

**ALLEGHENY COUNTY HEALTH DEPARTMENT
AIR QUALITY PROGRAM**

In the Matter of:

Sixth Ward Flats LP
611 William Penn Place, Suite 800
Pittsburgh, PA 15219

Costa Contracting, Inc
347 Lefever Hill Rd
Cheswick, PA 15024

NELCON, Inc.
3059 Cummings Drive
Glenshaw, PA 15116

Violation No. ASB-21-0102

Violations of Article XXI (“Air
Pollution Control”) at property:

3404 Penn Ave.
Pittsburgh, PA 15201

ENFORCEMENT ORDER

NOW, this 22nd day of January, 2021, the Allegheny County Health Department (hereinafter “ACHD” or “Department”) issues this Enforcement Order after it has found and determined the following:

1. The Director of the ACHD has been delegated authority pursuant to the federal Clean Air Act, 42 U.S.C. Sections 7401 -7671q (hereinafter “CAA”), and the Pennsylvania Air Pollution Control Act, 35 P.S. Sections 4001-4014 (hereinafter “APCA”), and the ACHD is a local health agency organized under the Local Health Administration Law, 19 P.S. §§ 12001-12028, whose powers and duties include the enforcement of laws relating to public health within Allegheny County including, but not limited to, the ACHD’s Rules and Regulations, Article XXI, Air Pollution Control (Allegheny County Code of Ordinances Chapter 505, 507, and 535) (hereinafter “Article XXI”).

2. The ACHD, through its powers under Article XXI, maintains the authority to regulate all asbestos abatement activity within the boundaries of Allegheny County. Article XXI

also incorporates the federal asbestos abatement regulations regarding asbestos abatement activity in Allegheny County, Article XXI § 2105.62.b.

3. Sixth Ward Flats LP (hereinafter “Sixth Ward Flats”) is a Pennsylvania Limited Partnership with a registered business address of 611 William Penn Place, Suite 800, Pittsburgh, PA 15219.

4. Sixth Ward Flats is the owner of a commercial property located at 3404 Penn Ave., Pittsburgh, PA 15201 (Parcel ID: 0048-S-00278-0000-00) (hereinafter “3404 Penn Ave. Property”).

5. Nelcon, Inc., (hereinafter “Nelcon”) is a Pennsylvania Corporation with a registered business address of 3059 Cummings Drive, Glenshaw PA 15116. At all times relevant, Nelcon is licensed by the City of Pittsburgh as a general contractor (License No.: BL006902).

6. Costa Contracting, Inc. (hereinafter “Costa Contracting”) is a Pennsylvania Corporation with a registered business address of 347 Lefever Hill Rd., Cheswick, PA 15024. At all times relevant, Costa Contracting is licensed by the City of Pittsburgh as a general contractor (License No.: BL002959).

7. Upon information and belief, Costa Contracting contracted with Nelcon, Inc., and/or Sixth Ward Flats to demolish the 3404 Penn Ave. Property.

8. On October 23, 2019, Costa Contracting was issued a permit (DP-2019-04410) by the City of Pittsburgh to demolish the 3404 Penn Ave. Property.

9. On December 3, 2019, an ACHD asbestos engineer inspected the site and observed the completed demolition of the commercial structure located at the 3404 Penn Ave. Property.

10. On January 22, 2020, an ACHD asbestos inspector contacted Nelcon and requested the Asbestos Abatement and Demolition/Renovation Notification Form and the asbestos survey

for the 3404 Penn Ave. Property. In response to this request, Nelcon's President, Joe Nelson, submitted to the ACHD the Asbestos Abatement and Demolition/Renovation Notification Form and the asbestos survey for the 3404 Penn Ave. Property. The asbestos survey identified the green shingles from the edge of the roof, the tar on brick on the roof, and the tar on the rubber roof as positive asbestos containing material (ACM)¹. Mr. Nelson stated that he assumed Costa Contracting had already taken care of this notification process.

11. The 3404 Penn Ave. Property is a "facility" as defined by 40 C.F.R. § 61.141 and as a "facility" the building is subject to the asbestos abatement requirements of Article XXI §§ 2105.60-2105.63 and 40 C.F.R. § 61.145.

12. Article XXI, § 2105.62.f.1, provides that no person shall demolish, or allow the demolition, of any facility unless the owner of the facility proposed to be demolished has submitted to the Department, and the Department has received, by no later than 10 days prior to the beginning of the proposed demolition, written notice which includes a copy of the documentation of the results of the ACM inspection showing that no asbestos removal project permit is required prior to demolition due to the absence of ACM in the facility. Section 2105.62.f.1 applies even if the survey is negative for asbestos.

13. The ACHD finds that Sixth Ward Flats, Nelcon, and Costa Contracting violated Article XXI § 2105.62.f.1, by demolishing the 3404 Penn Ave. Property without submitting to the ACHD a demolition notice and asbestos survey at least 10 days prior to demolition.

¹ The positive ACM material found in the asbestos survey did not need to be abated due to the amount being less than 160 square feet. Asbestos abatement is only required if the amount is greater than 160 square feet.

ORDER

NOW THEREFORE, pursuant to the authority granted to the ACHD by Article XXI § 2109.03.a.1 and the Local Health Administration Law, 19 P.S. § 12010, it is hereby ORDERED that:

14. For the violations set forth in the preceding paragraphs, Sixth Ward Flats, Nelcon, and Costa Contracting, jointly and severally, are hereby assessed a civil penalty of **ONE THOUSAND, THREE HUNDRED DOLLARS (\$1,300)**. The civil penalty is as follows:

A. Gravity Based Component

Violation	Gravity Based Penalty	Violation Days	Total Gravity Penalty
Failure to submit an Asbestos Notification Form prior to demolition (§2105.62.f)	\$1,300	1	\$1,300
Gravity Component Subtotal			\$1,300

B. Adjustment Factors

Compliance History Enforcement action in the prior two years.	\$325
Size of Violator Ten to Fifty Employees	(\$325)
TOTAL CIVIL PENALTY	\$1,300

15. Sixth Ward Flats, Nelcon, and Costa Contracting shall pay the civil penalty amount within thirty (30) days of receipt of this Order. Payment shall be made by corporate or certified check, or the like, made payable to the “Allegheny County Clean Air Fund”, and sent to Air Quality Program manager, Allegheny County Health Department, 301 39th Street, Bldg. #7, Pittsburgh, PA 15201.

16. The ACHD has determined the above civil penalty to be in accordance with Article XXI § 2109.06.b. reflecting relevant factors including, but not limited to: the nature, severity and

frequency of the alleged violations; the maximum amount of civil and criminal penalties authorized by law; the willfulness of such violations; the impact of such violations on the public and the environment; the actions taken by Sixth Ward Flats, Nelcon, and Costa Contracting to minimize such violations and to prevent future violations; and Sixth Ward Flats, Nelcon, and Costa Contracting's compliance history.

17. The gravity based component of the civil penalty reflects the severity of the violation and the potential harm to the public or environment from the violation. The gravity based component may be adjusted for factors and circumstances unique to the violator.

18. The above civil penalty is adjusted to reflect the size of the company.

19. The above civil penalty is also adjusted due to a prior enforcement action against Costa Contracting. On October 1, 2018, the ACHD issued an enforcement action against Costa Contracting for failing to submit a notification in violation of §2105.62. The violation of §2105.62 occurred on August 20, 2018. The violation in the present enforcement action occurred on December 3, 2019, within two years of the prior violation.

20. Please be advised that failure to comply with this Order within the times specified herein is a violation of Article XXI giving rise to the remedies provided by Article XXI § 2109.02 including civil penalties of up to \$25,000 per violation per day.

21. Pursuant to Article XI ("Hearings and Appeals") of the Allegheny County Health Department Rules and Regulations, you are notified that if you are aggrieved by this Order you have thirty (30) days from the date of issuance or receipt of this Order in which to file an appeal. Such a Notice of Appeal shall be filed in the Office of the Director at 542 Fourth Avenue, Pittsburgh, PA 15219. This Order is enforceable upon issuance and any appeal of this Order shall

not act as a stay unless the Director of ACHD so orders. In the absence of a timely appeal, the terms of this Order shall become final.

22. Please be aware that if you wish to appeal this Order, you are required within 30 days of receipt of this Order to either forward the penalty amount of the ACHD for placement in an escrow account or post an appeal bond to the ACHD in the amount of the penalty. Please review the specific requirements for prepaying the penalty or posting the appeal bond found in Article XXI §§ 2109.06.a.2-3. A copy of Article XXI and Article XI may be found at <https://www.alleghenycounty.us/Health-Department/Health-Department-Regulations.aspx>.

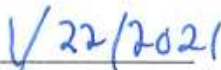
23. The provisions of this Order shall apply to, be binding upon, and inure to the benefit of the ACHD and Sixth Ward Flats, Nelcon, and Costa Contracting, and upon their respective officers, directors, agents, contractors, employees, servants, successors, and assigns.

DONE and ENTERED this 22nd day of January 2021, in Allegheny County, Pennsylvania.

For:



Dean DeLuca
Air Quality Program Manager



Date