

ALLEGHENY COUNTY HEALTH DEPARTMENT  
ADMINISTRATIVE DECISION

INDUSTRY ENTERPRISES, LLC, : In re: 739 McLain Street  
: Pittsburgh, PA 15210  
*Appellant,* :  
: Docket no. ACHD-22-016  
v. :  
: Copies Sent To:  
ALLEGHENY COUNTY HEALTH : *Representative for Appellant:*  
DEPARTMENT, : Kayla Huerbin  
: Industry Enterprises, LLC  
*Appellee.* : 829 Industry Street  
: Pittsburgh, PA 15210  
: :  
: *Counsel for ACHD:*  
: Elizabeth Rubenstein, Esq.  
: 301 39<sup>th</sup> Street, Building 7  
: Pittsburgh, PA 15201

DECISION AND ORDER OF THE ALLEGHENY COUNTY HEALTH  
DEPARTMENT HEARING OFFICER

**I. INTRODUCTION**

This case concerns an alleged rodent infestation, overgrown vegetation, and improper trash storage at a property in Pittsburgh’s Allentown neighborhood. Industry Enterprises, LLC (“Industry” or “Appellant”) owns a property at 739 McLain Street in Allentown (the “Property”). In September 2021, the Allegheny County Health Department (“ACHD”) cited Appellant for Housing Code violations at the Property, including rodent infestation, excessive vegetation, and improper refuse storage. The ACHD contends that these violations remained at the Property for several months, and that Appellant failed to correct them in a timely manner, thus justifying a \$2,500 civil penalty. Appellant responds that there was no

evidence of a rodent infestation at the Property and that the trash was properly stored.

After reviewing the evidence and testimony from the hearing, the briefs submitted by the parties, and the applicable law, this tribunal holds that the ACHD proved by a preponderance of the evidence that it properly assessed a civil penalty against Appellant for excessive plant growth, rodent infestation, and improper refuse storage violations at the Property. The civil penalty is affirmed, and Industry Enterprises, LLC's appeal is therefore dismissed.

## **II. EVIDENCE**

The following exhibits were introduced by the ACHD and admitted into evidence<sup>1</sup>:

- Ex. A: Civil Penalty Letter, dated January 21, 2022
- Ex. B: Notice of Violation, dated September 7, 2021
- Ex. C: Notice of Violation, dated October 19, 2021
- Ex. D1: September 2021 Inspection Report
- Ex. D2: October 2021 Inspection Report
- Ex. D3: January 2022 Inspection Report Photos
- Ex. D4: March 2022 Inspection Report Photos

## **III. FINDINGS OF FACT**

The following facts are established:

1. On July 1, 2021, the Allegheny County Health Department ("ACHD") received a complaint concerning overgrown vegetation and a possible rodent infestation at 739 McLain Street (the "Property") in Pittsburgh's Allentown neighborhood. (Hearing Transcript ("H.T.") at 7).
2. On September 3, 2021, ACHD Housing Inspector Maryann Manown ("Ms. Manown") inspected the Property for the first time, and cited the owner Industry Enterprises, LLC ("Appellant") for four violations of ACHD Article VI (Housing and Community Environment) ("Article VI"). (Ex. D1).

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<sup>1</sup> Appellant Industry Enterprises LLC did not offer any exhibits into evidence.

3. Appellant received a copy of the inspection and a Notice of Violation (“NOV”) on September 3, 2021, which declared that all violations must be abated by October 12, 2021. (Ex. B).
4. On October 13, 2021, Ms. Manown returned to the Property and found that Appellant had removed the refuse from the ground, but that the other three violations remained. (Ex. D2).
5. Appellant received a copy of that inspection report and a penalty assessment warning letter cautioning Appellant that a possible civil penalty of \$2,500 could be assessed if the violations were not abated by November 23, 2021. (Ex. C).
6. On January 13, 2022, Ms. Manown returned to the Property and cited Appellant for improper refuse containers and evidence of rodent infestations. (Ex. D3).
7. On January 24, 2022, the ACHD levied a \$2,500 civil penalty against Appellants. (Ex. A).
8. On or around February 14, 2022, Appellant timely appealed the \$2,500 civil penalty.
9. On March 2, 2022, Ms. Manown again returned to the Property, and found that the violations for rodent infestation and improper refuse containers had not been abated. (Ex. D4).
10. On June 3, 2022, an administrative hearing was held in this matter.

#### **IV. DISCUSSION**

##### **A. Burden of Proof**

Under ACHD Rules and Regulations Article XI (Hearings and Appeals) (“Article XI”), the ACHD bears the burden of proof in an administrative appeal when it assesses a civil penalty. Art. XI § 1105. To prevail here, the ACHD must prove by a preponderance of the evidence that the penalty was properly assessed in light of the continuing violations present at the Property.

The preponderance of evidence standard “is tantamount to a ‘more likely than not’ standard.” *Agostino v. Twp. of Collier*, 968 A.2d 258, 269 (Pa. Cmwlth. Ct. 2009) (citing *Commonwealth v. McJett*, 811 A.2d 104, 110 (Pa. Cmwlth. Ct. 2002)).

### **B. Rodent Infestation**

The ACHD penalized Appellant for a rodent infestation at the Property. (Exs. D1, D2). Article VI § 652 declares, “When the [rodent] infestation in either a single or multiple unit dwelling is caused by failure of the owner to maintain the dwelling in a rodent-proof or reasonably insect-proof condition, extermination shall be the responsibility of the owner.”

Here, Ms. Manown presented copious evidence of potential burrow holes for rodents at the Property, and noted that there was a food source available “without opening and digging into the trash bags.” (Exs. D3, D4; H.T. at 22-23). Ms. Manown’s multiple visits to the Property confirmed the longevity of these burrow holes. (Exs. D3, D4).

Appellant admitted at the hearing that it did not fill in the holes, because they disagreed with Ms. Manown that they were caused by rodents. (H.T. at 24). Appellant restates this assertion in their brief, although it does not provide any evidentiary support for this claim. (*Appellant Brief* at 1).

This tribunal finds that it is more likely than not that Appellant failed to properly abate a rodent infestation. Although Ms. Manown admitted that she did not witness any live rodents at the property, she observed an available food source and multiple holes on multiple occasions indicating the presence of rodents. (Exs.

D3, D4; H.T. at 22-23). Furthermore, Ms. Manown has worked as a housing inspector for the ACHD for nearly 15 years. (H.T. at 7). In that time, it is likely that she has observed many rodent-related issues at properties in Allegheny County. Based on Ms. Manown's testimony, evidence, and experience, this tribunal holds that the ACHD proved by a preponderance of the evidence that Appellant violated Article VI regulations concerning rodent infestation.

### **C. Improper Refuse Containers**

The ACHD also cited Appellant for failure to properly store refuse. (Exs. D1, D2; H.T. at 9). Article VI § 653 states, "Refuse storage facilities shall be made of metal or equivalent material, shall be watertight and provided with tight covers which shall be kept securely closed at all times." At the hearing, Ms. Manown testified that she observed improper refuse storage during her numerous inspections of the Property. (H.T. at 7-15, 19). The photos that Ms. Manown took of the Property support her testimony. (Exs. D3, D4).

Appellant contests Ms. Manown's findings. In its brief, Appellant states, "Trash was properly stored in trash cans[.]" (*Appellant Brief* at 1). However, this is merely a bare-bones conclusory statement. Appellant did not provide any evidence to refute Ms. Manown's findings. Therefore, this tribunal finds that the ACHD properly found that Appellant improperly stored refuse at the Property.

### **D. Excessive Plant Growth**

Finally, the ACHD cited Appellant for excessive plant growth. Article VI § 651(e) states, "Any premises determined by the Director to be a nuisance by reason

of unrestricted plant growth shall be maintained as to restrict such growth to ten (10) inches or less.” The ACHD presented evidence of excessive plant growth at the hearing. (Ex. B; H.T. at 9). Appellant did not contest this finding, either at the hearing or in their brief. This tribunal therefore finds that the ACHD properly cited Appellant for excessive plant growth at the Property.

## V. CONCLUSION

This tribunal finds that the ACHD properly assessed a \$2,500 civil penalty against Appellant Industry Enterprises, LLC. Based on the evidence and testimony presented at the hearing, as well as the briefs submitted by the parties, this tribunal agrees with the ACHD that Appellant failed to abate the violations concerning rodent holes and improper refuse containers at the Property in a timely manner. Appellant’s appeal is therefore dismissed. This administrative decision may be appealed to the Court of Common Pleas of Allegheny County, Pennsylvania.

  
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Max Slater  
Administrative Hearing Officer  
Allegheny County Health Department

August 17, 2022  
Dated: \_\_\_\_\_