

Respondent, owner of the premises, a hotel, appeals from a recommended decision sustaining a second violation of Section 24-524(f) of the Code of the City of New York (Code) for failing to comply with an order of the Department of Environmental Protection (DEP) commissioner. In the summons, the issuing officer (IO) affirmed that on March 1, 2017, he observed that Respondent failed to comply with two orders of the DEP commissioner, Numbers 63927 and 63928.

The hearing

At the hearing, the attorney for DEP submitted copies of the two orders, both issued on November 3, 2016. Each ordered Respondent under Section 19-03(f) of Title 15 of the Rules of the City of New York (RCNY) to install and maintain properly-sized grease interceptors that conform to PDI G101, ASME A112.14.3, or ASME A112.14.4. Order Number 63927 ordered the installation and maintenance specified grease interceptors on six identified first-floor and basement kitchen fixtures within 30 days; Order Number 63928, on eleven identified second-floor kitchen fixtures, also within 30 days.

Respondent's witness, the director of engineering for the hotel, did not dispute that Respondent had not installed the grease interceptors as ordered. Instead, he contended as follows. The existing grease interceptors at both locations were legal per Department of Buildings (DOB) approval of plans for the hotel's renovation in 1998, and there had been no further renovation or changes in the operation of the kitchen since then that would trigger additional or larger installations. For Respondent to install grease traps for each fixture as ordered or a large grease trap for all the first-floor basement kitchen fixtures, as suggested by the IO at the time he issued the orders, would be "physically impossible" and also unnecessary, considering that grease is only introduced at the sink hooked up to the first-floor dishwasher and at the second-floor dishwasher, both locations where grease traps are already installed.

Respondent's attorney submitted the DOB-approved 1998 application for a plumbing permit which included an attachment setting out the proposed number of grease traps/oil separators. He argued that DOB's approval of installation of the existing grease interceptors in 1998 estops DEP from requiring the grease traps listed in the instant orders. He pointed out that a DEP publication entitled "Preventing Grease Discharges into Sewers" directed that "[g]rease interceptors should conform to American Society of Mechanical Engineers (ASME) A112.14.3 or A112.14.4 . . . standards (unless prior approval for the grease interceptor was received from the NYC Board of Standards & Appeals or the NYC Department of Buildings Materials and Equipment Acceptance Division)," the latter of which he characterized as "essentially" DOB.

In response, Petitioner's attorney contended as follows. The paragraph of the publication relied upon by Respondent related solely to engineering standards for grease interceptors to ensure that they meet the requirements in the Sewer Use Regulations found in 15 RCNY, Chapter 19. The paragraph introduced by Respondent's attorney did not abrogate the preceding paragraph in the publication that states "[i]f a business has an interceptor that is too small, [DEP] inspectors will order the owner or operator to install the correctly sized unit, based on New York City's Sewer Use Regulations." Further, according to the 2014 Plumbing Code Section 1003.3.4. "Grease

interceptors and automatic grease removal devices shall be sized in accordance with the rules of the [DEP]. Grease interceptors and automatic grease removal devices shall be designed and tested in accordance with PDI G101, ASME A112.14.3 or ASME A112.14.4 and shall be installed in accordance with the manufacturer's instructions." Under 15 RCNY 19-11(a) the sizing of grease interceptors must similarly comply with criteria specified in applicable tables in Chapter 19.

The hearing officer sustained the violation, finding that Respondent's evidence did not refute the charge. She concluded that DOB's 1998 approval of the plumbing work showed only that the renovations in the premises were made in compliance with the Building Code in effect at that time and according to the plans submitted and approved. It was not an approval of the adequacy of the grease interceptors, only their installation according to the plans. Moreover, while Respondent's evidence states that DOB's Materials and Equipment Acceptance Division had the authority to determine appropriate grease interceptors, Respondent did not show approval by that division.

The issue

The issue on appeal is whether it is a defense to the violation that the installation of the grease interceptors was approved by DOB in 1998.

Applicable law

Under Code Section 24-524(f), in pertinent part, it is unlawful to fail to comply with an order issued by the DEP commissioner.

Section 19-03(f) of 15 RCNY provides that "[a]ll pretreatment and monitoring devices, including but not limited to a grease or oil interceptor, whether required to be installed by order of the commissioner or by any other law or regulation and located on any premises, shall be the proper device and correctly installed, maintained and operated."

Section 19-11(b) of 15 RCNY, Best Management Practices for Non-Residential Direct and Indirect Dischargers of Grease to the Public Sewer System, in pertinent part provides as follows.

(a) Grease interceptors shall be installed in waste lines which may receive grease from non-residential direct and indirect dischargers, including but not limited to those leading from pot wash sinks, woks, soup or stock kettles, food scrap sinks, scullery sinks, meat and/or poultry and/or fish preparation sinks, floor drains, automatic dishwashers, scraper sinks, or other similar plumbing fixtures, in all restaurants, kitchens, cafeterias, clubs, butcher shops, slaughterhouses, fish markets, supermarket food processing areas, delicatessens, or other non-residential establishments where grease may be introduced into the drainage system. Sizing of grease interceptors shall comply with the criteria specified in this section, including applicable Tables I and/or II.

(b) All prefabricated grease interceptors shall be approved by the New York City Board of Standards & Appeals prior to July 10, 1991, approved by the New York City Department of Buildings Materials and Equipment Acceptance Division prior to July 1, 2008, or shall conform to PDI G101, ASME A112.14.3 or ASME A112.14.4 and shall be installed in accordance with the manufacturer's instructions.

The appeal

On appeal, Respondent's attorney reiterates Respondent's hearing testimony and his arguments. He further argues that neither Plumbing Code Section 1003.3 nor 1003.3.4 or 15 RCNY Section 19-11 was cited in either of the Commissioner's orders and therefore they failed to give proper notice to Respondent that Petitioner intended to enforce those provisions.

Petitioner did not answer the appeal.

The Board's determination

Having fully reviewed the record, the Board finds that the hearing officer's decision is supported by the law and a preponderance of the evidence and denies the appeal.

Prior approval by DOB not a defense

On this record, the Board finds that it is not a defense to the violation that the installation of the existing grease interceptors in the premises was approved by DOB. Respondent asserted that it installed and operated the grease interceptors in accordance with applicable laws, as evidenced by the issuance of the DOB approval of permit application which referred to the installation of the grease interceptors. However, that the grease interceptors may have been installed according to DOB-approved plans does not establish compliance with the provisions of the specifications set out in the 2014 Plumbing Code and the public sewer use rules in 15 RCNY Chapter 19, as well as in the commissioner's orders issued under 15 RCNY Section 19-03(f). Nor does it override DEP's authority to determine the number, size, and capacity of grease interceptors required to be located in the areas cited. *Cf. NYC v. Jalapenos Mexican Restaurant* (Appeal No. 1501253, January 28, 2016) (finding that exhaust installation in accordance with DOB-approved plans and FDNY permit did not establish compliance with the NYC Air Pollution Control Code).

In addition, the Board further notes that (1) 15 RCNY Section 19-11(a) requires the installation of grease interceptors in any waste line that "may receive grease" without limitation as regards volume or likelihood, and (2) while Section 19-11(b) of 15 RCNY allows approval by the DOB Materials and Equipment Acceptance Division as an alternative to compliance with the PDI and ASME standards set out in the commissioner's orders, as the hearing officer found, Respondent failed to establish approval of its grease interceptors by that division of DOB.

Accordingly, the Board affirms the hearing decision sustaining a second violation of Code Section 24-524(f) and imposing the civil penalty of \$600.

Additional information from OATH records (not in original decision)

Master NOV #

Name of Respondent's counsel or other
authorized representative (if any)

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