

**BEFORE THE HEARING OFFICER
ALLEGHENY COUNTY HEALTH DEPARTMENT**

BOB’S DINER ENTERPRISES, INC.,	:	Docket no.: ACHD-22-047
	:	
Appellant,	:	In re: Bob’s Diner
	:	
v.	:	
	:	
ALLEGHENY COUNTY	:	
HEALTH DEPARTMENT,	:	
	:	
Appellee.	:	
	:	

ALLEGHENY COUNTY HEALTH DEPARTMENT’S POST-HEARING BRIEF

I. INTRODUCTION AND BACKGROUND

The Allegheny County Health Department (“ACHD” or “Department”), by and through its undersigned counsel, files this post-hearing brief supporting its position in the appeal of Bob’s Diner Enterprises, Inc. (“Bob’s Diner”), a Pennsylvania corporation.¹ Bob’s Diner operates several locations, though the only establishment relevant to these proceedings is situated at 1817 McKees Rocks Road, Kennedy Township, PA 15136 (the “subject facility”). At issue is a \$2,000.00 penalty levied by the ACHD Food Program against Appellant pursuant to Article III of its Rules and Regulations, Food Safety (“Article III”).

II. PROPOSED FINDINGS OF FACT

By or before October 17, 2021, Appellants had begun construction of the subject facility, next door to a previous Bob’s Diner location. Exhibit A; Evidentiary Hearing Transcript dated 2/4/2023 (“H.T.”) at 45:7-46:25. Appellant admits that as of that time, no permit application or plan review had been submitted to ACHD. H.T. 42:10-14. On February 11, 2022, ACHD Food

¹ Appellant’s Notice of Appeal includes the name Dane Marshall, rather than the name of the entity. However, since the enforcement action was initiated against Bob’s Diner Enterprises Inc., the caption and party name should be adjusted accordingly.

Safety Program Operations Manager, Aaron Burden, had a conversation with Dane Marshall, the owner of Bob's Diner, regarding her plans to re-open its diner at the adjoining space next door within the strip mall. Exhibit B; H.T. at 10:2-11:25. During this conversation, the Department informed Ms. Marshall of the requirement under Section 334 of Article III to submit plans prior to the move. Exhibit B; H.T. at 11:2-7. In a subsequent email, ACHD reiterated that Bob's Diner's current permit was not transferable and could not be moved or used at a different location. *Id.* On February 17, 2022, Bob's Diner submitted plans to the ACHD food safety offices, including a list of equipment and menu. Exhibit B. On March 10, ACHD was notified *via* its complaint system that at least one individual had allegedly become sick after eating at the subject facility and had been subsequently informed by staff that the facility was operating without a permit. Exhibit C.

In response, on March 24, 2022, ACHD Food Program inspectors completed a food safety assessment which noted several violations of numerous sections of Article III, and outlined the findings that: "(1) the facility was found to be open and operating without an ACHD Health Permit, [and] (2) the facility submitted plans to Food Safety but they had not been approved by ACHD." Exhibit D. Those two conditions violated Sections 330 and 334 of Article III respectively. The assessment prescribed that a valid health permit be posted in a conspicuous location once it was obtained from the Food Safety Program. *Id.* Furthermore, it recorded that Appellants were told that approval of construction materials and specifications had to be obtained prior to construction. *Id.*

After several months of administrative review and investigation of the other violations outlined in the assessment, ACHD issued a penalty assessment letter on August 1, 2022, outlining the violations that had not been adequately cured. In the letter, ACHD notified Appellant that it

was being fined \$2,000 for violation of Sections 330 and 334 of Article III.² Exhibit E. The \$2,000 figure was predicated upon a penalty calculation outlined in an ACHD penalty matrix. Exhibit F. Appellant submitted a Notice of Appeal of the penalty assessment on October 19, 2022, claiming that Bob's Diner had already submitted plans prior to commencing construction.

III. DISCUSSION

Article III specifies the ACHD Food Safety Program's practices related to food facility plan review, permit issuance, permit suspension, facility inspections, and the issuance of penalties. Art. III § 300, *as amended* 3/20/17. Former Section 330.1.A. stated, "It shall be unlawful for any person to operate a food facility in the County of Allegheny without first obtaining a valid health permit from the Director." Art. III § 330.1.A, *as amended* 3/20/17. Food safety permits are non-transferable. Art. III § 330.1.B. The Department interprets this regulation as meaning that permits are non-transferable between individuals, as well as between facilities owned by a single entity. H.T. at 11:2-7. Reviewing courts must give an agency's interpretation of its own regulation considerable weight and deference, considering such interpretation as "controlling unless the interpretation is plainly erroneous, inconsistent with the regulation or statute, or unreasonable." *Rubino v. Pennsylvania Gaming Control Bd.* 1 A.3d 976, (Pa. Commw. Ct. 2010) (citing *Bayada Nurses, Inc. v. Department of Labor and Industry*, 958 A.2d 1050 (Pa. Commw. Ct. 2008); *Portalatin v. Department of Corrections*, 979 A.2d 944 (Pa. Commw. Ct. 2009)).

Accordingly, such deference must be afforded to the Department's interpretation of the language prohibiting transfer within former Section 330.1.B as applying to transfer of permits between facilities owned by a single entity. Given that food safety permits are not transferable,

² Article III has since been amended. For purposes, of this brief, ACHD will cite to the version of effective at the time which had been previously amended on March 20, 2017.

Appellant was not permitted to take the permit for its existing food facility and apply it to the new facility. As such, it must be found liable for violation of Section 330.

Former Section 334 of Article III specifies the procedures for review of food facility construction plans. Art. III § 334. Section 334.1 states, “Whenever a food facility *is to be* constructed, remodeled or altered extensively, or whenever an existing structure is being converted to a food facility, plans and specifications must be submitted to the Food Protection Program for approval *prior to construction.*” Thus, it is a violation of Article III to commence construction, including remodeling, of a food facility without first submitting plans and specifications to the ACHD Food Safety Program for approval.

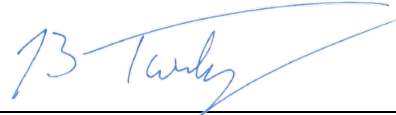
The construction of the subject facility, which Appellant attempts to classify as mere renovations (i.e., the kind of re-modeling that still triggers the requirements of Section 334), was underway as of October 2021. H.T. at 45:7-46:25. Appellant did not submit plans for review to ACHD until February 2022. H.T. at 42:10-14. Appellant has tried to claim that it was unaware of the Department’s plan review requirements at the time construction commenced. H.T. at 7:10-14. However, it is axiomatic in law that ignorance of the law is no defense from liability. *First Nat. Bank v. Rockefeller*, 5 A.2d 205, 206 (Pa. 1939); *Norris v. Crowe*, 55 A. 1125, 1129 (Pa. 1903). During the Evidentiary Hearing, Ms. Marshall recognized as much. H.T. at 7:10-14. As such, Appellant should not be shielded from liability for violating Section 334 simply because they claim that they were unaware of the requirements specified therein.

IV. CONCLUSION

ACHD has properly assessed a penalty of \$2,000.00 against Appellant for their failure to comply with the permitting and plan review requirements of Article III. Appellant has failed to raise a meritorious defense. Therefore, this tribunal is bound to affirm the penalty based on the evidence presented at hearing.

Dated: April 6, 2023

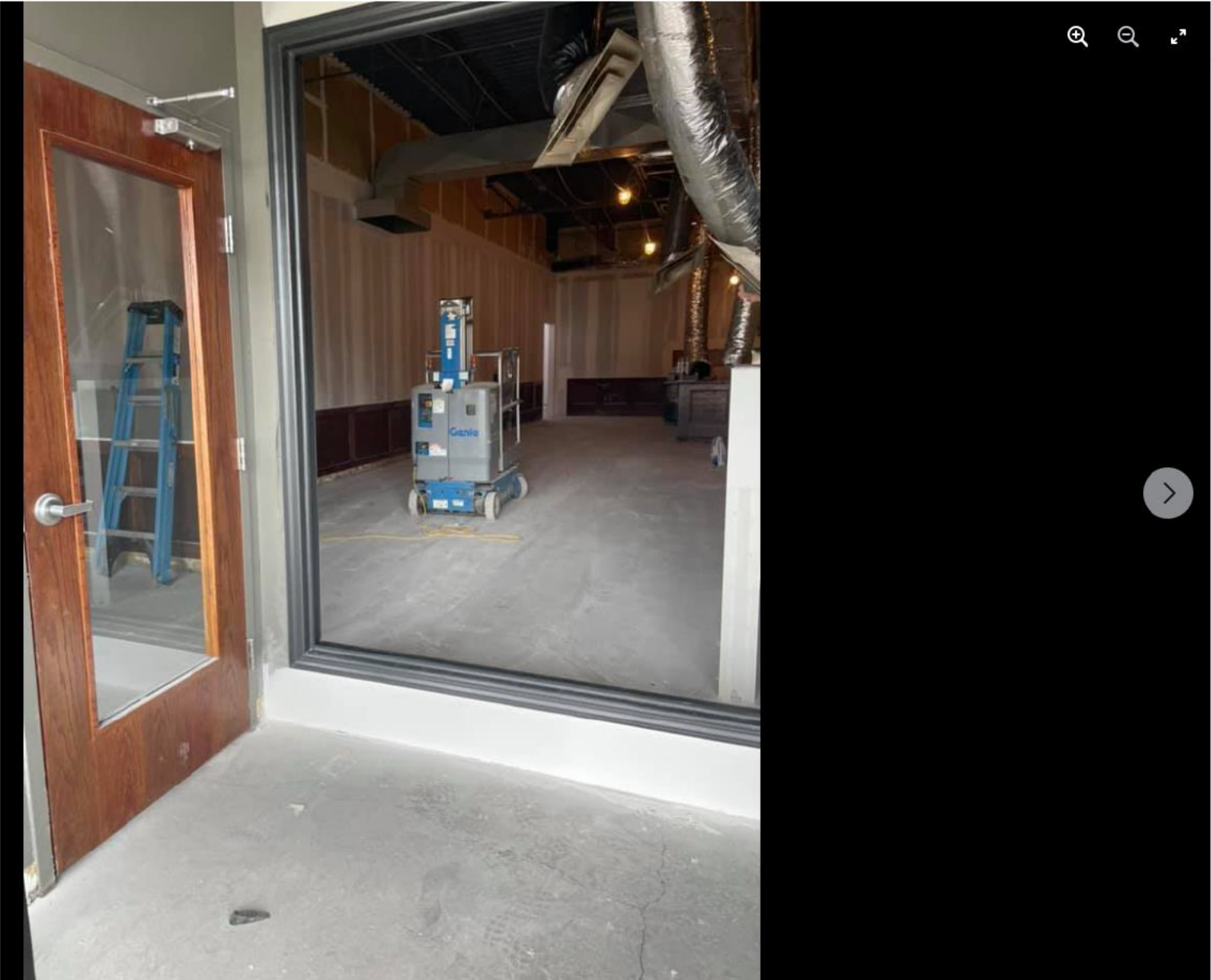
Respectfully Submitted,



Brendan Turley, Esq.
Pa. Id. No. 326538
Assistant Solicitor
Allegheny County Health Department
301 39th Street, Building #7
Pittsburgh, PA 15201-1811
Email: Brendan.turley@alleghenycounty.us
Telephone: (412) 578-8398

Exhibit A

Bob's Diner (Kennedy Township)
17 October 2021, Facebook Posts
Retrieved from Facebook on 10 February 2023
<https://www.facebook.com/bobsdinerkennedytownship/photos>



Facebook post interface showing the photo and engagement options.

This photo is from a post. View

Bob's Diner (Kennedy Township)
October 17, 2021 · 🌐

3

Like Comment Share

Write a comment... 🗨️ 😊 📷 🧠

Bob's Diner (Kennedy Township)

17 October 2021, Facebook Posts

Retrieved from Facebook on 10 February 2023

<https://www.facebook.com/bobsdinerkennedytownship/photos>



Facebook post interface showing the photo and interaction options.

This photo is from a post. View

Bob's Diner (Kennedy Township)
October 17, 2021 · 🌐

👍 2

👍 Like 💬 Comment ➦ Share

Write a comment... 🗨️ 😊 📷 🌐

Bob's Diner (Kennedy Township)

17 October 2021, Facebook Posts

Retrieved from Facebook on 10 February 2023

<https://www.facebook.com/bobsdinerkennedytownship/photos>








This photo is from a post. View

 **Bob's Diner (Kennedy Township)**
October 17, 2021 · 

 2

 Like  Comment  Share

 Write a comment...    

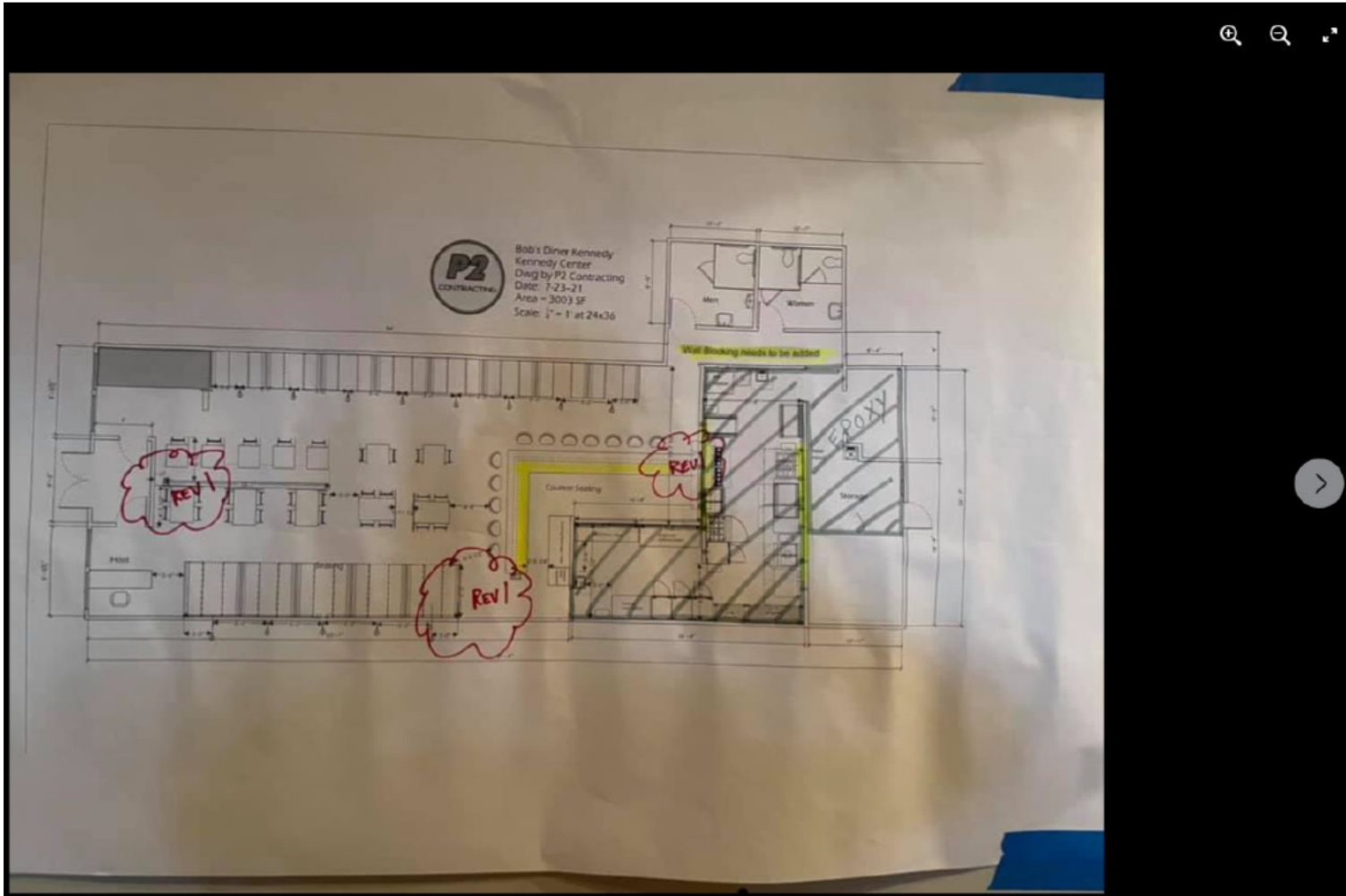


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This photo is from a post. View

Bob's Diner (Kennedy Township)
October 17, 2021 · 🌐

👍❤️ 10

👍 Like 💬 Comment ➦ Share

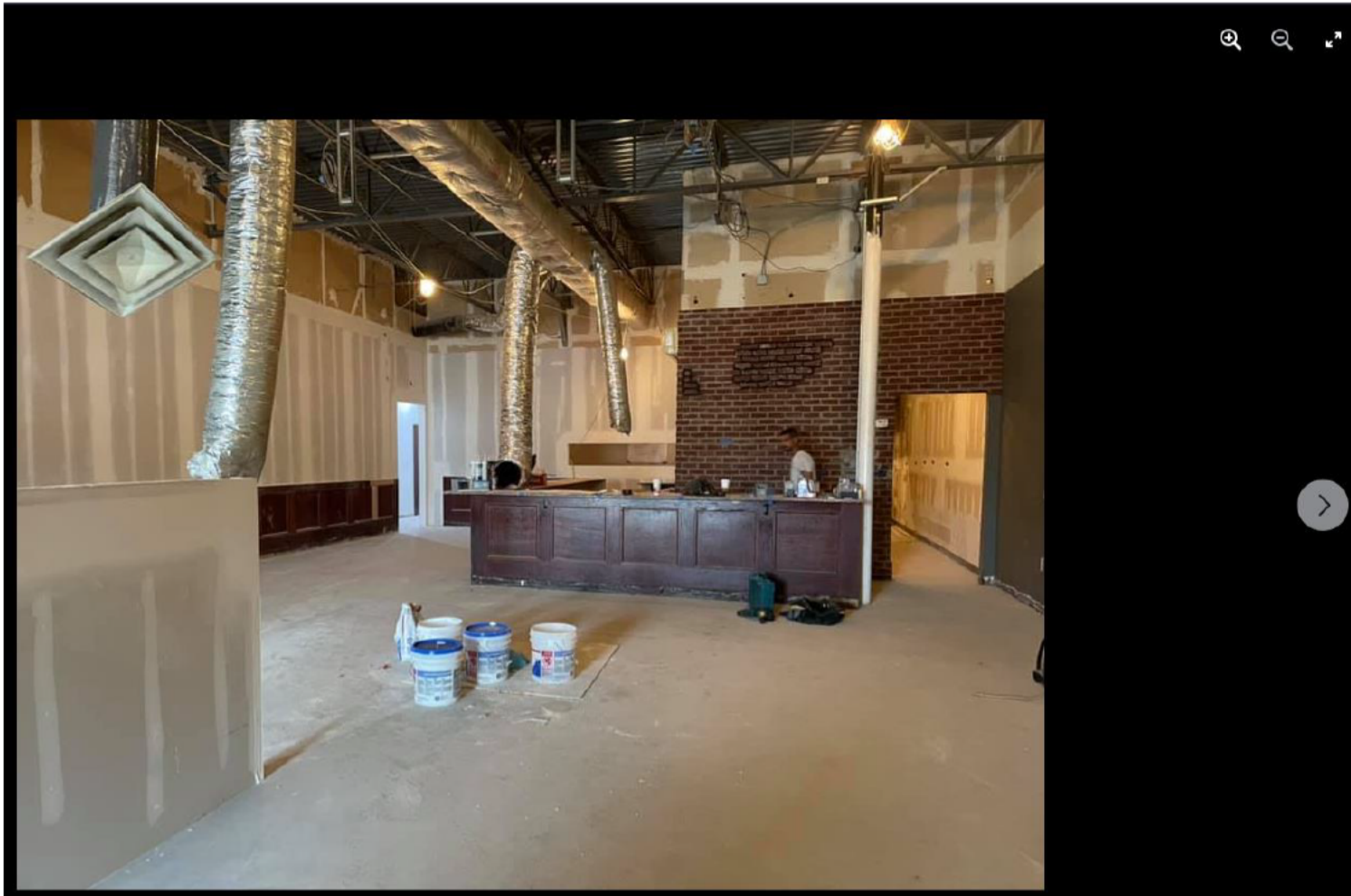
Write a comment... 🗨️ 😊 📷 🌐

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This photo is from a post. View

Bob's Diner (Kennedy Township)
October 17, 2021 · 🌐

2

Like Comment Share

Write a comment... 🗨️ 😊 📷 📄

Plan Review, Facility moving to a new location

Burden, Aaron <Aaron.Burden@AlleghenyCounty.US>

Fri 2/11/2022 11:59 AM

To: dfrey28@comcast.net <dfrey28@comcast.net>

Cc: Glidden, Robert <Robert.Glidden@AlleghenyCounty.US>

Client ID: 200909020003 Client Name: Bob's Diner - Kennedy
Address: 1815 Mckees Rocks Road, Mc Kees Rocks, PA 15136

Dane Marshall,

In response to our phone conversation regarding moving your food facility business from the location listed above to a location directly adjacent (1817 Mckees Rocks Road), I have included a link to our Plan Review information.

Your current permit is not transferable and can not be moved or used in a different location. The space that you intend to use as your new food facility was previously a food facility (Angelia's Grille, 1817 Mckees Rocks Road) and was placed out-of-business on 04/05/2021. The Food Safety Program requires complete new facility plans for food facilities that have been out-of-business for more than 6 months before a new permit can be issued.

<https://www.alleghenycounty.us/Health-Department/Programs/Food-Safety/Open-or-Renovate-a-Food-Facility.aspx>

Open or Renovate a Food Facility | Health Department | Allegheny County

Login. Live. Human Services and Care. Human Services; Kane Community Living Centers; Human Services and Care

www.alleghenycounty.us



Aaron D.L. Burden MSES, REHS/RS
(he, his, him)
Supervisor, Food Safety
2121 Noblestown Road, Suite 210
Pittsburgh PA 15205
O: (412) 578-7982
C: (412) 540-1563

Proposed changes to Allegheny County food safety regulations Proposed (redlined) Article III

LEGAL DISCLAIMER

Confidentiality Notice: This e-mail message, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure, forwarding, or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message. Any questions should be directed to Allegheny County Help Desk at 412-350-HELP (412-350-4357) or e-mail HelpDesk@AlleghenyCounty.US

All ACHD health inspections are public records which can be found at, <http://webapps.achd.net/Restaurant/> .

Annual permit fees can be paid online at <https://eapps.county.allegheny.pa.us/BillPay/> (not for temporary or seasonal permits)

Fw: Bob's diner Plan Review Inspection

Burden, Aaron <Aaron.Burden@AlleghenyCounty.US>

Wed 3/23/2022 8:36 AM

To: Russo, Janet <Janet.Russo@AlleghenyCounty.US>

From: Burden, Aaron <Aaron.Burden@AlleghenyCounty.US>

Sent: Thursday, March 17, 2022 11:49 AM

To: Russo, Janet <Janet.Russo@AlleghenyCounty.US>

Cc: Lindgren, Eric <Eric.Lindgren@AlleghenyCounty.US>; Weber, Louis J. <Louis.Weber@AlleghenyCounty.US>; Lauria, Dennis <Dennis.Lauria@AlleghenyCounty.US>; Glidden, Robert <Robert.Glidden@AlleghenyCounty.US>; Mator, Amanda <Amanda.Mator@AlleghenyCounty.US>

Subject: Re: Bob's diner Plan Review Inspection

Janet,

The GOV-QA complaint H304879-031022, regarding a suspected illness, must be investigated.

Since the facility is still in the plan review process they must be cited for "being open and operating without a valid health permit", and "failure to submit plans to the Food Safety Program prior to constructing/remodeling a food facility". Also, a civil penalty will be issued for those administrative violations above and any High and Medium-Risk violations cited during the inspection, in accordance with the 11-17-2017, 'Guide for Enforcement Actions in the Food Safety Program'.

There plan review process will end. The plan received a partial review the day it was submitted, but full compliance was not reviewed, therefore the plan review fee will be processed and not included in the civil penalty.

Review plans prior to inspection and create a new client ID. The review is not intended to determine compliance, but to provide awareness prior to the inspection. Copies of all inspection paperwork (File Record, E-28, Inspection Report) must be placed in the plan review packet and provided to Bob, originals will be filed with the clerks to create a new facility file.

From: Glidden, Robert <Robert.Glidden@AlleghenyCounty.US>

Sent: Tuesday, March 8, 2022 8:59 AM

To: Russo, Janet <Janet.Russo@AlleghenyCounty.US>; Lauria, Dennis <Dennis.Lauria@AlleghenyCounty.US>; Burden, Aaron <Aaron.Burden@AlleghenyCounty.US>

Cc: Lindgren, Eric <Eric.Lindgren@AlleghenyCounty.US>; Weber, Louis J. <Louis.Weber@AlleghenyCounty.US>

Subject: RE: Bob's diner Plan Review Inspection

Thanks for forwarding this message - I've also called and left a voicemail for that person to call me directly. For the record, facility representatives contacted our office on 2/11/22 and spoke with Aaron Burden. He provided them with a link to plan review webpage and we received a plan on 2/16/22.

Table1

ID	Plan#	Date Rec	Component	Review Start	Full Plan Date	Review Complete	Supervisor	Facility Name	Street Address	City	State	Zip Code	Municipality	Fee	Date Paid	Client #	Check #	Receipt #	Bill Criteria
8469	22-093	2/16/2022					Russo	Bob's Diner (relocation)	1817 McKees Rocks Road	McKees Rocks	PA	15136	Kennedy	\$191.50	2/17/2022	9597	ck #1839		96 seats

Facility had a final plumbing inspection on 2/24/22 so it can be assumed that the plumber had received the plumbing permit before approval of the food safety plan. The plumbing permit had the address of the storefront that Bob's Diner had been moving out of rather than into and I contacted the Plumbing Program to correct that error https://appsrv.alleghenycounty.us/reports/rwservlet?plumb_rep_insp&P_PLAN_NUM=12829_2021_26&P_INSP_ID=108929

There are currently 50+ plans ahead of Bob's Diner in the queue including a plan that they submitted for Bob's Diner commissary. The only thing that we can offer to them is for a review of the relocated restaurant in the place of the commissary plan (assuming that they had actually submitted THAT plan in advance of construction.)



Robert E. Glidden

Environmental Health Administrator

Food Safety Program

2121 Noblestown Road, Suite 210

Pittsburgh PA 15205

412.578.8037

fax: 412.578.8190

From: Russo, Janet <Janet.Russo@AlleghenyCounty.US>

Sent: Tuesday, March 8, 2022 8:37 AM

To: Glidden, Robert <Robert.Glidden@AlleghenyCounty.US>
Subject: FW: Bob's diner Plan Review Inspection



Janet Russo
Environmental Health Supervisor
Food Safety Program
2121 Noblestown Road
Pittsburgh PA 15205
412.578.7919

From: Burden, Aaron <Aaron.Burden@AlleghenyCounty.US>
Sent: Friday, February 11, 2022 11:59 AM
To: dfrey28@comcast.net
Cc: Glidden, Robert <Robert.Glidden@AlleghenyCounty.US>
Subject: Plan Review, Facility moving to a new location

Client ID: 200909020003 Client Name: Bob's Diner - Kennedy
Address: 1815 McKees Rocks Road, Mc Kees Rocks, PA 15136

Dane Marshall,

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<https://www.alleghenycounty.us/Health-Department/Programs/Food-Safety/Open-or-Renovate-a-Food-Facility.aspx>

[Open or Renovate a Food Facility | Health Department | Allegheny County](#)

Login: Live Human Services and Care Human Services; Kane Community Living Centers; Human Services and Care
www.alleghenycounty.us



Aaron D.L. Burden MSES, REHS/RS
(he, his, him)
Supervisor, Food Safety
2121 Noblestown Road, Suite 210
Pittsburgh PA 15205
O: (412) 578-7982
C: (412) 540-1563

Bob's Diner Plan review

Dane Marshall <dfrey28@comcast.net>

Thu 2/17/2022 10:03 PM

To: Burden, Aaron <Aaron.Burden@AlleghenyCounty.US>

 2 attachments (958 KB)

EjNfW7XB_Bobs+Diner+Equipment+Information+Equipment+List.zip; Bob's Diner Menu.pdf;

Warning! This email was sent from an external source. Please be sure you recognize the sender and use caution when clicking on links and/or opening attachments.

Mr. Burden,

Thanks again for your time today, here is the list of equipment you ask for along with our menu, which I neglected to include. Working on the plumbing inspection report.

Dane' Marshall
Owner
Bob's Diner Enterprises Inc.
eatatbobsdiner.com

Food Safety Complaint Form (H304878-031022)

Request Location

Address 1: 1817 mckees rocks rd

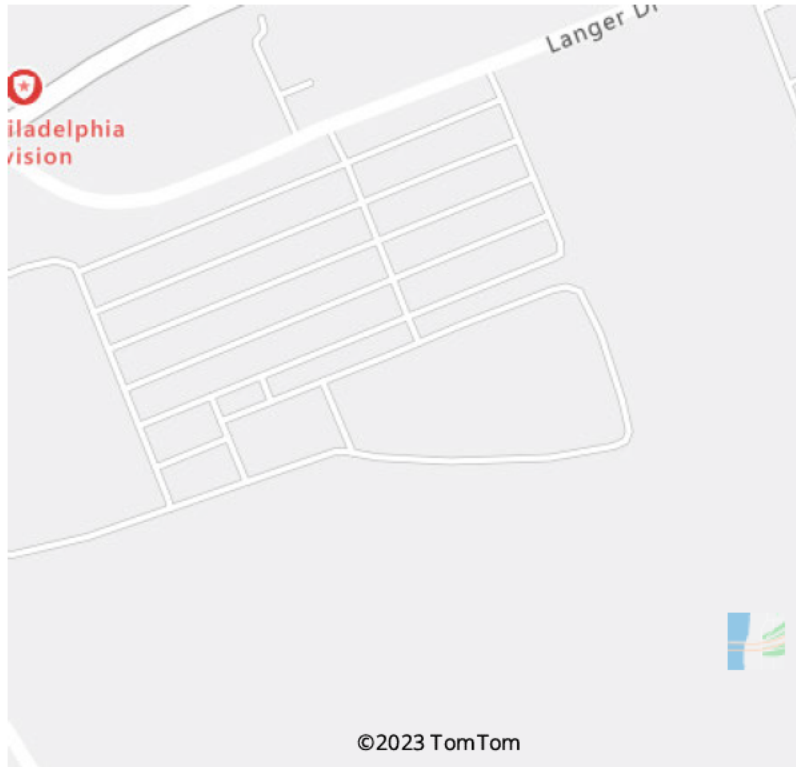
Address 2:

City: Pittsburgh

State/Province: PA

Zip/Postal Code: 15205

Map:



Map

Food Safety Complaint Form Details

What is the name of the Restaurant/Facility?: Bob's diner

Restaurant Client ID: 202203240003

Restaurant/Facility Municipality: Kennedy

Food Safety Complaint Type: Major Facility Issue or Condition

Describe the condition: Other

If Other, please describe: We fell ill after eating here. When we called to notify them we found out they're operating without a health department permit.

When did the emergency occur?: 3/9/2022

What time did the emergency occur?: 4:00 pm ex. 2:00 PM

Currently Occurring?: Yes

What are the impacted areas of the food facility?: Other|

If Other, please describe:

Did you notify an employee of the facility?: Yes

If Yes, what did the employee do?:

Describe the facility's response: The girl apologized that we didn't feel well and then let it slip that they're operating without a health dept inspection

Is the facility open for business?: Yes

Notes

Note	Created	Modified
Facility inspected and permitted 3/25/22 Unable to investigate alleged food borne illness no information available.	3/30/2022 10:57:00 AM by Janet Russo	3/30/2022 10:57:00 AM by Janet Russo

Message History

Date

On 3/30/2022 10:57:57 AM, System Generated Message:
 Message sent to: **Anonymous User Anonymous User**
Subject: Request Completed :: H304878-031022
Body:



Dear Anonymous User Anonymous User,

This request has been marked as completed.

Food Safety Complaint Form / H304878-031022


Status: Completed
Create Date: 3/10/2022 11:34:14 PM
Request Details:

Access the Allegheny County Request Center to View the Request

**Please note: If you do not believe that this issue has been addressed, you may reply to this email or log into the system and reopen the request to send a message to our team.*

If you have an issue unrelated to this completed request, please open another service request [here](#).

If you have never used this system or cannot remember your password you may request a temporary password [here](#)
 Request Temporary Password



On 3/10/2022 11:34:17 PM, Anonymous User Anonymous User wrote:
 Request Created on Public Portal

Request Details

Reference No: H304878-031022
Create Date: 3/10/2022 11:34 PM
Update Date: 12/8/2022 9:58 PM
Completed/Closed: Yes
Close Date: 3/30/2022 10:57 AM

Status: Closed
Priority: Medium
Assigned Dept: Health Department - Food Safety
Assigned Staff: Janet Russo

Customer Name: Anonymous User Anonymous User
Email Address: None
Phone:
Group: (Not Specified)

Source: Web

Food Safety Complaint Form (H304879-031022)

Request Location

Address 1: 1817 mkkees rocks rd

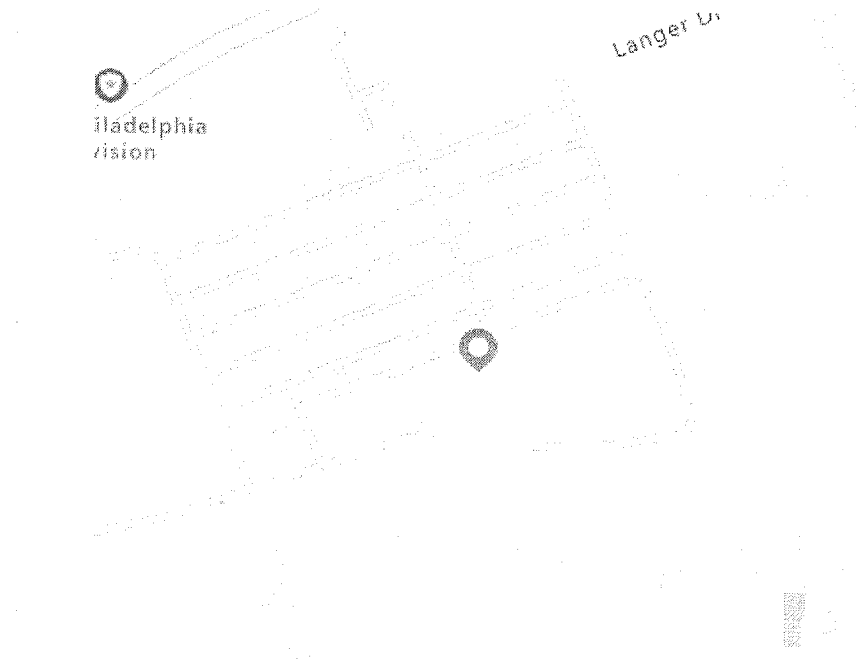
Address 2:

City: Pittsburgh

State/Province: PA

Zip/Postal Code: 15205

Map:



Map

Food Safety Complaint Form Details

What is the name of the Restaurant/Facility?: Bobs diner

Restaurant Client ID:

Restaurant/Facility Municipality: Kennedy I/mkkees rocks

Food Safety Complaint Type: Major Facility Issue or Condition

Describe the condition: Other

If Other, please describe: We fell ill after eating here. When we called to notify them we found out they're operating without a health department permit.

When did the emergency occur?: 3/9/2022

What time did the emergency occur?: 4:00 pm ex. 2:00 PM

Currently Occurring?: Yes

What are the impacted areas of the food facility?: Other |

If Other, please describe:

Did you notify an employee of the facility?: Yes

If Yes, what did the employee do?:

Describe the facility's response: The girl apologized that we didn't feel well and then let it slip that they're operating without a health dept inspection

Is the facility open for business?: Yes

Notes

Note	Created	Modified
Unable to complete food investigation no information given anonymous	3/22/2022 12:57:00 PM by Janet Russo	3/22/2022 12:57:00 PM by Janet Russo

Message History

Date
On 3/10/2022 11:34:44 PM, Anonymous User Anonymous User wrote: Request Created on Public Portal

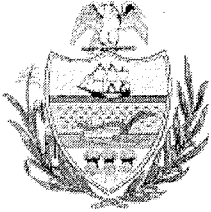
Request Details

Reference No: H304879-031022
Create Date: 3/10/2022 11:34 PM
Update Date: 3/22/2022 12:57 PM
Completed/Closed: No
Required Completion Date: 3/25/2022

Status: Not Started
Priority: Medium
Assigned Dept: Health Department - Food Safety
Assigned Staff: Janet Russo

Customer Name: Anonymous User Anonymous User
Email Address: None
Phone:
Group: (Not Specified)

Source: Web



ALLEGHENY COUNTY HEALTH DEPARTMENT

FOOD SAFETY PROGRAM
 2121 NOBLESTOWN RD, SUITE # 210,
 PITTSBURGH, PA 15205
 PHONE: 412-578-8044 FAX: 412-578-8190

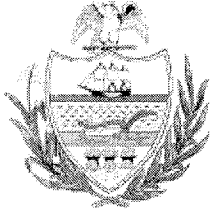
**FOOD SAFETY ASSESSMENT
 REPORT**

Client ID: 202203240003 **Client Name:** Bob's Diner - Kennedy
Address: 1817 McKees Rocks Road **Inspection Date:** 03/24/2022
City: Mc Kees Rocks **State:** PA **Zip:** 15136 **Purpose:** Initial, New Fa
Municipality: Kennedy **Inspector:** Schlaich, Elliot **Permit Exp. Date:** 03/31/2023
Category Code: 212-Chain Restaurant without Liquor **Priority Code:** H
Re- Inspection: Yes - Inspector **Re- Inspection Date:** 04/27/2022

Food Safety Assessment Categories	◆	Assessment Status				Violation Risk		
		S	NO	NA	V	High	Med.	Low
1 Food Source/Condition		x						
2 Cooking Temperatures #		x						
3 Consumer Advisory					x			x
4 Reheating Temperatures #			x					
5 Cooling Food #					x	x		x
6 Hot Holding Temperatures #		x						
7 Cold Holding Temperatures #					x	x		
8 Facilities to Maintain Temperature					x		x	x
9 Date Marking of Food		x						
10 Probe-Type Thermometers		x						
11 Cross-Contamination Prevention #		x						
12 Employee Health #		x						
13 Employee Personal Hygiene #		x						
14 Cleaning and Sanitization #					x		x	
15 Water Supply		x						
16 Waste Water Disposal		x						
17 Plumbing		x						
18 Handwashing Facilities		x						
19 Pest Management #		x						
20 Toxic Items		x						
21 Certified Food Protection Manager		x						
22 Demonstration of Knowledge		x						
23 Contamination Prevention - Food, Utensils and Equipment		x						
24 Fabrication, Design, Installation and Maintenance		x						
25 Toilet Room		x						
	0	19	1	0	5	2	2	3

General Sanitation	◆	Assessment Status				Violation Risk		
		S	NO	NA	V	High	Med.	Low
26 Garbage and Refuse		x						
27 Floors		x						
28 Walls and ceilings					x			x
29 Lighting		x						
30 Ventilation		x						
31 Dressing rooms and Locker rooms		x						
32 General Premises		x						
33 Administrative					x			
	0	6	0	0	2	0	0	1
# U.S. Centers for Disease Control and Prevention "high risk" for foodborne illness and establishment of priority of inspection.	0	25	1	0	7			

◆ - Diamond Exceptional S - Satisfactory NO - Not Observed NA - Not Applicable V- Violation



ALLEGHENY COUNTY HEALTH DEPARTMENT

FOOD SAFETY PROGRAM

2121 NOBLESTOWN RD, SUITE # 210,
PITTSBURGH, PA 15205

PHONE: 412-578-8044 FAX: 412-578-8190

FOOD SAFETY ASSESSMENT REPORT

INSPECTION DETAILS

Inspector Name: Schlaich , Elliot

Balance Amount: \$0.00

Placarding: Inspected & Permitted

Contact: Marshall Dane

Start Time: 01:30:00 PM **End Time:** 03:30:00 PM

Phone: (412) 771-7400

Violation: 3 Consumer Advisory

Comments: *LOW RISK*

Consumer advisory lacks a disclosure. Facility must link specific menu items that can be ordered raw or undercooked to the consumer advisory. (Asterisk specific menu items)

Food Code Section(s): 304

Corrective Action: Inform consumers or DISCLOSE that raw or undercooked animal products are offered for service.

Violation: 5 Cooling Food

Comments: *HIGH RISK***

- Large plastic pan of boiled potatoes found cooling in the walk in cooler at 68F. Manager said food was cooked "a few hours ago" Food was removed and spread out on smaller pans for proper cooler.

- Diced boiled potatoes found in the walk in cooler at 47F in a covered metal container. Condensate was present on the inside of the lid.

- Pancake batter found at 80F inside of a covered plastic container. Food was placed in cooler not long prior to the inspection.

-Facility is not maintaining cooling charts.

Food Code Section(s): 304

Corrective Action: Cool food from 135° F to 70° F or below within 2 hours and from 70° F to 41° F in an additional 4 hours, total cooling time not to exceed 6 hours.

Corrective Action: Cool cooked foods in uncovered metal containers 4 inches or less in depth or in pieces smaller than 4 pounds.

Corrective Action: Monitor cooling temperatures of prepared foods, record temperatures on charts, and retain charts for 30 days.

Violation: 7 Cold Holding Temperatures

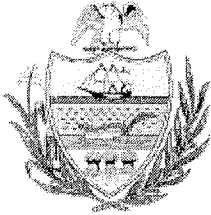
Comments: *HIGH RISK***

Raw ground beef and egg batter found sitting out of temperature control next to kitchen 1 door prep cooler at 44F-47F. Food should not be kept out of refrigeration.

- Food items on the top left side of the kitchen 3 door prep cooler was found holding at 44F - 46F. Food included ham, tomatoes and eggs. (Cooler was installed right next to an open flame stove. Separate equipment to help maintain temperature.)

Food Code Section(s): 303

Corrective Action: Food must be held at 41° F or below



ALLEGHENY COUNTY HEALTH DEPARTMENT

FOOD SAFETY PROGRAM

2121 NOBLESTOWN RD, SUITE # 210,

PITTSBURGH, PA 15205

PHONE: 412-578-8044 FAX: 412-578-8190

FOOD SAFETY ASSESSMENT REPORT

Violation:

8 Facilities to Maintain Temperature

Comments:

*MEDIUM RISK**

-Facility lacks the adequate number of refrigeration units to accommodate the menu size. Walk in cooler is crowded which contributes to cooling violations. Facility must limit the menu size immediately and minimize cooling until additional, approved refrigeration units are installed.

LOW RISK

- 1 Pepsi merchandizing cooler is being used to store open TCS food items.

- Home style microwave is being used in the facility.

Food Code Section(s): 303 ; 309

Corrective Action:

Provide enough conveniently located, approved, properly operating refrigeration units to assure the maintenance and cooling of foods at required temperatures.

Violation:

14 Cleaning and Sanitization

Comments:

*MEDIUM RISK**

3 bowl sink was set up incorrectly - facility had the sink set up rinse, wash, sanitize.

Food Code Section(s): 312

Corrective Action:

Clean and sanitize food-contact surfaces of equipment and utensils after each use and following any interruption of operations, during which time, contamination may have occurred utilizing the following procedure:

1. Wash- hot soapy water.
2. Rinse-clear water.
3. Sanitize-approved sanitizer and water.
4. Air-dry.

Violation:

28 Walls and ceilings

Comments:

LOW RISK

- Wall next to waffle irons are not finished.

- Hole found in wall near ice machine where conduit line is running into the wall. Seal hole.

Food Code Section(s): 321

Corrective Action:

Repair or replace

Violation:

33 Administrative

Comments:

- Facility was found open and operating with out an ACHD Health Permit.

- Facility submitted plans to food safety but plans were not approved by ACHD

-Permit was issued during the inspection

Food Code Section(s): 330 ; 334

Corrective Action: Health permit not posted. Post valid health permit in location conspicuous to the public

Corrective Action: Obtain a valid Allegheny County Health Department permit from the Food Safety Program.

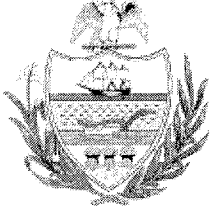
Corrective Action: Approval of construction plans and specifications must be obtained prior to construction.

Other Assesment observations and comments:

Exceptional Observations:

General Comments:

Facility has receive ACHD plumbing inspection on 2/24/22 for 1815 Mckeesrocks rd. Owner requested that the address be changed to 1817.



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PITTSBURGH, PA 15205

PHONE: 412-578-8044 FAX: 412-578-8190

FOOD SAFETY ASSESSMENT
REPORT

Permit issued during inspection with ACHD supervisor Janet Russo.

Additional refrigeration units must be installed and approved with in 60 days.

06/17/2022 - Item 33 updated to include section 334.

COUNTY OF



ALLEGHENY

RICH FITZGERALD
COUNTY EXECUTIVE

August 01, 2022

Bob's Diner Enterprises Inc.
c/o Dane Marshall
1817 McKees Rocks Road
McKees Rocks, PA 15136

Re: **Civil Penalty #166**
Client #202203240003
Bob's Diner – Kennedy
1817 McKees Rocks Road
- Kennedy

Dear Dane Marshall:

You are hereby notified that you violated Article III, "Food Safety", of the Allegheny County Health Department Rules and Regulations. Said violations were as follows:

Date(s): March 24, 2022**Section 330: Open and operating without a valid food permit.****Date(s): March 24, 2022****Section 334: Failure to submit plans and specifications for approval prior to construction of a food facility.**

As a result of the above violation(s), on behalf of the Director of the Allegheny County Health Department, it is hereby ordered that a civil penalty is being levied against you in the amount of **\$2,000.00** for the violation of said sections. In order to resolve these violations without burden of further litigation, said amount of **\$2,000.00** should be made payable to the "Food Safety Fund" and forwarded to the attention of Amanda Mator, Allegheny County Health Department, Food Safety Program, 2121 Noblestown Road, Suite 210, Pittsburgh PA 15205 no later than thirty (30) days after issuance of this notice. Failure to comply will result in further action including closure of your food facility.

If you need to further discuss the violations, payment schedule or settlement, please contact the Food Safety Program at (412)578-8044.

Pursuant to Article XI, entitled "Hearings and Appeals", you are hereby notified that you have thirty (30) days in which to file an appeal from the date of this notice. The appeal shall be filed in the office of the Director, 542 Fourth Avenue, Pittsburgh, PA 15219. In the event that an appeal is not filed within thirty (30) days from the date of this order, the within action shall become final.

If you have any questions regarding this matter, please do not hesitate to contact the undersigned.

Sincerely,

Amanda Mator
Program Manager
Food Safety Program



DEBRA BOGEN, MD, FAAP, FABM, DIRECTOR
ALLEGHENY COUNTY HEALTH DEPARTMENT

FOOD SAFETY PROGRAM

2121 NOBLESTOWN ROAD • SUITE 210 • PITTSBURGH, PA 15205

PHONE: 412.578.8044 • FAX: 412.578.8190

WWW.ALLEGHENYCOUNTY.US/HEALTHDEPARTMENT



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ALLEGHENY COUNTY HEALTH DEPARTMENT

**PENALTY ASSESSMENT
CASE SUMMARY SHEET AND CALCULATION FORM**

Food Safety Program	<input type="checkbox"/>	Consent Civil Penalty Agreement/ Settlement Offer
	<input checked="" type="checkbox"/>	Civil Penalty Assessment
	<input type="checkbox"/>	Consent Order & Agreement

FOOD FACILITY DATA		Client number: 202203240003
Facility Name & Address/Muni:	Bob's Diner, 1817 McKees Rocks Road, McKees Rocks PA 15136/Kennedy	Phone: 412 771 7400
Owner of record:	Bob's Diner Enterprises Inc	Phone:
Owner's Address:	Same as facility	
Agent:	Dane Marshall	Phone: 412 491 6987
Agent's Address:	Same as facility	

CASE RECORD							
Date Case Opened:	3/24/2022	Planned Program	<input checked="" type="checkbox"/>	Existing Case		Complaint	Referral from: Plumbing
Regulation(s):	Article III			Date of violation:	3/24/2022	<input type="checkbox"/> Multiple	

Description of Violations					Risk:	Description:	Date/purpose	Date/purpose	Date/purpose	Date/purpose
Sect(s)	ADM	H	M	L						
334	X					Plans not approved prior to construction.	3/24/2022, NF, complaint			
330	X					Open and operating without a food permit	3/24/2022, NF, complaint			

Additional Notes: Plan #22-093JR -- Diner relocated to a space next door to former location (1815 McKees Rocks Road) but did not submit plan until after the operation in the new location (1817 McKees Rocks Road) had begun. Review of plan occurred during pre-operational inspection provided by Janet Russo. Complaints received

DISPOSITION

Approvals:	<input checked="" type="checkbox"/>	Yes	<input type="checkbox"/>	No	Initiator:	Janet Russo	Date:	4/26/2022
	<input type="checkbox"/>	Yes	<input type="checkbox"/>	No	Program Manager:	Amanda Mator	Date:	6/17/2022
	<input type="checkbox"/>	Yes	<input type="checkbox"/>	No	Deputy Director:		Date:	
Recommended Maximum Penalty:								\$2000.00

**ALLEGHENY COUNTY HEALTH DEPARTMENT
FOOD SAFETY PROGRAM
Penalty Assessment Calculation Form**

FACILITY CLIENT NUMBER:	202203240003	FACILITY NAME:	Bob's Diner - Kennedy
REGULATION OR STATUTE UNDER WHICH PENALTY IS BEING ASSESSED:	Article III		

PENALTY CALCULATION

GROUP:		1		2		X	3		4
WILLFULNESS:		Accidental		Negligent		X	Reckless		Deliberate
A Violation Class	B No. Violations	C Maximum Penalty per Violation				D Total Maximum Penalty (BxC)			
1. Imminent Danger									
2. High Risk									
3. Moderate Risk									
4. Administrative	2	800.00				1600.00			
5. Low Risk									
6. SUBTOTAL (lines 1-5)						1600.00			
7. Additional dates	Notes:			No. days			(7Cx6D)50%		
8. Willfulness Penalty	Reckless – due to a complaint being received about ill customer & owners should be aware of review process and permit requirements					400.00			
9. Projected Cost Savings	Basis:								
TOTAL CALCULATED PENALTY (lines 6 + 7 + 8 + 9)						2000.00			

Guidelines for Civil Penalty Assessment Determination				
Food Facility	Group 1	Group 2	Group 3	Group 4
	Minimum service Low risk	Limited service Medium risk	Full service	High Risk
Imminent Threat	\$250.00	\$400.00	\$800.00	\$1250.00
High Risk	\$187.50	\$300.00	\$600.00	\$937.50
Moderate Risk	\$125.00	\$200.00	\$400.00	\$625.00
Low Risk	\$62.50	\$100.00	\$200.00	\$312.50
Administrative	\$62.50 – \$250.00	\$100.00 - \$400.00	\$200.00 - \$800.00	\$312.50 - \$1250.00
Culpability of Responsible Party				
Negligent	\$62.50	\$100.00	\$200.00	\$312.50
Reckless	\$125.00	\$200.00	\$400.00	\$625.00
Deliberate	\$250.00	\$400.00	\$800.00	\$1250.00

Penalties for violations that continue to occur from the same incident shall be assessed at one-half the applicable penalty, minus the culpability, for each day up to a maximum of \$2500, per violation.

Food Facility Group designation description:

High Risk Wholesale food processors, major retail markets/ warehouse clubs, wholesale shellfish, highly susceptible populations in residential facilities where food is prepared, including but not limited to categories such as: 121, 152, 172, 304, 308, 313,

 Full Service Facilities where food is prepared in advance and where extensive food handling practices take place in categories; full-service school such as: 100, 101, 102, 120, 201, 202, 211, 405, 651

 Medium Risk Facilities where pre—*prepared* food is served, or heated and served; non-TCS food is prepared; or prepackaged, but with wholesale distribution. Facilities such as bakery, grocery with raw meats, snack bar, mobile retail, adult or child facility with *catered* food, seasonal farmers’ market, temporary and miscellaneous including categories such as: 117, 118, 119, 151, 212, 401, 403, 653

Limited Service Facilities that undertake limited food preparation, where foods and food handling practices are less likely to be associated with FBI, Convenience stores with only beverages, pre-packaged snacks and sandwiches; satellite bakery with non-TCS foods such as: 115, 116, 250

 Low Risk Pre-packaged non-TCS foods, unprocessed produce, satellite bakery, non-TCS snacks
 Minimal Service

Willfulness calculation:

Accidental: Violations beyond the control of the violator; owner has no previous knowledge of the offense. No penalty assessed for willfulness

Negligent: Failure to prevent occurrence or correct a violation due to indifference, lack of reasonable care, or lack of diligence

Recklessness: Conscious disregard or indifference to the consequences of their actions, with full knowledge. However, the act is not intentional.

Deliberate: An intentional action or intentional lack of action

Administrative penalties

Although are typically not operational in nature, do at times place the public at risk. The following is to provide guidance for penalty assessment when evaluating risk. Common violations, along with considerations, regardless of culpability:

Open and operating without a health permit (first time vs repeat offense, chain vs. non-chain)

Failure to submit plans (Plan review fee should be added on top of the base penalty – cost savings)

Failure to pay Plan Review fee

Failure to provide 10-day notice for inspection (flat amount for first offense – 150.000, repeat: 300.00)

Failure to display health permit (same as low risk)

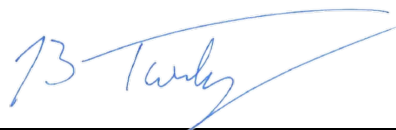
Concealment alteration, removal food facility placard – high risk, unless self-reported (as in customer or neighbor removed)

Operated against a closure order – imminent (injunction can be sought while in process)

CERTIFICATE OF SERVICE

I hereby certify that on April 6, 2023, I served a true and correct copy of the Allegheny County Health Department's Post-Hearing Brief on the following individual by electronic mail as follows:

Dane Marshall
41 S. Grandview Ave
Pittsburgh, PA 15205
Tel.: (412) 491-6987
Email: dfrey28@comcast.com



Brendan Turley, Esq.
Attorney for the Appellee