

**ALLEGHENY COUNTY HEALTH DEPARTMENT
AIR QUALITY PROGRAM**

In the Matter of:

KCA Demolition Co., Inc.
316 Grant Avenue
Duquesne, PA 15110

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

1104 Barbara Street
Duquesne, PA 15110

MOTION TO DISMISS

NOW COMES, the Allegheny County Health Department (hereinafter “Department”), by and through its undersigned counsel, and files the following Motion to Dismiss and in support thereof avers as follows:

1. On November 6, 2017, the Department issued an Administrative Order against Appellant, KCA Demolition Co., Inc., for violations of Article XXI of the Allegheny County Health Department’s Rules and Regulations relating to the demolition of a building located at 1104 Barbara Street, Duquesne, Pennsylvania (hereinafter referred to as “Barbara Street Property”). (A copy of the November 6, 2017 Administrative Order is attached hereto as Ex. “A”).

2. The November 6, 2017 Order assessed a civil penalty against Appellant in the amount of \$5,000.00.

3. The Order was served on Appellant on December 8, 2017.

4. On December 18, 2017, counsel for Appellant filed a Notice of Appeal challenging the November 6, 2017 Order.

5. Article XXI, Section 2109.06.a, of the Allegheny County Health Department Rules and Regulations provides as follows:

2. In accordance with §§9.1. and 12.g. of the Air Pollution Control Act, when the Department proposes to assess a civil penalty, it shall inform the

person of the proposed amount of the penalty. The person charged with the penalty shall then have 30 days to pay the proposed penalty in full, or *if the person wishes to contest the amount of the penalty* or the fact of the violation to the extent not already established, the person shall forward the proposed amount of the penalty to the Department within the 30 day period for placement in an escrow account with the County treasurer or any Commonwealth bank or post an appeal bond to the Department within 30 days in the amount of the proposed penalty, provided that such bond is executed by a surety licensed to do business in the Commonwealth and is satisfactory to the Department

3. If, through administrative or final judicial review of the proposed penalty, it is determined that no violation occurred or that the amount of the penalty shall be reduced, the Department shall, within 30 days, in accordance with §§9.1. and 12.g. of the Air Pollution Control Act, remit the appropriate amount to the person with any interest accumulated by the escrow deposit. *Failure to forward the money or the appeal bond at the time of the appeal shall result in a waiver of all legal rights to contest the violation or the amount of the civil penalty unless the appellant alleged financial inability to prepay the penalty or to post the appeal bond.* If alleged, the Department shall conduct a hearing to consider the appellant's alleged inability to pay within 30 days of the date of the appeal. The Department may waive the requirement to prepay the civil penalty or to post an appeal bond if the appellant demonstrates and the Department finds that the appellant is financially unable to pay. The Department shall issue an order within 30 days of the date of the hearing to consider the appellant's alleged inability to pay.

Article XXI, § 2109.06.a (emphasis added).

6. In this matter, the Department assessed a civil penalty of \$5,000.00 in the November 6, 2017 Order.

7. At no time subsequent to the issuance of the civil penalty on November 6, 2017 has Appellant forwarded an appeal bond for the amount of the civil penalty or forwarded the amount of the civil penalty to the Department for placement in an escrow account. Nor has Appellant alleged financial inability to prepay the penalty or to post the appeal bond.

8. Because Appellant failed to forward the money or post an appeal bond within 30 days of the penalty assessment, Appellant has waived all legal rights to contest the violations or

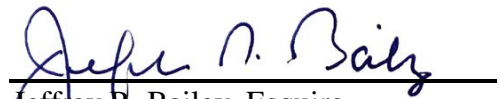
the amount of the civil penalty. Therefore, this tribunal is precluded, as a matter of law, from reaching the merits of its appeal.

9. Accordingly, this tribunal should dismiss Appellant's December 18, 2017 appeal.

CONCLUSION

For all of the aforementioned reasons, the Department respectfully requests that this tribunal dismiss with prejudice Appellant, KCA Demolition Co., Inc.'s, December 18, 2017 Notice of Appeal.

BY:



Jeffrey R. Bailey, Esquire
Pa. I.D. No. 203023
ACHD Assistant Solicitor

Michael A. Parker, Esq.
Pa. I.D. No. 90979
ACHD Solicitor

301 39th Street, Bldg. No. 7
Pittsburgh, PA 15201-1891
Tel.: 412-578-8124

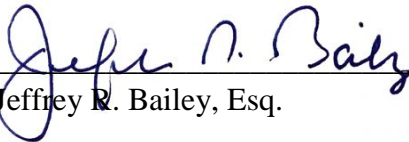
Attorneys for Appellee, Allegheny
County Health Department

Date: 1/23/2018

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion to Dismiss was served upon the following party by electronic mail on this 23rd day of January, 2018:

Christopher P. Furman, Esquire
Makel & Associates, LLC
98 E. Maiden Street
Washington, PA 15301
cpfurman@gmail.com
(Counsel for Appellant)



Jeffrey R. Bailey, Esq.

**ALLEGHENY COUNTY HEALTH DEPARTMENT
ADMINISTRATIVE ORDER**

In the Matter of:

KCA Demolition Co., Inc.
316 Grant Avenue
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AND NOW, this ____ day of January, 2018, it is hereby **ORDERED** that the Allegheny County Health Department’s Motion to Dismiss Appellant, KCA Demolition Co., Inc.’s, December 18, 2017 Notice of Appeal is **GRANTED** and Appellant’s Notice of Appeal is hereby **DISMISSED**, with prejudice, for the following reasons:

1. Appellant had 30 days from the assessment of the November 6, 2017 civil penalty of \$5,000 to either post a bond, forward the amount of the civil penalty to the Department, or assert an inability to pay the bond or prepay the penalty.
2. Appellant failed to either post the bond, forward the amount of the civil penalty to the Department, or assert an inability to pay the bond within these 30 days.
3. This tribunal therefore finds that Appellant’s failure to either post a bond, forward the amount of the civil penalty to the Department, or assert an inability to pay the bond within the 30 days “result[s] in a waiver of all legal rights to contest the violation or the amount of the civil penalty.” Article XXI, Section 2109.06(a)(3).

Max Slater
Administrative Hearing Officer

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ADMINISTRATIVE ORDER

NOW, this 6th day of November, 2017, the Allegheny County Health Department (hereinafter “ACHD”) issues this Administrative Order after it has found and determined the following:

FINDINGS

1. The Director of the ACHD has been delegated authority pursuant to the federal Clean Air Act, 42 U.S.C. §§ 7401-7671q (hereinafter “CAA”), and the Pennsylvania Air Pollution Control Act, 35 P.S. §§ 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 Chapters 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. With regard to regulations concerning asbestos abatement activity in Allegheny County, Article XXI incorporates the federal asbestos abatement regulations. Article XXI § 2105.62.b.

3. KCA Demolition Co., Inc. (hereinafter “KCA”), is a Pennsylvania corporation with a registered office address at 316 Grant Avenue, Duquesne, Pennsylvania 15110.

4. At all times relevant to this action, CSI Construction Co., Inc. (hereinafter “CSI”), was an asbestos abatement contractor licensed by the Allegheny County Health Department (License No.: ACAL-17-0428).

5. Upon information and belief, KCA contracted with the City of Duquesne to perform demolition work at a property located at 1104 Barbara Street, Duquesne, Pennsylvania 15110 (Property ID No.: 0305-M-00029) (hereinafter referred to as “Barbara Street Property”).

6. On March 28, 2017, an asbestos survey of the Barbara Street Property was conducted which identified 5,000 sq./ft. of asbestos containing plaster located throughout the structure.

7. On or about August 22, 2017, KCA contracted with CSI for the removal of asbestos containing material (ACM) at the Barbara Street Property.

8. On August 30, 2017, CSI submitted an Asbestos Abatement Permit Application to the ACHD for the abatement of ACM at the Barbara Street Property.

9. The Permit Application identified KCA as the demolition contractor.

10. The Asbestos Abatement Permit was issued by the ACHD on September 12, 2017 (Permit No.: PAA170490).

11. The Permit allowed for the structure to be demolished as ACM in place which required that the entire structure be treated as ACM. When a structure is demolished in this manner, the ACHD regulations require that the project have an asbestos abatement contractor on-site from the time the demolition begins and is to remain on-site until all of the demolition debris is removed from the site.

12. The Asbestos Abatement Permit for the Barbara Street Property includes the following requirements:

“An asbestos licensed supervisor to be at the site with a fire hose to maintain dust control and surveillance for any suspect asbestos that can be safely removed during all demolition activities. Personal pump with asbestos cartridge to be deliver to any approved lab. All materials to be disposed off [sic] as ACWM.”

13. On September 26, 2017, ACHD asbestos inspectors visited the site and observed that an employee of KCA was using an excavator to move asbestos containing building material around the site and was driving the machine over the demolition debris further crushing it and rendering it friable. During the inspection, an asbestos abatement contractor was not present on-site and KCA was not using water to keep the building material adequately wet to minimize dust. The ACHD inspectors did not see any evidence that water had been used at the site prior to their arrival.

14. The ACHD asbestos inspectors further observed that there were no asbestos warning signs at the jobsite or lined dumpsters for the disposal and removal of the asbestos containing building debris.

15. Additionally, KCA was observed segregating aluminum siding from the demolition debris. The Permit did not provide for any alternative procedures to allow for the removal and disposal of the aluminum siding in a manner different from the remaining building material.

16. Based on the above conduct and conditions, the ACHD has determined that KCA violated the following provisions of the Allegheny County Health Department's Rules and Regulations:

- (a) **Article XXI § 2101.11.a:** Failing to comply with or assisting in the violation of any requirement of Article XXI or any asbestos abatement permit. It is also a violation of Section 2101.11.a to fail to operate necessary control equipment or to take necessary precautions that may reasonably be anticipated to endanger the public health, safety, or welfare.
- (b) **Article XXI § 2105.60:** Failing to have a valid Asbestos Abatement Contractor License before removing ACM.
- (c) **Article XXI § 2105.61:** Failing to have proper accreditation before removing ACM.
- (d) **Article XXI § 2105.63.b.1:** Failing to post asbestos warning signs at all entrances to the work site.
- (e) **Article XXI § 2105.63.f:** Failing to adequately wet the ACM during removal and failing to remove the ACM in such a manner as to prevent the release of any fibers during removal and/or disposal.
- (f) **Article XXI § 2105.63.i:** Failing to properly containerize all ACM and transport and dispose of the ACM in an approved landfill.

ORDER

NOW THEREFORE, pursuant to the authority granted to the ACHD by Article XXI §§ 2109.03.a.1 and 2105.62.e and the Local Health Administration Law, 19 P.S. §12010, it is hereby **ORDERED** that:

17. For the violations set forth in paragraph 16, above, KCA Demolition Co., Inc., is hereby assessed a civil penalty of **FIVE THOUSAND DOLLARS AND NO CENTS** (\$5,000.00). KCA shall pay the civil penalty amount within thirty (30) days of receipt of this

Order. Payment shall be made by corporate 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.

18. The ACHD has determined the above penalty 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 KCA to minimize such violations and to prevent future violations; and KCA's compliance history.

19. Pursuant to Article XI, Allegheny County Rules and Regulations, Hearings and Appeals, you are notified that if you are aggrieved by this Order you have ten (10) days in which to file an appeal from the receipt of this Order. Such a Notice of Appeal shall be filed in the Office of the Director at 542 Fourth Avenue, Pittsburgh, PA 15219. In the absence of a timely appeal, the terms of this Order shall become final.

20. 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.

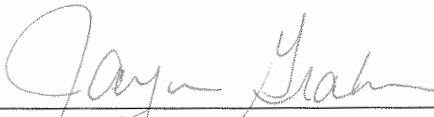
21. Failure to comply with this Order is a violation of Article XXI giving rise to the remedies provided by Article XXI § 2109.02 including civil penalties of up to \$25,000 per violation per day.

22. The provisions of this Order shall apply to, be binding upon, and inure to the benefit of the ACHD and KCA Demolition Co., Inc., and upon their respective officers, directors, agents, contractors, employees, servants, successors, and assigns.

DONE and **ENTERED** this 6th day of November, 2017, in Allegheny County, Pennsylvania.

For:

ALLEGHENY COUNTY HEALTH DEPARTMENT



Jayme Graham
Air Quality Program Manager

11/6/2017
Date