



ENFORCEMENT ORDER

Allegheny County Health Department

Air Quality Program

301 39th Street, Bldg. # 7, Pittsburgh, PA 15201

Phone: (412) 578-8103

Address of Alleged Violation 3109 Orchard Street, McKeesport, PA 15132			
Name of Alleged Violator Brandon Tomcheck			
Address of Alleged Violator 3109 Orchard Street, McKeesport, PA 15132			
Contact Person	Title	Phone Number	Email

PART 1: DESCRIPTION OF INSPECTION(S)	
<p>12-22-2021: an Inspector observed evidence of illegal burning (construction material had been burned). Open burning regulations were provided and rules explained.</p> <p>01-18-2022: Inspector observed evidence of illegal burning (fuel was wood; fire pit was too close to property line). Open burning regulations were provided, and a second warning given. Resident was instructed to move the fire pit.</p> <p>02/14/2022: Inspector observed evidence of illegal burning (construction material: painted wood with metal hardware). Resident did not respond to follow up phone call on 02/15/2022.</p> <p>02/16/2022: inspector observed evidence of another fire (fire pit had not been moved). Door was not answered. Phone was not answered. Voice message and written request for a phone call received no response.</p> <p>2/25/2022: Police were dispatched to a fire at 3109 Orchard.</p>	
Did the individual/company cooperate with ACHD personnel? If not, explain:	At each visit, resident stated he would change behaviors or stop. Burning activities continued after warnings
Inspection Date(s) multiple	Inspector Name(s) James Bollinger; Nicholas Delphia

PART 2: YOU ARE IN VIOLATION OF THE FOLLOWING REGULATION(S):							
1	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 30%;">Regulation Section §2105.50</td> <td>Regulation Requirement Open burning requirements including materials, size and set back</td> </tr> <tr> <td colspan="2">Description of Violation Fire pit does not meet setback, burned remnants of construction materials were observed on 1/18/2022 and on 02/14/2022</td> </tr> <tr> <td colspan="2">What You Must Do to Correct the Violation Cease burning activities until a compliant burning area has been established.</td> </tr> </table>	Regulation Section §2105.50	Regulation Requirement Open burning requirements including materials, size and set back	Description of Violation Fire pit does not meet setback, burned remnants of construction materials were observed on 1/18/2022 and on 02/14/2022		What You Must Do to Correct the Violation Cease burning activities until a compliant burning area has been established.	
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PART 3: YOU ARE HEREBY ORDERED AS FOLLOWS:

- Immediately stop all work and/or cease operations at the following location(s):**

Cease burning activities until a compliant burning area has been established.

- You are hereby Ordered to correct the violations(s) listed in Part 2 within _____ days of the service of this Enforcement Order.**
- You are hereby Ordered to comply with the following requirements within _____ days of the service of this Enforcement Order:**
-

The Order(s) in this Part is enforceable upon issuance and any appeal shall not act as a stay. The Order(s) shall remain in effect until you are notified in writing by the Department. Please contact the ACHD Air Quality Program at (412) 578-8103 to arrange for a reinspection or to request that the Order(s) be rescinded.

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.

PART 4: CIVIL PENALTY

For the violations listed in Part 2, you are hereby assessed a civil penalty of \$ 1,710.00. The determination of the civil penalty is attached as **Exhibit No. 1** and is incorporated as part of this Enforcement Order.

Please be aware that if the Department did not assess a civil penalty, the Department may issue a subsequent enforcement order in which a civil penalty is assessed.

You 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.

PART 5: REQUEST FOR ADMINISTRATIVE HEARING

Pursuant to Article XI, § 1104.A (“Hearings and Appeals”), of the Allegheny County Health Department Rules and Regulations, you are notified that if you are aggrieved by this Order, a Notice of Appeal shall be filed no later than thirty (30) days after receipt of written notice or issuance of this Order. Such a Notice of Appeal shall be filed in the Office of the Director at 542 Fourth Avenue, Pittsburgh, PA 15219.

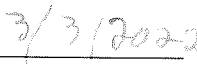
This Order is enforceable upon issuance and any appeal of this Order shall not act as a stay unless the Director of the ACHD so orders. In the absence of a timely appeal, the terms of this Order shall become final.

Please be aware that if you wish to appeal this Order and a civil penalty has been assessed under Part 4, you are required within 30 days of receipt of this Order to either forward the penalty amount to 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>.



Air Quality Program Manager



Date

EXHIBIT NO. 1

CIVIL PENALTY DETERMINATION AND CALCULATION

PURPOSE: The primary purpose for assessing civil penalties is to deter future violations not only at the specific facilities that are involved in the enforcement actions taken by the Department, but also at all the facilities within Allegheny County that are subject to the Article XXI regulations. In order to achieve the goal of deterrence, a civil penalty should remove any significant economic benefit resulting from noncompliance and include an amount beyond recovery of the economic benefit to reflect the seriousness of the violation.

CIVIL PENALTY FACTORS: The ACHD has determined the 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 the violator to minimize such violations and to prevent future violations; and the violator's compliance history.

CIVIL PENALTY FORMULA: The following calculation is used to assess the civil penalty:

$$\text{Civil Penalty} = (\text{Gravity Based Component} \times \text{Adjustment Factor}) + \text{Economic Benefit} + \text{Cost to the Department} + \text{Additional Deterrent Penalty}$$

Gravity Based Component: A gravity based component reflects the potential harm that the violation may have on the public or environment and the severity of the violation.

Adjustment Factor: The gravity based component may be adjusted for factors and circumstances unique to the violator. These adjustment factors include the violator's degree of cooperation with the ACHD during the investigation, the compliance history of the violator, the degree of willfulness that violator exhibited with regard to the violation, the size of the violator, and whether the violator is a Title V source or a Synthetic Minor source.

Economic Benefit: This component is a measure of the economic benefit gained by the violator as a result of noncompliance with the regulatory, statutory, or permit requirements.

Cost to the Department: Extra monetary costs for the investigation and preparation of the case, such as source sampling costs and laboratory costs, may be identified and added to the adjusted civil penalty.

Additional Deterrent Penalty: An additional deterrent penalty may be assessed if justified by the circumstances of the case.

CIVIL PENALTY CALCULATION

A. Gravity Based Component

Violation	Gravity Based Penalty	Violation Days	Total Gravity Penalty
§2105.50.	\$ 900.00	2	\$ 1,800.00
	\$		\$
	\$		\$
	\$		\$
Gravity Component Total			\$

B. <u>Adjustment Factors</u>	Factor	Adjustment Amount
Degree of Cooperation:	0.1	\$ 180.00
Compliance History:		\$
Degree of Willfulness:	0.3	\$ 540.00
Size of Violator:	-0.45	\$ -810.00
Title V source or a Synthetic Minor source:		\$
Adjustment Factors Total		\$ -90.00

C. <u>Other Adjustments</u>		
Economic Benefit:	\$	
Cost to the Department:	\$	
Additional Deterrent Penalty:	\$	
Other Adjustments Total		\$

TOTAL CIVIL PENALTY	\$ 1,710.00
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