

October 29, 2021

Via Hand Delivery and Electronic Mail (max.slater@alleghenycounty.us)

Max Slater, Esquire
Administrative Hearing Officer
Allegheny County Health Department - Office of the Director
542 Fourth Avenue
Pittsburgh, PA 15219

**RE: Neville Chemical Company
Notice of Appeal of Enforcement Order No. 211001**

Dear Mr. Slater:

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 October 5, 2021. Included with the enclosures is a check in the amount of \$62,075, 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 mwinek@babstcalland.com or (412) 394-5400.

Sincerely,



Michael H. Winek, Esq.
Counsel for Neville Chemical Company

Enclosures

cc: Vijya Patel, Esquire (vijya.patel@alleghenycounty.us)



Notice of Appeal

This form is used to file an appeal of an order, notice, decision, determination, or ruling by the Allegheny County Health Department. Please complete this form (use additional pages as necessary). If more than one person or entity is filing this appeal, please attach a separate form for each additional appellant. **A copy of the order, notice, decision, determination, or ruling must be attached to the Notice of Appeal.**

Name Neville Chemical Company

Mailing Address 2800 Neville Rd

City Pittsburgh State PA Zip 15225 Email Please use attorney email

Phone (412) 331-4200 Fax (optional) _____

If you are represented by an attorney, please provide contact information for your attorney:

Name Michael H. Winek, Babst Calland Clements & Zomnir, PC

Mailing Address Two Gateway Center, Sixth Floor

City Pittsburgh State PA Zip 15222 Email mwinek@babstcalland.com

Phone (412) 394-5400 Fax (optional) (412) 586-1059

Describe your objections to the Department's actions and a statement describing the relief you want the Hearing Officer to grant. (*The objections may be factual or legal and must be specific. If you fail to state an objection here, you may be barred from raising it later in your appeal. Use additional pages if necessary.*)

See attached.

By filing this Notice of Appeal with the Allegheny County Health Department, I hereby certify that the information submitted is true and correct to the best of my information and belief.

Signature /s/ Michael H. Winek Date 10/29/2021

Appeals should be submitted in person or by mail to:
**Allegheny County Health Department
Attention: Hearing Officer
542 4th Avenue
Pittsburgh, PA 15219**

BEFORE THE ALLEGHENY COUNTY HEALTH DEPARTMENT

**542 FOURTH AVENUE
PITTSBURGH, PA 15219**

NEVILLE CHEMICAL)	
COMPANY,)	
)	
Appellant,)	
)	
v.)	Appeal of Enforcement Order
)	# 211001
ALLEGHENY COUNTY HEALTH)	
DEPARTMENT,)	
)	
Appellee.)	

NOTICE OF APPEAL

Pursuant to 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 Enforcement Order #211001 issued by the ACHD on October 5, 2021 (“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 (“Facility”), with telephone number (412) 331-4200.
2. The ACHD issued the Order and Neville received the Order on October 5, 2021.

3. The Order alleges that Neville committed six violations of Article XXI and Title V Operating Permit #0060d (“Permit”), following a breakdown event that occurred at the Facility in the morning of September 2, 2021.

4. The Order assesses a civil penalty of \$62,075 for these six alleged violations of Article XXI and the Permit.

5. Neville objects to and appeals the Order because it is unreasonable, arbitrary, capricious, and an abuse of discretion, contrary to fact and law, and not supported by facts, for various reasons including the following:

a. The Order assesses a civil penalty for an alleged violation of Section 2101.11 of Article XXI, which prohibits the operation of “any source of air contaminants in such manner that emissions from such source ... Exceed the amounts permitted by [Article XXI] or by any order or permit issued pursuant to this Article.” The Order’s assessment of a civil penalty for this alleged violation is unreasonable and an abuse of discretion because it constitutes a penalty that is duplicative of penalties assessed elsewhere in the Order for alleged violations of VOC and HAP emission limits and is not an independent and substantially distinguishable violation.

b. The Order assesses a civil penalty for an alleged violation of Section V.E.6 of the Permit, which requires Neville to “calibrate, maintain, and operate all instrumentation, process equipment, and control equipment according to manufacturer’s recommendations, good engineering control practices, and the applicable terms and conditions of [the Permit].” The Order’s assessment of a civil penalty for this alleged violation is unreasonable and an abuse of discretion because Neville operated its process equipment, including the bottom valve on Heat Polymerization Still #18, consistent with

manufacturer's recommendations and good engineering control practices. In addition, the Order's assessment of a civil penalty for this alleged violation is unreasonable and an abuse of discretion because it is duplicative of penalties assessed elsewhere for alleged violations of volatile organic compound (VOC) and hazardous air pollutant (HAP) emission limits and is not an independent and substantially distinguishable violation.

c. The Order assesses a civil penalty for an alleged violation of Section 2108.01.c of Article XXI, which, among other things, requires providing notifications to the ACHD within certain timeframes after the commencement of a breakdown. The Order's assessment of a civil penalty for this alleged violation is unreasonable and an abuse of discretion because it does not consider notifications that Neville made to the ACHD, is based on the erroneous conclusion that Neville's notification to the Department was 33 hours late, and fails to consider that Neville notified the ACHD promptly after confirming the existence of a breakdown condition at its Facility on September 2, 2021.

d. The Order assesses a civil penalty for an alleged violation of Section V.E.1.f of the Permit, which, among other things, imposes a 0.36 tons per year of HAP for each of the Facility's No. 2 Packaging Center's Resin Drain Kettles. The Order's assessment of civil penalty for this alleged violation is unreasonable, arbitrary and capricious, and an abuse of discretion because it departs from the ACHD's Policy & Procedure HPA #363 ("Civil Penalty Policy").

e. The Order's assessment of civil penalty includes an adjustment factor for Neville's "Degree of Cooperation", which the ACHD applied so as to increase the assessment's base penalty by 10%. The Order's application of the "Degree of Cooperation" adjustment factor is unreasonable and an abuse of discretion, because it

does not appropriately reflect the promptness of Neville's response to the September 2, 2021 breakdown at the Facility, the nature of Neville's communications to ACHD regarding this breakdown, and is otherwise duplicative of penalties assessed in the Order for alleged violation of Section 2108.01.c of Article XXI.

f. The Order's assessment of civil penalty is unreasonable, arbitrary and capricious, and an abuse of discretion because it fails to consider application of the "Accidental" adjustment factor for "Degree of Willfulness", as specified in the Civil Penalty Policy.

B. Neville's Direct Interest in this Appeal

6. Neville is a named entity to which the Order was issued, and who was assessed a civil penalty under 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

7. 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.

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

Respectfully submitted,

Dated: October 29, 2021

A handwritten signature in black ink that reads "Michael H. Winek". The signature is written in a cursive style with a horizontal line underneath the name.

Michael H. Winek, Esq. (PA ID# 69464)
Babst Calland Clements & Zomnir, PC
Two Gateway Center, 6th Floor
Pittsburgh, PA 15222
(412) 394-5400
mwinek@babstcalland.com

EXHIBIT A

Enforcement Order # 211001

October 5, 2021

**ALLEGHENY COUNTY HEALTH DEPARTMENT
AIR QUALITY PROGRAM**

In the Matter of:

Neville Chemical Company
2800 Neville Road
Neville Twp., PA 15225

Violation No. 211001

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

Neville Chemical Company
2800 Neville Road
Neville Twp. PA 15225

ENFORCEMENT ORDER

NOW, this 5th day of October, 2021, the Allegheny County Health Department (hereinafter “ACHD”) issues this Enforcement Order after it has found and determined the following:

1. The Director of the ACHD has been delegated authority pursuant to the federal Clean Air Act, 42 U.S.C. Sections 7401-7671q (hereinafter “CAA”), and the Pennsylvania Air Pollution Control Act, 35 P.S. Sections 4001-4014 (hereinafter “APCA”), and the ACHD is a local health agency organized under Local Health Administration Law, 19 P.S. §§ 12001-12029, whose powers and duties include the enforcement of laws relating to public health within Allegheny County, including 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. Neville Chemical Company operates a facility that manufactures synthetic hydrocarbon resins, plasticizers, and plasticizing oils located at 2800 Neville Road, Neville Township, Pennsylvania 15225.
3. On September 28, 2015, the ACHD issued the Title V Operating Permit 0060 (hereinafter “TVOP-0060”) to Neville Chemical Company.

4. On November 10, 2020, the ACHD issued amended Title V Operating Permit 0060d (hereinafter "TVOP-0060d") to Neville Chemical Company.

5. On September 2, 2021, between 3 AM and 5 AM, Allegheny County Emergency Service (hereinafter "ACES"), ACHD, and Ohio Township Police (hereinafter "OTP") were alerted to complaints regarding malodors in the vicinity of Neville Island.

6. At approximately 4:33 AM on September 2, 2021, ACES coordinated with OTP to begin an investigation into the malodors.

7. OTP responded to Neville Chemical Company and was informed that Neville Chemical Company was in the process of manufacturing a hydrocarbon resin. A Neville Chemical Company representative acknowledged a stronger than usual odor was occurring, and they were in the process of trying to correct the issue and stop the process as soon as possible.

8. After OTP contacted Neville Chemical Company, Richard Colella of ACES was put in contact with Mike Harding of Neville Chemical Company. Richard Colella reported that Mr. Harding stated the process had been shut down at approximately 4:30 AM on September 2, 2021.

9. Neville Chemical Company left a voicemail with ACHD at 7:05 AM on September 2, 2021 and followed up with an email at 7:46 AM to ACHD to provide an update on the malodors on Neville Island. In the email, Neville Chemical Company stated there was an issue with a molten resin kettle in the early morning that was controlled within an hour.

10. ACHD requested additional information about the molten resin kettle issue. At 10:38 AM on September 2, 2021, Neville Chemical Company stated it was continuing to investigate but provided some initial findings. Specifically, Neville Chemical Company

advised that the molten resin kettle incident occurred at 2-4 Resin Kettle containing molten LX® 1035 Resin. At approximately 2:17 AM, the kettle began to vaporize significantly. At approximately 3:50 AM, the release was under control. Neville Chemical Company provided no cause for the vaporization but indicated that it would continue to investigate why the kettle vaporized.

11. At approximately 9:00 AM on September 3, 2021, Neville Chemical Company submitted an initial breakdown report for the 2-4 Resin Kettle incident while continuing to investigate the issue. The preliminary breakdown report indicated a valving issue as the nature of the breakdown.

12. Condition IV.8 of TVOP-0060d and Article XXI, §2108.01.c require Neville Chemical Company to submit an initial breakdown report no later than sixty (60) minutes after the commencement of the breakdown. In particular, Article XXI, §2108.01.c provides as follows:

IV.8 Breakdowns (§2108.01.c)

- a. In the event that any air pollution control equipment, process equipment, or other source of air contaminants breaks down in such manner as to have a substantial likelihood of causing the emission of air contaminants in violation of this permit, or of causing the emission into the open air of potentially toxic or hazardous materials, the person responsible for such equipment or source shall immediately, but in no event later than sixty (60) minutes after the commencement of the breakdown, notify the Department of such breakdown and shall, as expeditiously as possible but in no event later than seven (7) days after the original notification, provide written notice to the Department.

13. The initial breakdown report submitted by Neville Chemical Company on September 3, 2021 was approximately thirty-three (33) hours late and in violation of Condition IV.8 of TVOP-0060d and Article XXI, §2108.01.c.

14. At approximately 4:00 PM on September 7, 2021, Neville Chemical Company provided further updates regarding the 2-4 Resin Kettle incident. After a review of operational data, Neville Chemical Company suspected an issue with a Heat Polymerization valve allowed volatile material to enter the 2-4 Resin Kettle causing a release of emissions. Neville Chemical Company stated it was continuing to investigate the incident prior to the issuance of the final breakdown report.

15. At approximately 3:39 PM on September 9, 2021, Neville Chemical Company submitted the final breakdown report. The report stated the breakdown began at 11:00 PM on September 1, 2021 and was resolved at 4:00 AM on September 2, 2021. The report stated a Heat Polymerization reactor valve allowed volatile material into the 2-4 Resin Kettle. Valves were closed to isolate the #2 Packaging Center and stop the release of emissions. It further suggested that the Heat Polymerization valve would be removed, internally evaluated, and sent out for third party testing and evaluation to determine the condition of the valve.

16. On September 28, 2021, Neville Chemical Company provided supplemental information to the final breakdown report. Neville Chemical Company clarified that the 2-4 Resin Kettle was the source of the emissions release. Neville further stated the direct cause of the release was a bottom valve on the Heat Polymerization Still #18 that leaked through allowing atypical raw material into the 2-4 Resin Kettle.

17. Condition V.E.6.b of TVOP-0060d requires Neville Chemical Company maintain and operate all process equipment according to manufacturer's recommendations, good engineering control practices, and the applicable terms and conditions of the permit. Condition V.E.6.b states as follows:

V.E.6 Work Practice Standards

b. The permittee shall calibrate, maintain, and operate all instrumentation, process equipment, and control equipment according to manufacturer's recommendations, good engineering control practices, and the applicable terms and conditions of this permit. [IP #0060-I007a, V.A.6; RACT Order #230, 1.1; §2105.03]

18. Operating a bottom valve on Heat Polymerization Still #18 in a manner such that it can be bypassed fails to meet the work practice standards and is therefore a violation of Condition V.E.6.b of TVOP-0060d.

19. The final breakdown report identified the emissions released during the breakdown as a hydrocarbon mixture. The breakdown resulted in a total of 24,800 pounds (12.4 tons) of Volatile Organic Compounds (VOCs) released and a total of 956 pounds (0.478 tons) of Hazardous Air Pollutants (HAPs) released.

20. Condition V.E.1.f of TVOP-0060d limits Neville Chemical Company's emissions from the #2 Packaging Center Resin Kettles as follows:

V.E.1 Restrictions

f. Emissions from the No. 2 Packaging Center shall not exceed the following at any time: [IP #0060-I007a, V.A.1.g; §2103.12.a.2.B]

Table V--1: No. 2 Packaging Center Emission Limitations

	Process	Short-term (lb/hr)¹	Long-term (tpy)²
Particulate Matter⁴	Crusher, Large & Small Bagging Stations, and Flaking (total emissions)	0.38	1.67
PM₁₀⁽⁴⁾	Crusher, Large & Small Bagging Stations, and Flaking (total emissions)	0.38	1.67
PM_{2.5}⁽⁴⁾	Crusher, Large & Small Bagging Stations, and Flaking (total emissions)	0.38	1.67
VOC	Resin Drain Kettles ³	0.51	15.56
	No. 2 Flaking Belt	1.86	8.14
HAP	Resin Drain Kettles ³	0.01	0.36
	No. 2 Flaking Belt	0.04	0.19

1. Based on a 3-hour average.
2. A year is defined as any 12 consecutive months.
3. Short-term emissions are per kettle (lb/hr per kettle). There are seven (7) total drain kettles.
4. All particulate matter emission limits are for filterable particulate.

21. On September 2, 2021, Neville Chemical Company emitted 24,800 pounds of VOCs over five hours (4,960 pounds per hour). Based on that, ACHD has determined Neville Chemical Company failed to meet the requirements of TVOP-0060d V.E.1.f regarding VOC emission limitations for the 2-4 Kettle by exceeding the short-term permit limit of 0.51 pounds per hour.

22. On September 2, 2021, Neville Chemical Company emitted 956 pounds (0.478 tons) of HAPs over five hours (19.2 pounds per hour). ACHD has also determined Neville Chemical Company failed to meet the requirements of TVOP-0060d V.E.1.f regarding HAP emission limitations for the 2-4 Kettle by exceeding the short-term permit limit of 0.01 pounds per hour and long-term permit limit of 0.36 tons per year.

23. The emission limitation violations of TVOP-0060d documented in the previous paragraphs coupled with the above-mentioned facts constitute a violation of Article XXI, §2101.11 which reads as follows:

§2101.11 Prohibition of Air Pollution

- a. It shall be a violation of this Article to fail to comply with, or to cause or assist in the violation of, any requirement of this Article, or any order or permit issued pursuant to authority granted by this Article. No person shall willfully, negligently, or through the failure to provide and operate necessary control equipment or to take necessary precautions, operate any source of air contaminants in such manner that emissions from such source:
 1. Exceed the amounts permitted by this Article or by any order or permit issued pursuant to this Article

ORDER

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:

24. Neville Chemical Company shall submit a corrective action plan to ensure foreign volatile material does not enter the Resin Kettles in the future no later than sixty (60) days of receipt of this order.

25. For the violations set forth in the preceding paragraphs, Neville Chemical Company is hereby assessed a civil penalty of **SIXTY-TWO THOUSAND SEVENTY-FIVE DOLLARS (\$62,075.00)**. The civil penalty is as follows:

A. Gravity Based Component

Violation	Gravity Based Penalty	Number of Violations	Total Gravity Penalty
Prohibition of Air Pollution (§2101.11)	\$9,000.00	1	\$9,000.00
Work Practices (TVOP-0060d V.E.6)	\$9,000.00	1	\$9,000.00
Failure to Submit Timely Breakdown Report (§2108.01.c)	\$2,750.00	1	\$2,750.00
Exceedance of #2 Packaging Kettles VOC Limits (TVOP-0060d V.E.1.f)	\$9,000.00	1	\$9,000.00
Exceedance of #2 Packaging Kettles HAP Short-term Limits (TVOP-0060d V.E.1.f)	\$9,000.00	1	\$9,000.00
Exceedance of #2 Packaging Kettles HAP Long-term Limits (TVOP-0060d V.E.1.f)	\$9,000.00	1	\$9,000.00
Gravity Component Subtotal			\$47,750.00

B. Adjustment Factors

Degree of Cooperation	
Failure to Determine Valve Failure in a Timely Manner.	\$4,775.00
Title V or Synthetic Minor	
Neville Chemical Company is a Title V source	\$9,550.00
TOTAL CIVIL PENALTY	\$62,075.00

26. Neville Chemical Company 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.

27. The ACHD has determined the above penalty is 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 economic benefit gained by failing to comply with the ACHD's regulations; the actions taken by Neville Chemical Company to minimize such violations and to prevent future violations. The gravity-based component of the civil penalty reflects the severity of the violation and the potential harm to the public or environment from the violation. The gravity based component may be adjusted for factors and circumstances unique to the violator. Pursuant to Article XI ("Hearings and Appeals") of the Allegheny County Health Department Rules and Regulations, you are notified that if you are aggrieved by this Order you have thirty (30) days from the date of issuance or receipt of this Order in which

to file an appeal. 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 ACHD so orders. In the absence of a timely appeal, the terms of this Order shall become final.

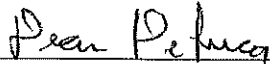
28. Please be aware that if you wish to appeal this Order, you are required within 30 days of receipt of this Order to either forward the penalty amount of the ACHD for placement in an escrow account or post an appeal bond to the ACHD in the amount of the penalty. Please review the specific requirements 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>.

29. The provisions of this Order shall apply to, be binding upon, and inure to the benefit of the ACHD and Neville Chemical Company and upon their respective officers, directors, agents, contractors, employees, servants, successors, and assigns.

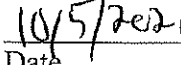
DONE and **ENTERED** this 5th day of October, 2021, in Allegheny County, Pennsylvania.

For:

ALLEGHENY COUNTY HEALTH DEPARTMENT



Dean Deluca
Air Quality Program Manager


Date

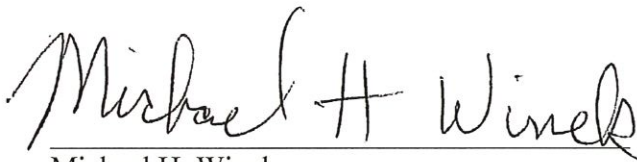
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing, as well as a check in the amount of \$62,075 for placement in escrow, was filed and served via hand delivery and electronic mail this 29th day of October, 2021 upon the following persons:

Max Slater, Esquire
Administrative Hearing Officer
Allegheny County Health Department - Office of the Director
542 Fourth Avenue
Pittsburgh, PA 15219
max.slater@alleghenycounty.us

The following individuals were served a true and correct copy of the foregoing by electronic mail this 29th day of October, 2021:

Vijya Patel, Esquire
Allegheny County Health Department
301 39th Street, Bldg. No. 7
Pittsburgh, PA 15201
vijya.patel@allegheny county.us



Michael H. Winek



Neville Chemical Company
2800 Neville Road, Pittsburgh, PA 15225-1496

Dollar Bank

304156

8-7438
2430

DATE	AMOUNT
10/26/21	\$ ***62,075.00

PAY EXACTLY Sixty Two Thousand Seventy Five Dollars and 00 Cents

PAY TO THE ORDER OF: ALLEGHENY COUNTY CLEAN AIR FUND
301 39TH STREET
PITTSBURGH, PA 15201-1891

Richard C. Radtke MP
Denise J. Butler MP
AUTHORIZED SIGNATURE

MICRO-PRINT SIGNATURE LINE - MAGNIFY TO VIEW

⑈ 304156⑈ ⑆ 243074385⑆ 2676876706⑈