNIES: A lot of this, for

1 example, when we had the map at the presentation in June,
2 the buildings that have permits to use number 4 are really
3 overwhelmingly in the Bronx and in upper Manhattan.

4 MR. DOUGLAS SWAN: That makes sense.

5 COMMISSIONER ASIM REHMAN: Other comments or
6 questions?

7 MS. SHAMONDA GRAHAM: One question. You mentioned
8 that the respondent will be given an opportunity to have a
9 special hearing where they can present to the hearing
10 officer giving reasons to not have the Board of a skill
11 for some innovation steps that they're taking. In this
12 particular case, they took this GTTG [unintelligible
13 00:39:55] it looks like they had a hearing found in
14 violation. My question is, this hearing was in July, I'm
15 thinking it was part of the packages [unintelligible
16 00:40:08]

17 MR. RUSSELL PECUNIES: It may have been on the
18 summons.

19 MS. SHAMONDA GRAHAM: Okay, but my question is,
20 in that hearing, if a respondent comes forward, meaning
21 before the session, and they present circumstances or
22 where they inform they are looking for a contractor, would
23 customary practice be to adjourn the same way you would do
24 in a special hearing because they're taking steps to come
25 into compliance?

1 MR. RUSSELL PECUNIES: Yes. For example, we have
2 this package was 10 until we found out right before the
3 hearing that one of the buildings had actually just come
4 in and renewed their permit. With the ones that defaulted
5 through the first round of hearing dates, when I went
6 through those with the bureau, it turns out that one of
7 those, even though they defaulted as to the cease and
8 desist hearing, has come into compliance.

9 We will be checking these, obviously, before we
10 do anything to see if they've come into compliance. At the
11 December meeting, we probably will be notifying the Board
12 as to a small number of cease and desist that even though
13 they did not show for the hearing, we are aware that they
14 are now in compliance, so that those orders can now be
15 closed out [unintelligible 00:41:42] does that address--

16 MS. SHAMONDA GRAHAM: I guess what I'm concerned
17 about is people who are taking steps towards it. My
18 thought is, within a special hearing a person could say,
19 "I'm looking for a contract with the board, I'm taking
20 these proactive steps without [unintelligible 00:41:58]
21 steps to come into compliance in an adjournment granted in
22 this particular case where [unintelligible 00:42:05] were
23 found in violation, I guess I'm making the assumption that
24 they did not present the same type of mitigation measures
25 that they're doing. I'm just wondering if in a normal

1 hearing, a person is working towards compliance, would DEP
2 have an adjournment? I wonder why [unintelligible
3 00:42:27] so much resources, trying to come into
4 compliance.

5 MR. RUSSELL PECUNIES: In other words, at a
6 hearing on the summons, if the respondent said, "We're not
7 in compliance but we're working to come into compliance,"
8 would the hearing on the summons be adjourned for them to
9 come into compliance? The respondent could ask the hearing
10 officer for an adjournment, but I don't know why the
11 hearing officer would grant that because the hearing
12 itself is about adjudicating the summons, it's not about
13 compliance.

14 MS. SHAMONDA GRAHAM: It's the original problem,
15 compliance.

16 COMMISSIONER ASIM REHMAN: Elizabeth.

17 MS. ELIZABETH KNAUER: Just quickly, is DEP going
18 to cut off any service in any buildings during the
19 hearing?

20 MR. RUSSELL PECUNIES: Again, that's a difficult
21 question. The buildings could theoretically have to get a
22 temporary boiler to provide heat but hot water. That's
23 going to be an issue if they're in default. Ultimately
24 that will be an issue that the commissioner will probably
25 have to make a call on, like what to do when you have a

1 building that has an expired permit, some of them for 5,
2 6, to 10 years, and they're still not in compliance, are
3 you going to seal their boiler in January? That's going to
4 be a call, I think, for the commissioner--

5 MS. ELIZABETH KNAUER: This may be an HPD but is
6 there any self-help that the city could pay to take it on
7 to get the temporary boiler in place before the sealing
8 occurs and then try to charge that back to the building
9 owner through [unintelligible 00:44:24] Is that a
10 possibility?

11 MR. RUSSELL PECUNIES: I guess it's a possibility
12 to talk. Before, I think you were going to probably seal
13 we're going to seal the boiler in an apartment building.
14 In January, I think we would want to talk to the HPD.
15 Hopefully it's not going to come to that with any of
16 these, ultimately. These 40-ish buildings have been
17 extremely unresponsive. So, this is an attempt to get to
18 get some kind of responsiveness out of them. For the ones
19 that still don't respond even to this, that's probably
20 going to be a pull for Commissioner Agarwal.

21 MS. ELIZABETH KNAUER: I just do want to say that
22 it's troubling to think that there's a possibility of
23 folks needing to vacate their homes in [crosstalk]
24 [unintelligible 00:45:26]

25 MR. RUSSELL PECUNIES: If it came down to the

1 building having to be vacated or not sealing the boiler,
2 I'm pretty sure that the commissioner would come down on
3 the side of not sealing. COMMISSONER REHMAN: This was why
4 we were hoping to do all of these earlier. We have to
5 space them out for our own [unintelligible 00:45:46]
6 purposes. The concern you're raising is what I think
7 others here raised when we first started hearing these
8 cases.

9 MR. RUSSELL PECUNIES: I think also from the few
10 that have shown up so far and have been adjourned, it
11 looks like that these buildings, some of them are going to
12 need quite a bit of work done. We just had one on Tuesday
13 that was adjourned based on the work plan that they had
14 and the hearing was adjourned until February because they
15 have to replace the chimney and do a whole bunch of other
16 stuff before they can actually convert the boiler. These
17 may not be the 40 best apartment buildings in New York
18 City, let's put it that way. COMMISSIONER REHMAN: It's
19 promising to hear that people are showing up, they're
20 explaining the steps that we're taking and that is
21 allowing for a pause in the reinforcement process.

22 MS. LISA URBAN: There is something they can do
23 because they can get these temporary boilers, very
24 expensive [crosstalk] but landlords perhaps have a way to
25 remediate it if they're [crosstalk] [unintelligible]

1 00:47:01]

2 MR. RUSSELL PECUNIES: As long as they show up
3 and say credibly that they're doing something, like with
4 the one on Tuesday where they came in and submitted a plan
5 that indicated that everything will be completed by the
6 end of February. The hearing officer adjourned it, thought
7 it was fine, and we didn't object to it because, again, if
8 they submit something credible and that's what it's going
9 to take, it's going to take until February, that's what
10 the contractor says, the idea is to get them into
11 compliance, and since they've already mostly not been in
12 compliance for years, if it takes them four or five or six
13 months, then fine.

14 MS. ELIZABETH KNAUER: I was wondering if I could
15 request for [unintelligible 00:47:54] we could request
16 that the department, our next meeting report on the status
17 of these, just so we can have an understanding as a board,
18 when we have the vote on the next batch, how they're
19 working through the process, what the implications are
20 turning out to be.

21 MR. RUSSELL PECUNIES: Yes, I think we can do
22 that. The first batch that was approved in June have had
23 their hearing dates. The second batch that were approved
24 in August have not yet had their hearing date. I think
25 within December [unintelligible 00:48:34] would be great.

1 COMMISSIONER ASIM REHMAN: Thank you so much.
2 Other comments or questions?

3 [silence]

4 Okay, again, thank you all for the questions and
5 the thoughtful discussion on this issue. With respect to
6 the nine cease and desist orders that Russ read out into
7 the record by name, could I have a motion to approve these
8 cease and desist order requests? Okay, I see a motion,
9 Matt? second from Matt?

10 ASSISTANT GENERAL COUNSEL HALIMI: Are there any
11 objections to the motion approving the cease and desist
12 orders [unintelligible 00:49:06] respondents with expired
13 certificates cooperation issues, [unintelligible 00:49:12]
14 seeing none, hearing none, the motion passes.
15 [unintelligible 00:49:15]

16 COMMISSIONER ASIM REHMAN: Okay. Russ, thanks
17 again to you and your colleagues for all the work that
18 you're doing on this, and your responsiveness to the
19 questions from the board. Okay, I'd like to ask for a
20 motion to go into executive session. See a motion from
21 Matt [unintelligible 00:49:29] second from Lisa.

22 ASSISTANT GENERAL COUNSEL HALIMI: Are there any
23 objections to the motion to go into executive session?
24 Seeing none, hearing none, the motion carries.

25 COMMISSIONER ASIM REHMAN: Okay.

1 KARIN MCAVOY: Hold on while I get ready for the
2 executive session.

3 [pause 00:49:44]

4 COMMISSIONER ASIM REHMAN: Okay, we're back in
5 public session. Does anyone have any other questions or
6 business to raise? All right then, let's discuss possible
7 dates for the next meeting. We'd like to propose either
8 December 5th or 12th. Does anyone have any objections to
9 either of those dates?

10 MS. LISA URBAN: I'm away on the 12th.

11 COMMISSIONER ASIM REHMAN: Okay. Is everyone okay
12 for the 5th? All right, let's put down December 5th for
13 the next ECB meeting, and we will get calendar invites for
14 that, as usual. May I please have a motion to adjourn the
15 meeting today? Okay, I see a motion from Shamonda. I see a
16 second from Matthew.

17 ASSISTANT GENERAL COUNSEL HALIMI: Are there any
18 objections to the motion to adjourn the meeting? Seeing
19 none, hearing none, the motion carries.

20 COMMISSIONER ASIM REHMAN: Okay, today's motions
21 to adjourn, thank you all very much, and we'll see you
22 next after [unintelligible 00:51:02]

23 ASSISTANT GENERAL COUNSEL HALIMI: Thank you.

(The board meeting concluded at 10:38 a.m.)



Certificate of Accuracy

Audio File: "October 10, 2024 Meeting of the Environmental Control Board"

Language: English

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Dated: 10/20/2024

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