

ALLEGHENY COUNTY HEALTH DEPARTMENT
AIR QUALITY PROGRAM

In the Matter of:

Port Authority of Allegheny County
345 Sixth Ave. 3rd Floor
Pittsburgh, PA 15222

Violation No. 220801

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

6831 5th Ave., Pittsburgh, PA 15206;
4600 Perry Highway, Pittsburgh, PA 15229;
1011 Lebanon Road West Mifflin, PA 15122;
1000 Village Drive Bethel Park, PA 15241

CONSENT ORDER AND AGREEMENT

This Consent Order and Agreement (“Consent Agreement”) is entered into this 16 th day of August 2022, by and between the Allegheny County Health Department (hereinafter “ACHD”) and Port Authority of Allegheny County (hereinafter “Port Authority”) (a/k/a Pittsburgh Regional Transit or “PRT”), (hereinafter referred to collectively as the “Parties”).

WHEREAS, the Director of ACHD has been delegated authority pursuant to the federal Clean Air Act, 42 U.S.C. §§ 7401 et seq., and the Pennsylvania Air Pollution Control Act, 35 P.S. §§ 4001 et seq., and ACHD is a local health agency organized under Local Health Administration Law, Act 315 of August 24, 1951, P.L. 1304, as amended, 16 Pa.C.S. § 12001 et seq., whose powers and duties include the enforcement of laws relating to public health within Allegheny County, including ACHD’s Rules and Regulations, Article XXI, Air Pollution Control (hereinafter “Article XXI”);

WHEREAS, Port Authority owns and operates sources of air pollution under Operating Permits #0226, #0156, #0344, and #0345, at the following properties: 6831 5th Ave., Pittsburgh,

PA 15206; 4600 Perry Highway, Pittsburgh, PA 15229; 1011 Lebanon Road West Mifflin, PA 15122; and 1000 Village Drive Bethel Park, PA 15241. Those sources operate boilers, miscellaneous hanging heaters, emergency generators, and surface coating operations;

WHEREAS, Port Authority East Liberty Garage's Operating Permit #0226 is subject to Article XXI §2102.04.a, which states:

It shall be a violation of this Article giving rise to the remedies set forth in Part I of this Article for any person to install, modify, replace, reconstruct, or reactivate any source or air pollution control equipment to which this Part applies unless: A. The Department has first issued an Installation Permit for such source or equipment; or B. Such action is solely a reactivation of a source with a current Operating Permit which is approved under §2103.13 of this Article; or C. Such source is exempt under subsection a.5 of this section;

WHEREAS, ACHD was notified in a letter dated November 2, 2020, of Port Authority's intention to replace the existing Natural Gas fired Emergency Generator (EG001) at its East Liberty Garage with two Diesel fueled Emergency Generators. ACHD sent a Determination Letter via email on December 4, 2020, notifying Port Authority that the installation would require an Installation Permit. The existing emergency generator (EG001) was removed, and the two new generators were installed in February of 2021. Port Authority did not notify ACHD of the removal of the existing Natural Gas fueled Emergency Generator. Port Authority did not submit an Installation Permit Application and applicable fee to ACHD prior to the installation of the new Diesel fueled Emergency Generators. The Installation Permit Application for the two new generators was received by ACHD on May 17, 2021;

WHEREAS, Port Authority Ross Garage's Operating Permit #0156 Emission Unit Level Permit Condition V.A.1.b states that VOC content of each as-applied coating in the Automotive primer-sealer process category must be equal to or less than 4.6 lbs/gallon. Port Authority reported 18 separate occurrences of applications of Omni MP-170 Epoxy Primer Sealer with as-applied

VOC content exceeding the 4.6 lbs/gallon standard during the October 1, 2020, through March 31, 2021, reporting period;

WHEREAS, Port Authority West Mifflin Garage's Operating Permit #0344 Emission Unit Level Permit Condition V.A.1.b states that VOC content of each as-applied coating in the Automotive primer-sealer process category must be equal to or less than 4.6 lbs/gallon. Port Authority reported 14 separate occurrences of applications of PPG Epoxy Primer DP 50LF with as-applied VOC content exceeding the 4.6 lbs/gallon standard during the October 1, 2020, through March 31, 2021, reporting period;

WHEREAS, Port Authority South Hills Village's Operating Permit #0345 Site Level Condition IV.15 requires compliance with all applicable provisions of Article XXI §2105.62 and §2105.63 in the event of removal, encasement, or encapsulation of Asbestos-Containing Material ("ACM") at a facility. Port Authority removed boilers B001-B002 without first obtaining a thorough pre-renovation asbestos survey;

WHEREAS, Port Authority South Hills Village's Operating Permit #0345 is subject to Article XXI §2102.04.a, which states:

It shall be a violation of this Article giving rise to the remedies set forth in Part I of this Article for any person to install, modify, replace, reconstruct, or reactivate any source or air pollution control equipment to which this Part applies unless: A. The Department has first issued an Installation Permit for such source or equipment; or B. Such action is solely a reactivation of a source with a current Operating Permit which is approved under §2103.13 of this Article; or C. Such source is exempt under subsection a.5 of this section;

WHEREAS, two boilers were removed from Port Authority South Hills Village facility and replaced with one boiler without any written notification or request for determination submitted to ACHD;

WHEREAS, ACHD issued Notice of Violation #220404 on April 27, 2022, notifying Port Authority of the issues listed above. ACHD and Port Authority entered into informal negotiations and are now entering into this Consent Order and Agreement to address identified issues.

WHEREAS, ACHD and Port Authority recognize that this Consent Agreement has been negotiated in good faith and that any actions undertaken by Port Authority in accordance with this Consent Agreement do not constitute an admission of fault or liability; and

WHEREAS, after a full and complete negotiation of all matters set forth in this Consent Agreement, and upon mutual exchange of covenants contained herein, the Parties agree that this Consent Agreement is in the best interest of the Parties and the public.

NOW, THEREFORE, without any final determination of fact or law, and intending to be legally bound hereby, the Parties hereto agree as follows:

I. JURISDICTION

1. Solely for the purposes of this Consent Agreement, Port Authority waives all objections and defenses that it may have to jurisdiction or venue. Port Authority shall not challenge ACHD's jurisdiction to enter into or to enforce this Agreement.

II. APPLICABILITY

2. The provisions of this Consent Agreement shall apply to, be binding upon, and inure to the benefit of ACHD and Port Authority and upon their respective officers, directors, agents, contractors, employees, servants, successors, and assigns.

3. The duties and obligations under this Consent Agreement shall not be modified, diminished, terminated, or otherwise altered by the transfer of any legal or equitable interest in

Port Authority or any part thereof. In the event that Port Authority proposes to sell or transfer any of its permitted facilities covered in this Consent Agreement after the effective date of this Consent Agreement or any part thereof, Port Authority shall provide written notice to ACHD of such purchaser or transferee at least thirty (30) days prior to the sale or transfer. Port Authority shall also provide a copy of this Consent Agreement to any person or entity Port Authority intends to make any such sale or transfer to at least thirty (30) days prior thereto.

4. The undersigned representative of Port Authority certifies that they are fully authorized to execute this Consent Agreement on behalf of Port Authority and to legally bind Port Authority to this Agreement.

III. GENERAL TERMS

5. This Consent Agreement addresses and is intended to resolve all outstanding issues between the Parties relating to Notice of Violation #220404.

6. The Parties do not authorize any other persons to use the findings in this Consent Agreement in any matter or proceeding.

7. Nothing herein is intended to limit the authority of ACHD with respect to violations that may have occurred prior to the date of this Consent Agreement, if any, that are not intended to be the subject of resolution hereunder, or to limit the authority of ACHD to seek enforcement of this Agreement in the event that Port Authority fails to comply with its terms and conditions.

IV. CONDITIONS

8. Port Authority is hereby assessed a civil penalty of TWO THOUSAND NINETY DOLLARS (\$2,090.00). Within ninety (90) days from the date of this Consent Agreement, 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.

V. FORCE MAJEURE

9. For purposes of this Consent Decree, “force majeure,” as applied to Port Authority or to any entity or person controlled by Port Authority, is defined as any event arising from circumstances or causes beyond the control of Port Authority or of any entity or person controlled by Port Authority, including but not limited to, its officers, directors, employees, agents, representatives, contractors, subcontractors, and consultants, that could not have been prevented by reasonable due diligence and that delays or may delay or prevent the performance of any condition under this Consent Agreement despite Port Authority’s diligent efforts to fulfill the condition. The requirement to exercise “diligent efforts to fulfill the condition” includes using diligent efforts to anticipate any potential force majeure event and diligent efforts to address the effects of any potential force majeure event (i) as it is occurring and (ii) after it has occurred, such that the delay or nonperformance is minimized to the greatest extent possible.

10. If any event occurs or has occurred that may delay or prevent the performance of any condition under this Consent Agreement, and if Port Authority is to have the right to claim such event constitutes force majeure, Port Authority shall:

- (a) Telephonically notify and inform ACHD of the occurrence of the event within forty-eight (48) hours after Port Authority first knew or, with the exercise of reasonable care, should have known, of the event;
- (b) Provide in writing to ACHD, within five (5) days after Port Authority first knew or, with the exercise of reasonable care, should have known, of the event, a statement which:
 - (1) Describes and explains the reasons for the delay or nonperformance;
 - (2) Describes and explains the reasons for the duration or anticipated duration of the delay or nonperformance;
 - (3) Identifies all measures taken or to be taken by Port Authority to prevent or minimize the delay or nonperformance;
 - (4) Includes a timetable and schedule pursuant to which such measures shall be implemented;
 - (5) Contains Port Authority's rationale for attributing such delay or nonperformance to a force majeure event if it intends to assert such a claim;
 - (6) States whether, in the opinion of Port Authority, such event may cause or contribute to an endangerment to public health, welfare, or the environment; and
 - (7) Includes available documentation which, to the best knowledge and belief of Port Authority, supports Port Authority's claim that the delay or nonperformance was attributable to a force majeure event.

11. Failure by Port Authority to comply with each of the notice requirements above shall constitute a waiver of Port Authority's right to invoke the Force Majeure provision as a basis for delay or nonperformance under this Consent Agreement.

VI. GENERAL PROVISIONS

12. In the event that Port Authority fails to comply with any provision of this Consent Agreement, ACHD may pursue any remedy available under Article XXI of the ACHD's Rules

and Regulations for a violation of an Order of the ACHD, including an action to enforce this Consent Agreement.

13. ACHD reserves the right to require additional measures to achieve compliance with this Consent Agreement. Port Authority reserves the right to challenge any action that the ACHD may take to require those measures.

14. Port Authority shall be liable for any violations of this Consent Agreement, including those caused by, contributed to, or allowed by its officers, agents, employees, or contractors.

15. All correspondence with ACHD concerning this Consent Agreement shall be addressed to:

Dean DeLuca
Program Manager
Air Quality Program
Allegheny County Health Department
301 39th Street, Building 7
Pittsburgh, PA 15201-1811

With a copy to:

Jason Willis, Solicitor
Allegheny County Health Department
Legal Section
301 39th Street, Building 7
Pittsburgh, PA 15201-1811

16. All correspondence with Port Authority concerning this Consent Agreement shall be addressed to:

Eric Bilsky P.E.
Director
Port Authority of Allegheny County
345 6th Avenue, 3rd Floor
Pittsburgh, PA 15222

17. Port Authority shall notify ACHD whenever there is a change in the contact person's name, title or address. Service of any notice or any legal process for any purpose under this Consent Agreement, including its enforcement, may be made by mailing an original or true and correct copy by first class mail to the above addresses.

18. The paragraphs of this Consent Agreement are severable, and should any part hereof be declared invalid or unenforceable, the remainder shall remain in full force and effect between the Parties.

19. This Consent Agreement shall constitute the entire integrated agreement of the parties. No prior or contemporaneous communications or prior drafts shall be relevant or admissible for the purposes of determining the meaning or intent of any provisions herein in any litigation or other proceeding.

20. The Parties shall bear their respective attorneys' fees, expenses, and other costs with regard to the prosecution or defense of this matter or any related matters arising prior to the execution of this Consent Agreement.

21. This Consent Agreement may be modified only by written agreement of the Parties hereto.

IN WITNESS WHEREOF, the Parties hereto have caused this Consent Agreement to be executed by their duly authorized representatives. The undersigned representatives of PORT AUTHORITY and ACHD certify under penalty of law, as provided by 18 Pa.C.S. § 4909, that they are authorized to execute this Consent Agreement on behalf a party; that PORT AUTHORITY consents to the entry of this Agreement as a final ORDER of ACHD; and that, except as otherwise provided herein, PORT AUTHORITY hereby knowingly waives its rights to appeal this Consent Agreement and to challenge its content or validity, which rights may be available under Article XI

of the ACHD Rules and Regulations for Hearings and Appeals, the Pennsylvania Local Agency Law, 2 Pa.C.S. § 105, or any other applicable provision of law. Signature by PORT AUTHORITY's attorney certifies only that this Consent Agreement has been signed after consulting with counsel.

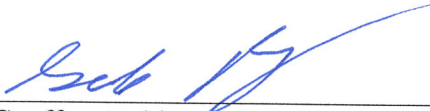
FOR PORT AUTHORITY OF ALLEGHENY COUNTY

Date: 08 31, 2022

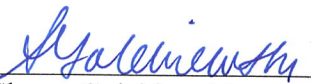

Eric Bilsky
Director

FOR THE ALLEGHENY COUNTY HEALTH DEPARTMENT

Date: August 16, 2022



Geoffrey Rabinowitz
Deputy Director Environmental Health



Sherry Golebiewski
ACHD Solicitor