

AUDIT REPORT



CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
BUREAU OF MANAGEMENT AUDIT
WILLIAM C. THOMPSON, JR., COMPTROLLER

Audit Report on the Timeliness of Case Adjudications at the Bronx Office Of the Environmental Control Board

ME05-070A

June 20, 2005



THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
1 CENTRE STREET
NEW YORK, N.Y. 10007-2341

WILLIAM C. THOMPSON, JR.
COMPTROLLER

To the Citizens of the City of New York

Ladies and Gentlemen:

In accordance with the Comptroller's responsibilities contained in Chapter 5, §93, of the New York City Charter, my office has reviewed the timeliness of case adjudications in the Bronx office of the Environmental Control Board (ECB).

The results of our audit, which are presented in this report, have been discussed with ECB officials, and their comments have been considered in the preparation of this report.

Audits such as this provide a means of ensuring that City resources are used effectively, efficiently, and in the best interests of the public.

I trust that this report contains information that is of interest to you. If you have any questions concerning this report, please e-mail my audit bureau at audit@comptroller.nyc.gov or telephone my office at 212-669-3747.

Very truly yours,

A handwritten signature in cursive script that reads "William C. Thompson, Jr.".

William C. Thompson, Jr.
WCT/fh

Report: ME05-070A
Filed: June 20, 2005

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*The City of New York
Office of the Comptroller
Bureau of Management Audit*

**Audit Report on the Timeliness of
Case Adjudications at the Bronx Office
Of the Environmental Control Board**

ME05-070A

AUDIT REPORT IN BRIEF

This audit determined whether hearings in the Bronx office of the Environmental Control Board (ECB) are being adjudicated in a timely manner. ECB adjudicates “quality of life” violations, including clean street, health, building, fire safety, and air and noise pollution cases. ECB has full-time hearings offices in Manhattan, Brooklyn, and Queens. The Bronx office is open for hearings four days a week, while the Staten Island office is open for hearings two days a week. The ECB Bronx office conducted 10,742 (10.4%) of the 103,713 ECB case hearings held Citywide between July 1, 2004, and December 31, 2004. We received an allegation letter on March 17, 2004 that asserted that the ECB Bronx office had not been issuing hearing decisions in a timely manner.

Audit Findings and Conclusions

The Environmental Control Board did not ensure timely case adjudications in the Bronx office during calendar year 2004. As of October 21, 2004, there were 4,891 cases listed on the Bronx office ECB Overdue Action Report. For 35 percent of these cases, the last ECB action on the case occurred in 2003 or earlier. Twenty-seven of these cases go back as far as the 1996 to 1999 time period. Delays in issuing hearing decisions do a disservice to respondents and may result in lost revenue for the City.

Our audit identified the following aspects of ECB’s management of case adjudications in the Bronx office that contributed to the significant backlog of cases.

- ECB did not effectively use its ECB Overdue Action Report to monitor the progress of its cases.
- The ECB Bronx office did not sufficiently staff or manage the hearings process to ensure the timely resolution of cases.

- The administrative law judges (ALJs) in the ECB Bronx office lacked sufficient computer instruction.

Audit Recommendations

To address these issues, the audit makes the following recommendations:

- ECB should maximize the use of the ECB Overdue Action Report to identify those cases that are awaiting adjudication and then ensure that timely action is taken on those cases.
- ECB should not enter default judgments in the Automated Information Management System (AIMS) on cases that have not been fully adjudicated.
- ECB should ensure that all of its adjudication files are properly stored and readily available.
- ECB should conduct a study of the need for one or more additional full-time ALJs in the Bronx office. The study should include a review of whether the office should gradually assume the responsibility to review its own case decisions.
- ECB should provide additional computer instruction to the ALJs.

ECB Response

On May 24, 2005, we submitted a draft report to ECB officials with a request for comments. We received a written response from ECB on June 1, 2005. In its response, ECB generally agreed with the audit's findings and recommendations and stated that it will work to implement the recommendations in the near future.

The full text of the ECB response is included as an addendum to this report.

INTRODUCTION

Background

The Department of Environmental Protection's Environmental Control Board adjudicates "quality of life" violations, including clean street, health, building, fire safety, and air and noise pollution cases. ECB receives notices of violations primarily from 11 issuing agencies. These City agencies include the Departments of Sanitation, Transportation, Police, Health, Buildings, Fire, and Environmental Protection. ECB is governed by a 13 member Board comprised of the Commissioner of Environmental Protection, who serves as the chair; the Commissioners of Sanitation, Buildings, Fire, Police, Health, and Consumer Affairs; and six citizen members.

In addition to ECB's adjudication responsibilities for conducting hearings and reviewing appeals, ECB mails penalty payment notices to respondents and collects payments. Penalties must be paid unless the violation is dismissed at a hearing. In response to an appeal of a hearing decision, the ECB Board can uphold or overturn the administrative law judge's decision. ECB has full-time hearings offices in Manhattan, Brooklyn, and Queens. The Bronx office is open for hearings four days a week, while the Staten Island office is open for hearings two days a week.

The ECB Bronx office conducted 10,742 (10.4%) of the 103,713 ECB case hearings held Citywide between July 1, 2004, and December 31, 2004.

We received an allegation letter on March 17, 2004 that asserted that the ECB Bronx office has not been issuing hearing decisions in a timely manner. The letter claimed that no decisions had been issued for many hearings held between 2000 and 2002. The allegation stated that respondents were receiving notices in 2004 to pay their penalties despite the fact that they had not been notified of the results of hearings held in 2002 or earlier. The letter identified 382 cases that were claimed to be overdue.

Audit Objective

The audit objective was to determine whether hearings in the ECB Bronx office are being adjudicated in a timely manner.

Scope and Methodology

The period covered by this audit is calendar year 2004.

To obtain an understanding of ECB policies, procedures, and practices, we reviewed ECB's Mission Statement and its *Procedural Manual for Adjudication at the Environmental Control Board*, and interviewed ECB headquarters officials and Bronx hearing office representatives, including seven of the 13 ALJs assigned to the Bronx office as of February 2005.

To test the validity of the allegation letter, we reviewed a randomly selected sample of 20 of the 382 cases identified in the letter. We also reviewed a randomly selected sample of 50 of the 4,981 cases identified in the October 21, 2004 ECB Overdue Action Report, which identifies cases in which there has been no action for a period of 45 days or more. We endeavored to determine the reasons for such inaction. For the two selected samples, we reviewed case history information available in ECB's Automated Information Management System and in the case files at the Bronx office.

The results of the above tests, while not statistically projected to their respective populations, provided a reasonable basis for us to assess the timeliness of ECB's actions on these cases.

To assess the reliability of AIMS data, we compared the information in AIMS on our random sample of 50 Overdue Action Report cases with the information on these cases contained in the adjudication files. We also randomly selected a sample of 50 Notices of Appearance (NOAs) that were completed in the Bronx office on two randomly selected dates— June 10 and 14, 2004. (NOAs are forms that are completed by respondents when they arrive at an ECB office for a hearing.) We compared the information on the NOA forms to data contained in AIMS. Our data reliability assessments revealed that AIMS data were generally reliable.

This audit was conducted in accordance with generally accepted government auditing standards (GAGAS) and included tests of records and other auditing procedures considered necessary. This audit was performed in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

Discussion of Audit Results

The matters in this report were discussed with ECB officials during and at the conclusion of this audit. A preliminary draft report was sent to ECB officials on April 28, 2005, and was discussed at an exit conference held on May 12, 2005. On May 24, 2005, we submitted a draft report to ECB officials with a request for comments. We received a written response from ECB on June 1, 2005.

In its response, ECB generally agreed with the audit's findings and recommendations and stated that it will work to implement the recommendations in the near future.

The full text of the ECB response is included as an addendum to this report.

FINDINGS AND RECOMMENDATIONS

The Environmental Control Board did not ensure timely case adjudications in the Bronx office during calendar year 2004. As of October 21, 2004, there were 4,891 cases listed on the Bronx office ECB Overdue Action Report. For 35 percent of these cases, the last ECB action on the case occurred in 2003 or earlier. Twenty-seven of these cases go back as far as the 1996 to 1999 time period. In addition, for the time period from July 1, 2004 to December 31, 2004, the ratio of issued decisions to hearings held was only 54 percent in the Bronx office, whereas in the four other ECB borough offices these ratios ranged from 64 percent to 76 percent. Delays in issuing hearing decisions do a disservice to respondents and may result in lost revenue for the City.

Our audit identified the following aspects of ECB's management of case adjudications in the Bronx office that contributed to the significant backlog of cases.

- ECB did not effectively use its ECB Overdue Action Report to monitor the progress of its cases.
- The ECB Bronx office did not sufficiently staff or manage the hearings process to ensure the timely resolution of cases.
- The ALJs in the ECB Bronx office lacked sufficient computer instruction.

ECB Did Not Ensure Timely Case Adjudications in Its Bronx Office

The Environmental Control Board did not ensure timely case adjudications in the Bronx office during calendar year 2004. As a result, a significant backlog of cases developed.

On a monthly basis, the Environmental Control Board uses AIMS to generate a list of overdue cases, which is called the ECB Overdue Action Report. Cases are listed in this report when there has been no action on a case for a period of 45 days or more. The report is given to each borough office for follow-up review and action. The October 21, 2004 ECB Overdue Action Report for the Bronx listed 4,981 overdue cases in various stages awaiting further action. The total penalty amount for these cases was approximately \$2,065,000.

For these 4,981 cases, an average of 326 days elapsed from the date of the last ECB action on a case until October 21, 2004, the date of the Overdue Action Report. The last ECB action on 1,189 of these cases (or more than 35 percent of the 4,981 cases) occurred in 2003 or earlier. For 4,607 (92%) of the 4,981 overdue cases, the last action had been the holding of a hearing. The ALJ decision was still pending on these cases. The remaining 374 cases either needed another hearing or were on appeal.

In order to obtain a better understanding of these overdue cases, we randomly selected 50 cases from the Overdue Action Report and reviewed the information available on these cases in

AIMS and the case adjudication files. For these 50 cases, an average of 295 days elapsed from the date of the last ECB action on a case until October 21, 2004, the date of the report. As of October 21, 2004, two of the 50 overdue cases had been decided by the ALJ, but one of these decisions had not been reviewed and approved, and the other was approved three days before (and entered in AIMS five days after) the October 21, 2004 report. For the remaining 48 cases, 44 (92%) had hearings but the ALJ decision had not been written, and four (8%) either needed to have another hearing or were on appeal.

ECB Did Not Make Effective Use Of Its Overdue Action Report

When we discussed overdue cases with ECB Bronx officials, we were informed that little use is made of the Overdue Action Report. ECB Bronx officials stated that they rely on the ALJs to provide monthly reports on the numbers of cases they worked and the numbers of cases they still have pending. The ECB Bronx office does not verify these numbers or compare these numbers with the information provided in the Overdue Action Report. The electronic version of the Overdue Action Report can easily be sorted to show the number of cases pending with each ALJ. Any discrepancies between the ALJs' monthly reports and the Overdue Action Report could be reviewed by the Bronx office to determine the exact number of overdue cases and then develop a plan to minimize the backlog. These steps are simply not being taken.

We also randomly selected 20 of the 382 cases listed on the March 17, 2004 allegation letter. We reviewed information in AIMS and the case adjudication files on these 20 cases. All of these cases began in 2000 or 2001 and received hearings between 2000 and 2002. Prior to February 2004, these hearings were the last significant ECB action on each of these cases. The ALJs did not begin to issue decisions on these cases until 2004. By the time that ECB took action on these 20 cases in February and March 2004, there had been an average delay of about two and one-half years, ranging from more than one year to more than three years.

ECB officials informed us that rather than reviewing the individual status of each of these 20 cases, as well as the status of many other long overdue cases, they, in a March 2004 attempt to promote action on the cases, simply entered default (nonpayment and nonappearance) judgments in AIMS against all of the respondents. This action led to request-for-payment notices being sent out on these cases even though hearing decisions had not been issued. Three of the 20 respondents paid their penalties two to five months before ECB issued decisions on their cases later in 2004. For one of the three respondents who paid, the hearing decision dismissed the violation. An effort to promote action on long overdue cases does not justify the unfairness to respondents of requesting penalty payments for violations that have not been fully adjudicated.

In addition, ECB was unable to find the adjudication files for nine (18%) of the 50 cases in our Overdue Action Report sample and five (25%) of the 20 cases in our allegation letter sample. The inability to find large percentages of the overdue cases in our two samples raises further concerns about the ECB Bronx office's ability to effectively address its case backlog problem.

The ECB Bronx Office Did Not Sufficiently Staff or Manage the Hearings Process

The ECB Bronx office did not sufficiently staff or manage the hearings process to ensure the timely resolution of cases. As of December 31, 2004, the Bronx office had more overdue cases than any other borough office except Manhattan's. In addition, as shown in Table I, between July 1, 2004 and December 31, 2004, the ratio of case decisions issued to hearings held was lower in the Bronx office than in any other borough office. These results suggest either that the Bronx office, which had 13 ALJs as of February 2005, did not have sufficient ALJ resources or that these resources were not effectively managed, or both.

Table I
Decisions Issued and Hearings Held in ECB Borough Offices
From July 1, 2004 to December 31, 2004

Borough	Decisions Issued	Hearings Held	Ratio of Decisions Issued to Hearings Held
Bronx	5,747	10,742	54%
Staten Island	2,414	3,793	64%
Brooklyn	13,980	21,966	64%
Manhattan	37,601	51,336	73%
Queens	12,007	15,876	76%

ECB officials claim that they have had considerable difficulty hiring lawyers to serve as ALJs in the Bronx office. The officials state that it has been much easier to find lawyers to work in the other borough offices. ECB has taken steps to address this concern. Four new per diem ALJs (for a total of 17 ALJs) began working in the Bronx office in March 2005. In addition, ECB officials state that they have been requiring that new ALJs hired for other borough offices agree to work at least one day a week in the Bronx office.

As indicated in Table II below, these actions bring the Bronx office ALJ staffing to a level that slightly exceeds (considering relative caseloads) the ALJ staffing levels of the other four borough offices.

Table II
Hearings Held per ALJ in ECB Borough Offices

Borough	ALJs (as of 3/3/05)	Hearings Held (7/1/04 to 12/31/04)	Hearings Held per ALJ
Bronx	17	10,742	632
Queens	25	15,876	635
Manhattan	72	51,336	713
Staten Island	5	3,793	758
Brooklyn	21	21,966	1,046

Prior to the addition of the four new ALJs, each Bronx office ALJ handled about 826 hearings during a six month period. Only the Brooklyn office had a higher number of hearings held per ALJ. Despite improvements in ALJ staffing at the Bronx office, each of the borough offices in Manhattan, Brooklyn, and Queens has more full-time ALJs than the Bronx office has. The Manhattan office has eight full-time ALJs, the Brooklyn and Queens offices have three each, but the Bronx office only has one.

ECB has not studied whether the staffing stability provided by one or more additional full-time ALJs could help the Bronx office resolve adjudication cases in a more timely manner. Lower-cost per diem ALJs have flexible part-time schedules that accommodate their personal schedules. The availability of one or more additional full-time ALJs in the Bronx office might allow the office to have a more reliable schedule of hearing officers and facilitate the scheduling of decision “write-up” days. ECB Bronx officials stated that while an ALJ may be scheduled for a day to write overdue decisions, if a per diem ALJ scheduled to handle hearings on that day does not come to work, an ALJ who was going to work on overdue cases may be required to conduct hearings instead.

ECB has also not studied whether one or more additional full-time ALJs could help the Bronx office review the decisions prepared by per diem ALJs. All hearing decisions must be reviewed by an experienced ALJ before they are finalized. Because most full-time ALJs were experienced per diem ALJs before being promoted to full-time status, most could perform this responsibility upon receiving this promotion. Due to the backlog of cases in the Bronx office, hearing decisions prepared in the Bronx office are currently being sent to the Manhattan office for review. However, considering that the Manhattan office also has a large number of overdue cases—16,827 as of December 31, 2004—and considering the inefficiency of forwarding cases to the Manhattan office for review, the gradual assumption by the Bronx office of the responsibility to review its own case decisions is a reasonable option for ECB to consider.

Clearly, the issue of ALJ staffing is an important element of an effective strategy to address the backlog of cases at the Bronx office. A study of the need for one or more additional

full-time ALJs in the Bronx office could help ECB develop an effective strategy for managing the scheduling of hearings and the writing and reviewing of case decisions.

ALJs in the Bronx Office Lacked Sufficient Computer Instruction

A number of ALJs in the Bronx office informed us that the hearings process would be more efficient if they were provided with better computer resources and access to data available on AIMS and the City intranet system. The ALJs stated that they often need access to information available on the City intranet, such as City agency regulations, Buildings Department permits, and Finance Department building ownership data. They also stated that the computer password system is problematic and often keeps them from gaining this access. For computer security reasons, if ALJs have not used their passwords for a period of time, computer access is denied and must be reapproved.

ECB officials claimed that the computer resources and data access provided to the ALJs were sufficient for the ALJs to perform their duties. They also claimed that an ALJ's password can be readily reactivated by contacting agency technical assistance staff. Our review of the computer resources and data access available to the ALJs at the Bronx office indicated that the resources and data access were adequate. The Bronx office provides 10 computer workstations to the ALJs that are equipped with relatively new computers and printers, and allow for access to AIMS and the City intranet. However, we concluded from our review of the available resources and our discussions with ECB officials and the ALJs that the ALJs need additional instruction on how to make the best use of the resources that are provided. Additional computer instruction could help to improve the productivity of the ALJs in the Bronx office.

Recommendations

1. ECB should maximize the use of the ECB Overdue Action Report to identify those cases that are awaiting adjudication and then ensure that timely action is taken on those cases.

ECB Response: "The Environmental Control Board (ECB) agrees that the Overdue Action report is a useful tool in ensuring that cases move promptly through the adjudication process. We have spoken to Bronx staff about the importance of using reports to better manage case flow and we will continue to work with the Bronx staff as well as other ECB offices to make certain that reports are properly utilized."

2. ECB should not enter default judgments in AIMS on cases that have not been fully adjudicated.

ECB Response: "We agree with this recommendation."

3. ECB should ensure that all of its adjudication files are properly stored and readily available.

ECB Response: “ECB recognizes the importance of good records retention as it relates to our case files. Unfortunately inherent in an environment where paper is the primary medium it is difficult to avoid the misplacement of files. In the near future we will be implementing an online adjudication system (NYCServ), which will eliminate paper case folders. This will significantly decrease if not entirely eliminate the potential for lost or misplaced case files.”

4. ECB should conduct a study of the need for one or more additional full-time ALJs in the Bronx office. The study should include a review of whether the office should gradually assume the responsibility to review its own case decisions.

ECB Response: “ECB will review whether a full time attorney is warranted in the Bronx office. The review of cases heard in the Bronx in our Manhattan office was intended as a management initiative to assist in reducing the Bronx backlog. We have every intention of having cases that are heard in the Bronx reviewed in the Bronx. It is anticipated that we will be able to resume review in the Bronx in the fall of this year.”

5. ECB should provide additional computer instruction to the ALJs.

ECB Response: “ECB will conduct a survey of ALJ’s in the Bronx and identify areas where additional computer training is required. We will initiate a survey in June and will conduct training as needed during the summer.”



ENVIRONMENTAL CONTROL BOARD

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Greg Brooks
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June 1, 2005

**Re: Audit Number ME05-070A - Audit Report on the Timeliness of Case
Adjudications at the Bronx Office of the Environmental Control Board**

Dear Deputy Brooks:

Thank you for the opportunity to comment upon the above referenced draft report recently conducted at the Environmental Control Board. We appreciate the opportunity to respond to the draft report and have commented on each recommendation.

The Environmental Control Board for the most part agrees with the recommendations and will work to implement these in the near future. Comments regarding each recommendation are attached. Again thank you for the time and effort of your staff.

Sincerely,

Richard Friedman
Director, Environmental Control Board

cc: Lloyd Hoffer Moran
Tweedy Reed Lento
Grob Ritze Katsorhis (Operations)

The Following are DEP's comments regarding the recommendations of the above audit.

RECOMMENDATION 1

The ECB should maximize the use of the ECB overdue Action Report to identify those cases that are awaiting adjudication and then ensure that timely action is taken on those cases.

DEP RESPONSE

The Environmental Control Board (ECB) agrees that the Overdue Action report is a useful tool in ensuring that cases move promptly through the adjudication process. We have spoken to Bronx staff about the importance of using reports to better manage case flow and we will continue to work with the Bronx staff as well as other ECB offices to make certain that reports are properly utilized.

RECOMMENDATION 2

ECB should not enter default judgments in AIMS on cases that have not been fully adjudicated.

DEP RESPONSE

We agree with this recommendation.

RECOMMENDATION 3

The ECB should ensure that all of its adjudication files are properly stored and readily available.

DEP RESPONSE

ECB recognizes the importance of good records retention as it relates to our case files. Unfortunately inherent in an environment where paper is the primary medium it is difficult to avoid the misplacement of files. In the near future we will be implementing an online adjudication system (NYCServ), which will eliminate paper case folders. This will significantly decrease if not entirely eliminate the potential for lost or misplaced case files.

RECOMMENDATION 4

ECB should conduct a study of the need for one or more additional full-time ALJs, in the Bronx office. The study should include a review of whether the office should gradually assume the responsibility to review its own case decisions.

DEP RESPONSE

ECB will review whether a full time attorney is warranted in the Bronx office. The review of cases heard in the Bronx in our Manhattan office was intended as a management initiative to assist in reducing the Bronx backlog. We have every intention of having cases that are heard in the Bronx reviewed in the Bronx. It is anticipated that we will be able to resume review in the Bronx in the fall of this year.

RECOMMENDATION 5

ECB should provide additional computer instruction to the ALJ's.

DEP RESPONSE

ECB will conduct a survey of ALJ's in the Bronx and identify areas where additional computer training is required. We will initiate a survey in June and will conduct training as needed during the summer.