

**ALLEGHENY COUNTY HEALTH DEPARTMENT
AIR QUALITY PROGRAM**

In the Matter of' : Violations of Article XXI ("Air Pollution
: Control") at property:
KCA Demolition Co., Inc. :
316 Grant Avenue : 1104 Barbara Street
Duquesne, PA 15110 : Duquesne, PA 15110
: :
: **RESPONSE TO MOTION TO DISMISS**
: :
: Filed on behalf of, KCA Demolition Co., Inc.
: :
: Counsel of record for above party:
: :
: Christopher P. Furman, Esquire
: 98 East Maiden Street
: Washington, PA 15301
: PA ID # 89822
: 724-222-7639

RESPONSE TO MOTION TO DISMISS

AND NOW comes, Appellant, KCA Demolition Co., Inc. ("KCA"), by its attorney Christopher P. Furman, Esquire, and files the following Response to Motion to Dismiss:

1. It is admitted that Exhibit A is a true and correct copy of the Administrative Order.
2. It is admitted that the Administrative Order assessed a penalty against Appellant in the amount of \$5,000.00. To the extent it is implied it is denied that the assessed penalty is warranted because the Appellant did not commit the violations alleged. To the contrary, as explained in the Notice of Appeal Appellant had taken all required precautions to abate asbestos at the subject property and on the day of the inspection the asbestos was already removed and Appellant was not actually working on the subject property.
3. Admitted upon information and belief.
4. Admitted.
5. Paragraph 5 constitutes conclusions of law which require no response.

6. Admitted.

7. It is admitted that Appellant did not forward the amount of the assessed penalty or an appeal bond. Although Appellant did include in its Notice of Appeal that it was requesting a stay of the order, it is further admitted that Appellant did not allege financial inability as required by Article XXI, Section 2109.06.a.3. of the Allegheny County Health Department Rules and Regulations. By the Affidavit attached hereto, Appellant hereby states that it is financially unable to pay the penalty or obtain a bond because it is not currently doing any work nor does it have any receivables to collect. By way of further response, counsel for Appellant ensured to hand delivery a copy of the Notice of Appeal to the Office of the Director within the ten (10) day time to appeal. Responding further, KCA is a relative newcomer to the public demolition business and although KCA has been able to comply with all regulations in order to bid on jobs and conduct the work, it and its counsel are unfamiliar with all of the rules and regulations applicable to the appeal process. Responding further, during this time period, Appellant's counsel was pre-occupied with ongoing trial work and was further burdened by contracting the flu and immediate family members also contracting the flu. As a result of a confluence of conditions and circumstances, Appellant's counsel failed to follow up with obtaining and filing allegations that KCA was financially unable to meet the prepayment requirement.

8. Paragraph 8 constitutes conclusions of law which require no response. To the extent a response is deemed required, Appellant admits it did not prepay the assessed penalty but avers that said failure does not result in any prejudice and is a result of the circumstances described above and not a result of any intent to avoid compliance. Appellant believes it has a meritorious defense to the assessed penalty and to dismiss this Appeal would run counter to the American tradition of *juris prudencia* affording an accused his day in court and deciding cases on their merits. It is also the long standing tradition of the Allegheny County Court of Common Pleas to afford parties the ability to present their cases and decide matters on the merits where

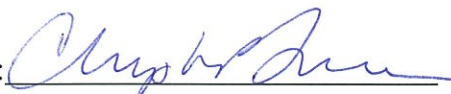
there is no prejudice. Permitting Appellant to proceed in this matter and contest the violations would not result in any prejudice. Rather, permitting Appellant to present the merits of its appeal would satisfy the traditions of this County and simply ensure that a true and just adjudication can be had, rather than imposing a harsh sentence on a small contractor. Imposing such a penalty on a technicality would have the result of removing a small but competitive contractor from the marketplace having the ultimate effect of increasing costs to the public by reducing competition for public demolition contracts.

9. Paragraph 9 constitutes conclusions of law which require no response. To the extent a response is deemed required, Appellant respectfully suggests that this tribunal accept the attached Affidavit of Appellant's Vice President and find that Appellant is financially unable to prepay the assessed penalty or obtain a bond, and accordingly deny the Allegheny County Health Department's Motion to Dismiss in favor of reaching a decision on the merits of Appellant's Appeal.

CONCLUSION

For all of the above stated reasons, Appellant KCA Demolition Co., Inc. respectfully requests that this tribunal deny the Department's Motion to Dismiss.

Respectfully Submitted,

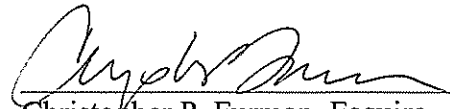
By: 

Date: February 6, 2018

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Response to Motion to Dismiss was served upon the following party by electronic mail on February 6, 2018:

Jeffrey R. Bailey, Esquire
ACHD Assistant Solicitor
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Christopher P. Furman, Esquire