



# 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 Nicole Swett

Mailing Address 4128 Beehner Road

City Pittsburgh State PA Zip 15217 Email nicole.swett@gmail.com

Phone 412-894-6422 Fax (optional) \_\_\_\_\_

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

Name Michael A. Parker, Esq., Fair Shake Environmental Legal Services

Mailing Address 6425 Living Place, Suite 200

City Pittsburgh State PA Zip 15206 Email mparker@fairshake-els.org

Phone 412-927-3874 Fax (optional) 412-291-1197

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.*)

Please see the attached Notice of Appeal.

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**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 A. Parker, Esq. Date June 23, 2022

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**

**Nicole Swett  
4128 Beehner Road  
Pittsburgh, PA 15217**

**Appellant**

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**In re: 4128 Beehner Road  
Pittsburgh, PA 15217**

**NOTICE OF APPEAL**

Pursuant to Article XI of the Rules and Regulations of the Allegheny County Health Department (hereinafter, "ACHD"), Appellant Nicole Swett hereby appeal the Notice of Violation and Civil Penalty Assessment issued against them on May 24, 2022 (hereinafter, "May 24<sup>th</sup> NOV"). A copy of the May 24<sup>th</sup> NOV is attached hereto as Exhibit A. Appellant hereby makes the following specific objections to the ACHD's action:

1. Appellants object to the civil penalty assessment as arbitrary, capricious, and an abuse of discretion for after the site visit on November 14, 2021, an ACHD inspector, Victor Hildebrand, informed Appellant via a telephone call on or about March 9, 2022, that there was no violation that required action by Appellant based on an assessment from the Appellant's plumber. The reason that Appellants spoke to Mr. Hildebrand by telephone is that a second site visit was scheduled to meet Appellant's plumber, but Mr. Hildebrand did not show up. Therefore, the Appellant called for clarification and was told that there was no problem. Appellant relied on Mr. Hildebrand's assertion and did not have any further plumbing evaluation or work done at her property. Due to this communication that there was no problem that

required abatement, the ACHD should be estopped from issuing a civil penalty against the Appellant and the civil penalty should be rescinded

2. Appellants object to the order to abate the violations as arbitrary, capricious, and an abuse of the ACHD's discretion because the order is vague and unenforceable on its face. The May 24<sup>th</sup> NOV only lists two provisions from Article XV, the ACHD's Rules and Regulations for Plumbing and Building Drainage, without explaining the specific way in which those provisions were violated, while only giving three days to abate an unknown condition. See Exhibit A. This is significant because the two provisions cited in the May 24<sup>th</sup> NOV are Section 102.3, "Maintenance", and Section 108.7, "Unsafe Plumbing", which are general provisions that do not help to inform Appellant of the exact nature of the violation. Without more specifics on what conditions at her property should be abated, Appellant is unable to comply with the order to abate. This is especially true given the November 14, 2021, statement from the ACHD inspector that no abatement work needed to be done at Appellant's property. The Appellant also called the ACHD's Plumbing Program on numerous occasions for guidance on what condition to abate at the property without a return call. Again, without guidance from the ACHD, the May 24<sup>th</sup> NOV is unenforceable for vagueness. As such, the ACHD's order to abate found in the May 24<sup>th</sup> NOV should be struck.

Since the Appellant does not know the specific nature of the alleged violations, Appellants reserve the right to amend or supplement the factual and legal basis for their Notice of Appeal if additional information is provided by the ACHD through discovery or information requests or if the ACHD amends its May 24<sup>th</sup> NOV in any way.

Respectfully submitted,

/s/ Michael A. Parker, Esq.

Michael A. Parker, Esq. (Pa.Id. No. 90979)

Counsel for Appellant

Fair Shake Environmental Legal Services

6425 Living Place, Suite 200

Pittsburgh, PA 15206

(412) 927-3874

[mparker@fairshake-els.org](mailto:mparker@fairshake-els.org)

June 23, 2022

Date

# Exhibit A



COUNTY OF



ALLEGHENY

RICH FITZGERALD  
COUNTY EXECUTIVE

May 24, 2022

**PROOF OF MAILING**

Martha Swett  
Nicole Swett  
4128 Beehner Road  
Pittsburgh, PA 15217

Complaint: 6-22  
4128 Beehner Road, 15<sup>th</sup> Ward

To Whom It May Concern:

This shall serve as notice that you are in violation of the Allegheny County Health Department Plumbing Code Article XV, sections:

Section 102.3  
Section 108.7

**Date of Violation:**  
January 7, 2022

On behalf of the Director of the Allegheny County Health Department, you are hereby ordered to abate the above violations with three (3) days. Furthermore, this shall serve as notice that a civil penalty is being levied against you in the amount of \$480.00. It is also ordered that an additional civil penalty may be levied against you every day the violations continue after the three (3) days.

Please make the check/money order payable to "Environmental Health Fund".

Payments shall be sent to:

Allegheny County Health Department  
c/o Plumbing Program Manager Andrew Grese  
542 4<sup>th</sup> Avenue  
Pittsburgh, PA 15219

Pursuant to Article VI entitled "Hearings and Appeals" you are hereby notified that you have thirty (30) days after issuance of this written notice to file an appeal. The appeal shall be made in writing and must set forth with particularity all issues to be raised. The notice of appeal shall be submitted to the Allegheny County Health Department, Office of the Director, 542 4<sup>th</sup> Ave, Pittsburgh, Pennsylvania 15219. In the event that an appeal is not filed within thirty (30) days after issuance of this written notice the within action shall become final.

Sincerely,

Andrew P. Grese  
Acting Plumbing Program Manager

APG/bk



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

3901 PENN AVENUE • BUILDING 5 • PITTSBURGH, PA 15224-1318  
PHONE: 412.578.8036 • FAX: 412.578.8053  
WWW.ALLEGHENYCOUNTY.US/HEALTHDEPARTMENT



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