

COUNTY OF



ALLEGHENY

RICH FITZGERALD  
COUNTY EXECUTIVE

October 12, 2018

**VIA INTER-OFFICE MAIL AND EMAIL**

Max Slater, Esq.  
Administrative Hearing Officer  
Allegheny Co. Health Dept.  
542 Fourth Avenue  
Pittsburgh, PA 15219

**RE: 117 and 119 Kaplan Avenue Appeal submitted by the Borough of Brentwood, dated August 6, 2018.**

Dear Hearing Officer Slater:

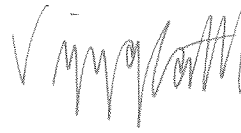
On July 26, 2018, the Allegheny County Health Department (“ACHD”) issued a notice of violation to the Borough of Brentwood (“Borough”) for alleged violations of the Pennsylvania Clean Streams Law, Act 394 of 1937, P.L. 1987, sections 201, 202, and 203, as amended; and the ACHD Rules and Regulations Article XIV, “Sewage Management”, section 1404. The ACHD observed sanitary sewer overflow causing sewage to backup into the basements of 117 and 119 Kaplan Avenue, Pittsburgh, PA 15227 (“Properties”). The ACHD ordered the Borough to submit within 14 days a plan and schedule for providing interim protection from sewage backup for the Properties, and a written confirmation that the sewer line downstream of the affected area is not impacted by restrictions from damage to the line. On August 6, 2018, the Borough filed an appeal and claimed that the sewage backups into the Properties were not caused by any act or omission by the Borough and denies that sewage backups are from public lines. Moreover, the Borough alleges that the owners of the Properties failed to install backflow prevention valves as required by the Borough’s Backflow Prevention Ordinance.

On August 9, 2018, the ACHD received a letter from the Borough whereby the Borough agreed to install backflow prevention valves in the Properties by August 31, 2018. The Borough also confirmed that the sewer line downstream of the Properties is not impacted by the restrictions from damage to the line. Therefore, there is no controversy ripe for a hearing and the ACHD requests that the appeal be dismissed. If you have any questions, I can be reached at 412-578-2653.



KAREN HACKER, MD, MPH, DIRECTOR  
**ALLEGHENY COUNTY HEALTH DEPARTMENT**  
542 FOURTH AVENUE • PITTSBURGH, PA 15219  
PHONE (412) 687-ACHD (2243) • FAX (412) 578-8325 • WWW.ACHD.NET

Sincerely,

A handwritten signature in black ink, appearing to read 'Vijyalakshmi Patel', with a stylized, cursive script.

Vijyalakshmi Patel  
ACHD Assistant Solicitor

Enclosures

cc: Michael Moskorisin, ACHD Water Pollution Control & Solid Waste Management Program  
Manager (via email)  
Daniel Conlon, Esq., Counsel for Appellant (via email)  
Gavin Robb, Esq., Counsel for Appellant (via email)



# Notice of Appeal

RECEIVED AUG 06 2018

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 The Borough of Brentwood

Mailing Address 3624 Brownsville Rd.

City Pittsburgh State PA Zip 15227 Email \_\_\_\_\_

Phone \_\_\_\_\_ Fax (optional) \_\_\_\_\_

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

Name Tucker Arensberg, P.C.

Mailing Address 1500 One PPG Place

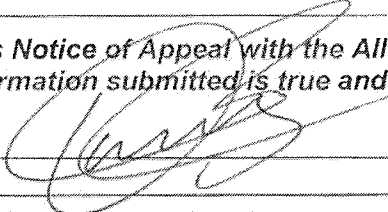
City Pittsburgh State PA Zip 15222 Email dconlon@tuckerlaw.com

Phone 412-594-3951 Fax (optional) \_\_\_\_\_

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 Enclosed Notices of Appeal & Enforcement Orders)

**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  Date 8/6/2018

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

**EXHIBIT**  
D1

August 6, 2018

VIA HAND DELIVERY

Office of the Director  
Allegheny County Health Department  
542 4<sup>th</sup> Avenue  
Pittsburgh, PA 15219

**Re: In Re: Enforcement Order Dated July 26, 2018  
117 & 119 Kaplan Avenue  
Notice of Appeal**

To Whom It May Concern:

Enclosed please find a Notice of Appeal of the Enforcement Order dated July 26, 2018,  
which is being filed on behalf of the Appellant, The Borough of Brentwood.

Your consideration is appreciated.

Very truly yours,

TUCKER ARENSBERG, P.C.

  
Daniel C. Conlon

DCC/kc  
Enclosure

c: Jason Willis, Esquire, Asst. Solicitor, Allegheny County Health Department (w/enc.)

BUS\_EST:461595-1 031940-178336

BEFORE THE ALLEGHENY COUNTY HEALTH DEPARTMENT  
542 4<sup>th</sup> AVENUE  
PITTSBURGH, PENNSYLVANIA, 15219

In the Matter of:       BOROUGH OF BRENTWOOD  
                                  3624 Brownsville Rd.  
                                  Pittsburgh, PA 15227  
                                  117 & 119 Kaplan Avenue / Angle Way

**NOTICE OF APPEAL**

Appellant, the Borough of Brentwood ("Borough"), by and through its attorneys, Tucker Arensberg, P.C., respectfully submits this Notice of Appeal of the Enforcement Order dated July 26, 2018 ("Order"), attached hereto as **Exhibit "A"**, pursuant to Section 1104 of the Rules and Regulations ("Rules") of the Allegheny County Health Department ("ACHD"), and avers as follows:

1.       The Borough is a municipal corporation with its offices located at 3624 Brownsville Road, Pittsburgh, PA 15227.

**Direct Interest / Aggrieved Party**

2.       The Borough, a municipal corporation with its offices located at 3624 Brownsville Road, Pittsburgh, PA 15227, is the subject of the Order.

3.       The Borough is an aggrieved party and has a direct interest in this action because the ACHD ordered the Borough to: (1) plan and schedule for interim protection for sewage backups affecting the residences located at 117/119 Kaplan Avenue, and (2) provide the ACHD with confirmation that the sewer line downstream of the affected areas is not impacted by restrictions from damage to the line within 14 days of receipt of the Order.

**Grounds for Appeal**

4.       The Order states that on July 20, 2018, ACHD officials inspected manholes along Kaplan Avenue and Angle Way and the inspection revealed evidence of Sanitary Sewer Overflows in the Angle Way line, which the ACHD alleges is causing sewage to backup into the basements of

117 & 119 Kaplan Avenue.

5. Upon inspection and belief, the Sanitary Sewer Overflows in the Angle Way line and the sewage backups into the basements of 117 & 119 Kaplan Avenue are not caused by any act or omission by the Borough.

6. Specifically, the Borough denies that the backups into the basements of 117 & 119 Kaplan Avenue are caused by the discharge of sewage waters in violation of Sections 201, 202, and 203, of the Pennsylvania Clean Streams Act. The Borough also denies the sewage backups are from public lines.

7. The Borough has taken numerous steps to address the alleged backups into the basements of 117 & 119 Kaplan Avenue in accordance with by the Borough Backflow Prevention Ordinance, adopted February 19, 2018. (See Ordinance 2018-1262).

8. The Backflow Prevention Ordinance ("Backflow Ordinance") was enacted to protect the health, safety, and welfare of Borough residents affected by backflow events and to reimburse these residents for one-half of the cost of installing specialized equipment designed to prevent such backflow from reaching habitable areas of the resident's home.

9. Since May 18, 2018, the Borough has worked in good faith with William Danylo, owner of the property located at 117 Kaplan Avenue, to provide reimbursement for the installation of a backflow prevention valve.

10. The Backflow Ordinance requires an affected Borough resident to provide the Borough with written quotes from at least three separate plumbers licensed by the ACHD and written evidence of the installation of a backflow prevention device that has been inspected by the ACHD after its installation.

11. While the Borough agreed to reimburse William Danylo for 50% of the cost of installing a backflow prevention valve at the property located at 117 Kaplan Avenue, Mr. Danylo failed to engage a licensed plumber to install the backflow prevention valve.

12. In addition, on July 9, 2018, the Assistant Borough Manager spoke with Patricia

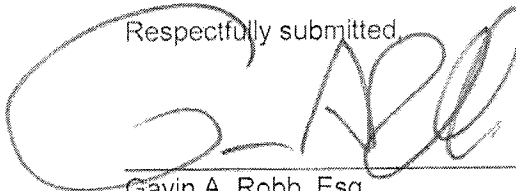
Rocco, the owner of 119 Kaplan, and informed her of financial assistance provided through the Backflow Ordinance but she took no action after making her inquiry.

13. Finally, the Sanitary Sewer Overflows in the Angle Way line and the sewage backups into the basements of 117 & 119 Kaplan Avenue are not caused by any act or omission by the Borough because the Borough is in compliance with the Borough's Operations and Maintenance Plan ("O&M Plan").

14. The Borough O&M Plan was adopted in accordance with an Administrative Consent Order between ACHD and the Borough.

15. The Borough reserves the right to amend and/or supplement the factual and legal averments contained herein as authorized by the Rules.

Respectfully submitted,

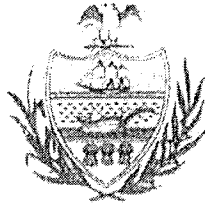
A large, stylized handwritten signature in black ink, appearing to read 'G. Robb', is written over a horizontal line.

Gavin A. Robb, Esq.  
Daniel C. Conlon, Esq.

TUCKER ARENSBERG, P.C.  
1500 One PPG Place  
Pittsburgh, PA 15222  
(412) 566-1212

Counsel for the Appellant,  
Borough of Brentwood

COUNTY OF



ALLEGHENY

RICH FITZGERALD  
COUNTY EXECUTIVE

July 26, 2018

Brentwood Borough  
3624 Brownsville Road  
Brentwood, PA 15227

Attention: Harold Smith, President of Council  
George Zboyovsky, Manager

**RE: SEWERAGE  
BASEMENT BACKUPS / SANITARY SEWER OVERFLOW  
117 & 119 KAPLAN AVENUE / ANGLE WAY  
BRENTWOOD BOROUGH**

Dear Officials:

This Department's Water Pollution Control & Solid Waste Management (WPC/SWM) Program has received a citizens' complaint concerning the discharge of sewage from manholes along Kaplan Avenue, Brightside Way, and Angle Way during significant rain events. On July 20, 2018, Brian Buttacavoli (WPC) and Sean Halerz (Plumbing) of this Department, met with Brentwood Public Works Department head Vitali Alexandrov, and superintendent Robert Mackewich, at 117/119 Kaplan Avenue to discuss Sanitary Sewer Overflows (SSOs) that occur in this area. The inspection revealed evidence of a SSO in the Angle Way line which is causing sewage to backup into the basements of 117 & 119 Kaplan Avenue.

The Borough is advised that in instances where sewage backs up from a municipal sewer into a residence or other occupied structure, the Department, pursuant to its authority under Act 315, holds the Borough responsible for abating the resultant health hazard by pumping out the basement and then having it cleaned and disinfected. Due to the potential health hazards associated with sewage discharges into homes, cleanup and disinfection procedures should be initiated immediately after the sewage discharge has occurred.

Please be advised that these discharges of sewage constitute violations of the Pennsylvania Clean Streams Law, Act 394 of 1937, P.L. 1987, Sections 201, 202, and 203, as amended; and of the Allegheny County Health Department Rules and Regulations, Article XIV, "Sewage Management", Section 1404.



KAREN HACKER, MD, MPH, DIRECTOR  
ALLEGHENY COUNTY HEALTH DEPARTMENT

WATER POLLUTION CONTROL & SOLID WASTE MANAGEMENT  
3901 PENN AVENUE • BUILDING 5 • PITTSBURGH, PA 15224-1318  
PHONE: 412.578.8040 • FAX: 412.578.8053 • WWW.AC.HD.NET





These discharges also constitute a health hazard as determined by this Department. Under the authority vested in this Department by Section 12 of the Local Health Administration Law, Act 315 of 1951, P.L. 1304, the Borough is hereby **ORDERED** to:

1. Within fourteen (14) days of receipt of this notice, submit to this Department a plan and schedule for providing interim protection from sewage backups for the above affected residences. This can include, but not limited to, a backflow prevention valve, grinder pump, holding tank, or other method as approved by your consultant(s).
2. Within fourteen (14) days provide to this office in writing confirmation that the sewer line downstream of the affected area is not impacted by restrictions from damage to the line, sediment deposits, grease accumulations, root growth, or other impasse.

Pursuant to Article XI entitled "Hearings and Appeals", you are hereby notified that you have ten (10) days in which to file an appeal from the date of this Order. The notice of 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 ten (10) days from the date of this Order, the within action shall become final.

If you have any questions, please contact Brian Buttacavoli, Environmental Health Specialist 2, of this office at 412-578-8381.

Sincerely,

Michael J. Moskorisin, Program Manager  
Water Pollution Control & Solid Waste Management

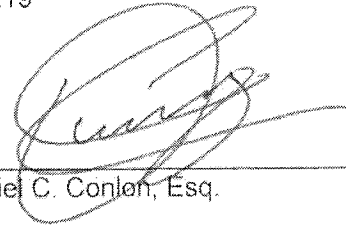
MJM/BRB/ge

cc: Stacey Greenwald, PA DEP Clean Water Program  
William Danylo, 117 Kaplan Avenue

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing *Notice of Appeal* has been served on the party listed below via hand delivery, on August 6, 2018:

Office of the Director  
Allegheny County Health Department  
542 4<sup>th</sup> Avenue  
Pittsburgh, PA 15219

A handwritten signature in black ink, appearing to read "Daniel C. Conlon", is written over a horizontal line.

Daniel C. Conlon, Esq.

August 9, 2018

RECEIVED AUG 09 2018  
Katie Dunn

**VIA HAND DELIVERY**

Max Slater, Administrative Hearing Officer  
Allegheny County Health Department  
542 4<sup>th</sup> Avenue  
Pittsburgh, PA 15219

**Re: Sanitary Sewer Basement Backups on Kaplan Avenue  
Response to Administrative Corrective Orders**

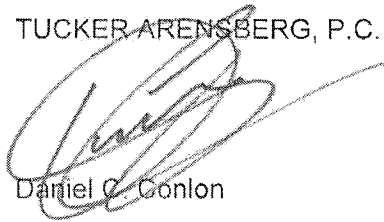
Dear Mr. Slater:

Enclosed please find the response to the above-referenced Administrative Corrective Orders which is being filed on behalf of the Appellant, The Borough of Brentwood.

Your consideration is appreciated.

Very truly yours,

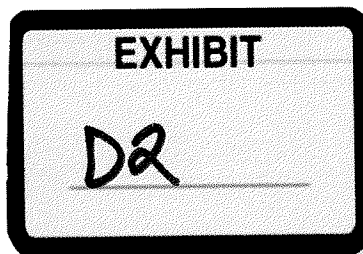
TUCKER ARENSBERG, P.C.

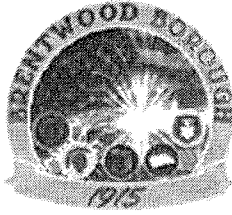


Daniel C. Conlon

DCC/kc  
Enclosure

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THE BOROUGH OF BRENTWOOD  
MUNICIPAL BUILDING – 3624 BROWNSVILLE ROAD  
PITTSBURGH, PA 15227-3199  
Office 412-884-1500 – FAX 412-884-1911  
[www.brentwoodboro.com](http://www.brentwoodboro.com)

August 9, 2018

Michael J. Moskorisin, Program Manager  
Allegheny County Health Department  
Water Pollution Control & Solid Waste Management Division  
3901 Penn Avenue, Building 5  
Pittsburgh, PA 15224

***RE: SANITARY SEWER BASEMENT BACKUPS ON KAPLAN AVENUE  
RESPONSE TO ADMINISTRATIVE CORRECTIVE ORDERS***

Dear Mr. Moskorisin:

The Borough of Brentwood (“Borough”) is in receipt of your July 26, 2018 letter regarding sanitary sewer basement backup incidents at the structures located at 117 and 119 Kaplan Avenue in the Borough. The letter directs the Borough to take two corrective measures and to provide a written response to the Allegheny County Health Department. On August 6, 2018, a Notice of Appeal was filed on behalf of the Borough with respect to the determination of the Department in this matter. Without waiving its rights pursuant to said appeal, please find below the Borough’s responses:

- 1) Since receiving a May 17, 2018 inquiry from the owner of 117 Kaplan Avenue, the Borough has worked in good faith to enroll Mr. William Danylo in the Borough’s Backflow Prevention Program, which is codified as Chapter 167, Section VI of the Brentwood Borough Code. On July 9, 2018, the Borough similarly informed Ms. Patricia Rocco of 119 Kaplan Avenue of the availability of said program. However, in accordance with the expedited timeline outlined in the enforcement notice, the Borough, without admission of liability, shall assume responsibility for coordinating the installation of a backflow prevention device to provide protection from sewage backups for the affected residences. On August 9, 2018, the Borough contacted three licensed master plumbers. Upon the receipt of written quotes, Brentwood shall, subject to review of the proposed scope of work by The Gateway Engineers, engage the services of the low bidder to install said device. It is expected that all necessary improvements shall be completed by August 31, 2018.
- 2) The Borough’s Department of Public Works preformed a visual inspection of the municipal main sewer traversing Angle Way at the manhole located directly downstream from 117 Kaplan Avenue. No obstructions or major defects were sighted. As part of the

terms of its Sanitary Sewer Operations & Maintenance Plan, the Borough annually performs CCTV inspections. Brentwood will utilize its contracted vendor to perform a more thorough review of conditions within this infrastructure.

If you have any further questions, do not hesitate to contact me.

Sincerely,

BRENTWOOD BOROUGH

  
George Zboyovsky, PE  
Borough Manager

CC: Office of the Director, Allegheny County Health Department, 542 4<sup>th</sup> Avenue, Pittsburgh PA 15219 (via hand delivery)