

RECEIVED AUG 15 2018

August 15, 2018

Via Hand Delivery

Attn: Karen Hacker
Office of the Director
542 Fourth Avenue
Pittsburgh, PA 15219

**RE: Neville Chemical Company
Notice of Appeal of Administrative Order No. 180701**

Dear Director Hacker:

Pursuant to Article XI of the Rules and Regulations of the Allegheny County Health Department, Neville Chemical Company submits for filing the enclosed Notice of Appeal regarding the above-referenced order dated July 11, 2018. Included with the enclosures is a check in the amount of \$3,000.00, equal to the civil penalty assessed by the above-referenced order, to be held in escrow. If you have any questions or wish to discuss this matter further, please contact me at mgraham@babstcalland.com or (412) 773-8712.

Sincerely,



Meredith Odatto Graham, Esq.
Counsel for Neville Chemical Company

Enclosures

Cc: Max Slater, Esq. (via e-mail: max.slater@alleghenycounty.us)
Jeff Bailey, Esq. (via e-mail: jeff.bailey@alleghenycounty.us)
Jason Willis, Esq. (via e-mail: jason.willis@alleghenycounty.us)
Michael Winek, Esq. (via e-mail: mwinek@babstcalland.com)

BEFORE THE ALLEGHENY COUNTY HEALTH DEPARTMENT

**542 FOURTH AVENUE
PITTSBURGH, PA 15219**

NEVILLE CHEMICAL)	
COMPANY,)	
)	
Appellant,)	
)	
v.)	Appeal of Administrative Order
)	#180701
ALLEGHENY COUNTY HEALTH)	
DEPARTMENT,)	
)	
Appellee.)	

NOTICE OF APPEAL

Consistent with Sections 1103 and 1104 of Article XI of the Rules and Regulations of the Allegheny County Health Department (“ACHD”), Appellant Neville Chemical Company (“Neville”) appeals the ACHD’s Administrative Order received by Neville on July 16, 2018 (“Order”). A copy of the Order is attached to this Notice of Appeal as Exhibit A. This submission constitutes timely filing of a Notice of Appeal of an ACHD action, and properly specifies the manner in which Neville is aggrieved by the ACHD’s action, the nature of Neville’s direct interest in the action and the grounds for appeal.

A. Manner in which Neville is Aggrieved and Grounds for Appeal

1. Neville owns and operates a resin manufacturing facility located at 2800 Neville Road, Pittsburgh, PA 15225, with telephone number (412) 331-4200 (hereinafter “Facility”).
2. The ACHD issued the Order dated July 11, 2018, and it was received by Neville on July 16, 2018.

3. The Order alleges that Neville violated Section 2102.03.c of Article XXI of the ACHD's Rules and Regulations "by failing to meet the compliance limits stated in the applicable ACHD permit during the November 1, 2017 stack test," namely the "pounds/hour limits for [volatile organic compounds (VOCs)] found in OP #0060b, Condition V.I.1.b." Exhibit A, p. 1. According to Section 2102.03.c, it is a violation of Article XXI of the ACHD's Rules and Regulations "to fail to comply with any terms or conditions set forth in any permit issued pursuant to [Part B of Article XXI]."

4. Neville objects to the Order. For the following reasons, the ACHD has abused its discretion and acted unreasonably, arbitrarily, capriciously, contrary to fact and law and in a manner not supported by evidence:

- a. Neville determined through a subsequent investigation that the stack testing performed on the Resin Rework Tank process at the Facility on October 31 and November 1, 2017 provided questionable or unreliable results;
- b. Neville later demonstrated compliance with the pounds/hour limit for VOCs in OP #0060b, Condition V.I.1.b through additional testing. Results of this testing have been provided to the ACHD;
- c. The Order requires Neville to pay within 30 days of receiving the Order a civil penalty of \$3,000.00. See Exhibit A, p. 2. This penalty is inappropriate under the circumstances;
- d. The ACHD has not provided a detailed explanation for the basis of the penalty assessed by the Order;
- e. The Order is vague and insufficiently specific; and

- f. The ACHD did not provide an opportunity for Neville to discuss the matter before unilaterally issuing the Order.

B. Neville's Direct Interest in the Action

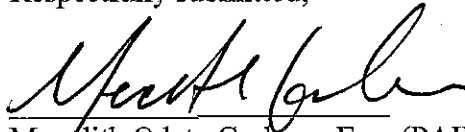
5. Neville is a named entity to which the Order was issued, and whose activities are restricted by the Order. As a result, Neville is negatively impacted by the Order and has a direct interest in the Order and this Appeal.

C. Conclusion

6. Neville has identified its objections to the Order through this Notice of Appeal but reserves the right to amend or supplement the factual and legal basis of its appeal as authorized by the ACHD's Rules and Regulations.

7. For the foregoing reasons, Neville respectfully requests that the Hearing Officer vacate the Order, or alternatively, vacate and remand the Order to the ACHD for consideration consistent with the Hearing Officer's opinion.

Respectfully submitted,



Meredith Odatto Graham, Esq. (PAID#311664)

Michael H. Winek, Esq. (PAID#69464)

Babst, Calland, Clements and Zomnir, P.C.

Two Gateway Center, 6th Floor

Pittsburgh, Pennsylvania 15222

Telephone: (412) 394-5400

Email: mgraham@babstcalland.com

mwinek@babstcalland.com

Counsel for Neville Chemical Company

Dated: August 15, 2018

EXHIBIT A

Administrative Order
July 11, 2018

COUNTY OF



ALLEGHENY

RICH FITZGERALD
COUNTY EXECUTIVE

July 11, 2018

CERTIFIED MAIL – 9489 0090 0027 6037 9173 93

Mr. Dan Kokoski
Environmental Manager
Neville Chemical Company
2800 Neville Road
Pittsburgh, PA 15225

RE: Administrative Order #180701 – Neville Chemical Company, 2800 Neville Road, Pittsburgh, PA 15225 – Article XXI, §2102.03 – Permits Generally; October 31, 2017.

Dear Mr. Kokoski,

Please see the attached Administrative Order.

Sincerely,

A handwritten signature in cursive script, appearing to read "Dean DeLuca".

Dean DeLuca
Enforcement Chief, Air Quality Program
Allegheny County Health Department

CC: Dan Morgan, ACHD Enforcement Engineer (via email)
File



KAREN HACKER, MD, MPH, DIRECTOR
ALLEGHENY COUNTY HEALTH DEPARTMENT
AIR QUALITY PROGRAM
301 39TH STREET • CLACK HEALTH CENTER • BUILDING 7
PITTSBURGH, PA 15201-1811
PHONE (412) 578-8103 • FAX (412) 578-8144
24-HR (412) 687-ACHD (2243) • WWW.ACHD.NET

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File: Manufacturing

Received: 7/19/18 JHF

**ALLEGHENY COUNTY HEALTH DEPARTMENT
AIR QUALITY PROGRAM**

In the Matter of:

Neville Chemical Company
2800 Neville Road
Pittsburgh, PA 15225

Violation No. 180701

Violations of Article XXI
("§2102.03 PERMITS
GENERALLY") at property:

Neville Chemical Company
2800 Neville Road
Pittsburgh, PA 15122

ADMINISTRATIVE ORDER

NOW, this 11th day of July 2018, the Allegheny County Health Department (hereinafter "ACHD" or the "Department") issues this Administrative Order after it has found and determined the following:

On October 31 and November 1, 2017, ACHD representatives were onsite during the Resin Rework Tank stack test at Neville Chemical Company. Shortly thereafter, a Neville Chemical Company representative notified the Department that the Resin Rework Tanks tested non-compliant on a pounds/hour basis with the permit volatile organic carbon (VOC) limits as detailed below:

<u>Permit limit</u>	<u>Tested Value</u>
3.78 pounds/hour	15.69 pounds/hour

Neville Chemical Company discontinued use of the Resin Rework Tank process except to conduct internal informal testing to ensure a repeatable process. On May 8 and 9, 2018, ACHD representatives were onsite for the retesting of the Resin Rework Tank process. A final report from the retest was submitted to the ACHD on June 6, 2018 and was subsequently reviewed. The retest results demonstrated compliance for the Resin Rework Tank process with permitted VOC limits. The three-run average emission rate was 3.37 pounds/hour.

The ACHD has determined that Neville Chemical Company is in violation of Article XXI, §2102.03.c, of the ACHD's Rules and Regulations by failing to meet the compliance limits stated in the applicable ACHD permit during the November 1, 2017 stack test. Specifically, Neville Chemical Company exceeded the pounds/hour limits for VOCs found in OP #0060b, Condition V.I.1.b. Article XXI, §2102.03.c, reads as follows:

§2102.03 Permits Generally

c. Conditions

It shall be a violation of this Article giving rise to the remedies provided by Part I of this Article for any person to fail to comply with any terms or conditions set forth in any permit issued pursuant to this Part.

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 Neville Chemical Company shall pay a civil penalty of **\$3,000.00**. Neville Chemical Company shall pay the civil penalty amount within thirty (30) days 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.

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.

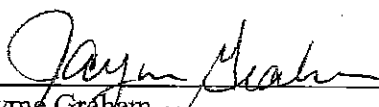
The ACHD has determined the above penalty in accordance with Article XXI § 2109.06.b, reflecting relevant factors including, but not limited to: the nature, severity and frequency of the alleged violations; the maximum amount of civil and criminal penalties authorized by law; the willfulness of such violations; the impact of such violations on the public and the environment; the actions taken by Neville Chemical Company to minimize such violations and to prevent future violations; and Neville Chemical Company compliance history.

Pursuant to Article XI, Allegheny County Health Department Rules and Regulations, Hearings and Appeals, you are notified that if you are aggrieved by this Order you have thirty (30) 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. 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, 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>.

Thank you for your anticipated prompt attention to this matter and future increased efforts to comply with all applicable regulations. Any questions concerning this Order should be directed to the ACHD's representatives, Nicholas Caito, at 412-578-7963 or e-mail nicholas.caito2@alleghenycounty.us.

DONE and **ENTERED** this 11th day of July 2018, in Allegheny County, Pennsylvania.



Jayme Graham
Air Quality Program Manager

Date

cc: Dean DeLuca, Enforcement Section Chief (via email)
Nicholas Caito, Air Quality Engineer (via email)
File

BEFORE THE ALLEGHENY COUNTY HEALTH DEPARTMENT

**542 FOURTH AVENUE
PITTSBURGH, PA 15219**

NEVILLE CHEMICAL)
COMPANY,)
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Appellant,)
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v.) Appeal of Administrative Order
) #180701
ALLEGHENY COUNTY HEALTH)
DEPARTMENT,)
)
Appellee.)

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of August, 2018, a true and correct copy of the foregoing Notice of Appeal was served via hand delivery and addressed as follows:

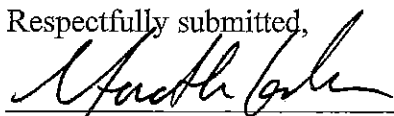
Karen Hacker
Office of the Director
Allegheny County Health Department
542 Fourth Avenue
Pittsburgh, PA 15219

The following individuals were served by electronic mail:

Max Slater, Esq.
Administrative Hearing Officer
Allegheny County Health Department
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max.slater@alleghenycounty.us

Jeffrey Bailey, Esq.
Jason Willis, Esq.
Assistant Solicitors
Allegheny County Health Department
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Pittsburgh, PA 15201
jeff.bailey@alleghenycounty.us
jason.willis@alleghenycounty.us

Respectfully submitted,



Meredith Odatto Graham, Esq.
Counsel for Neville Chemical Company