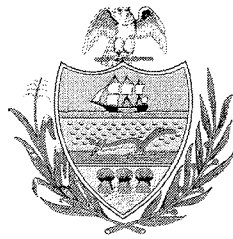


COUNTY OF



ALLEGHENY

RICH FITZGERALD  
COUNTY EXECUTIVE

November 16, 2018

VIA INTER-OFFICE MAIL AND EMAIL

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

**RE: WB Convenience Appeal filed October 4, 2018 (Client ID 200101160005).**

Dear Hearing Officer Slater:

On September 26, 2018, the Allegheny County Health Department (“ACHD” or “Department”) issued a notice of violation to WB Convenience for a violation of the ACHD Rules and Regulations Article III, “Food Safety”, (“Article III”) observed at 801 W. Main Street, Carnegie, PA 15106 (“Facility”) (“Sept. 26<sup>th</sup> Report”). The violation arose because the Facility’s dumpsters were placed in a location that created a nuisance to the neighboring property. On October 4, 2018, the Facility filed an appeal challenging the complaint and alleged that the Sept. 26<sup>th</sup> Report was based on the neighbor’s allegations and should therefore be dismissed.

The ACHD moves to dismiss the appeal on the following grounds. ACHD Rules and Regulations Article XI, Hearings and Appeals (“Article XI”) § 1104.B states that the Notice of Appeal “shall set forth with particularity the manner in which the Appellant is aggrieved by the action of the Department...” Article XI § 1102 defines “action” as “[a]ny order, notice, decision, determination or ruling by the Department affecting personal or property rights, privileges, immunities, duties, liabilities or obligations of any person.” The Facility claims that it is aggrieved because the ACHD issued a violation upon receipt of a complaint regarding the location of the Facility’s dumpsters. Essentially, the Facility is appealing the fact that the ACHD received a complaint. A complaint is not an “action” by the ACHD as defined by Article XI § 1102. Furthermore, the appeal suggests that the Sept. 26<sup>th</sup> Report was issued purely based on the complaint and for this reason requests that the report be dismissed. However, violations are issued based on the independent inspections and investigations conducted by ACHD staff which may or may not have been initiated by a complaint. In this case, the Sept. 26<sup>th</sup> Report is based on an inspection of the Facility’s premises conducted by ACHD inspector Varangkorn Nakkeow. The inspection was conducted to investigate a complaint and independently determine whether any violations of Article III actually existed, which in this case they did.



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

Letter to Max Slater, Esq.  
Re: WB Convenience Appeal  
November 16, 2018  
Page 2 of 2

Moreover, the ACHD believes that the Facility is involved in a dispute with its neighbor. However, the ACHD asserts that the Facility's actions in this dispute resulted in an Article III violation and the ACHD urges the Facility to resolve its private dispute outside of this tribunal. Therefore, the ACHD requests that this tribunal dismiss the appeal on the grounds that receiving a complaint is not an appealable "action" and that this tribunal is not the proper forum to resolve disputes between neighbors. If you have any questions, I can be reached at 412-578-2653.

Sincerely,

A handwritten signature in black ink, appearing to read "Vijyalakshmi Patel". The signature is fluid and cursive, with the first name being the most prominent.

Vijyalakshmi Patel  
ACHD Assistant Solicitor

Enclosure

cc: Donna Scharding, ACHD Food Safety Program Manager (via email)  
Jennifer L. Beresky, Esq., Counsel for Appellant (via email)

RECEIVED



# Notice of Appeal

OCT 04 2018

DIRECTOR'S  
OFFICE

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 WB Convenience Store

Mailing Address 801 W. Main Street

City Carnegie State PA Zip 15106 Email \_\_\_\_\_

Phone 412-276-2027 Fax (optional) \_\_\_\_\_

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

Name Jennifer L. Beresky (PA ID 316224)

Mailing Address 100 Ryan Court, Suite 9

City Pittsburgh State PA Zip 15205 Email jberesky@rig-consulting.com

Phone 412-693-3007 Fax (optional) \_\_\_\_\_

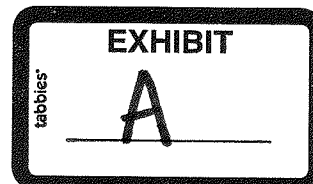
Describe your objections to the Department's actions and a statement describing the relief you want the Hearing Officer to grant. (*The objections may be factual or legal and must be specific. If you fail to state an objection here, you may be barred from raising it later in your appeal. Use additional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

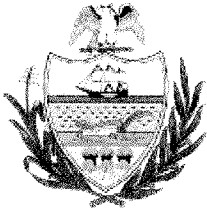
WB Convenience Store received a negative food safety assessment report, noted as a low risk.  
The report was based on the complaint of the neighboring property owner, however, this neighbor has  
a documented animus against WB Convenience Store, as the Store had previously denied the  
neighbor's request to use the Store's parking lot for a monthly rental fee. The Store has tried to  
accommodate the neighbor with various other complaints, but the report we received pertained only  
to Section 318 of the ACHD's Article III Food Safety Regulations and per that Section, the Store has  
maintained clean dumpsters, equipped with lids that remain closed when not in use. We believe this  
complaint was only made because of the neighbor's aforementioned unhappiness with our refusal to rent  
parking to him; we request the Hearing Officer dismiss the negative report without further enforcement action.

**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 10-1-18

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





ALLEGHENY COUNTY HEALTH DEPARTMENT

FOOD SAFETY PROGRAM  
 3901 PENN AVE.  
 PITTSBURGH, PA 15224  
 PHONE: 412-578-8044 FAX: 412-578-8190

FOOD SAFETY ASSESSMENT  
 REPORT

Client ID: 200101160005  
 Address: 801 W Main St  
 City: Carnegie  
 Municipality: Carnegie  
 Category Code: 113-Retail/Convenience Store  
 Re- Inspection: No Selection

Client Name: W B Convenience  
 State: PA Zip: 15106  
 Inspector: Nakkeow , Varangkorn  
 Re- Inspection Date: 10/10/2018

Inspection Date: 09/26/2018  
 Purpose: Complaint  
 Permit Exp. Date: 12/31/2018  
 Priority Code: 1

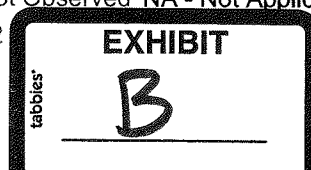
Food Safety Assessment Categories	Assessment Status					Violation Risk		
	◆	S	NO	NA	V	High	Med.	Low
1 Food Source/Condition								
2 Cooking Temperatures #								
3 Consumer Advisory								
4 Reheating Temperatures #								
5 Cooling Food #								
6 Hot Holding Temperatures #								
7 Cold Holding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

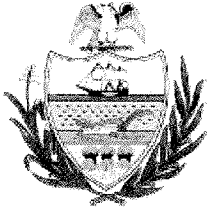
General Sanitation	Assessment Status					Violation Risk		
	◆	S	NO	NA	V	High	Med.	Low
26 Garbage and Refuse					x			x
27 Floors								
28 Walls and ceilings								
29 Lighting								
30 Ventilation								
31 Dressing rooms and Locker rooms								
32 General Premises								
33 Administrative								
	0	0	0	0	1	0	0	1

# U.S. Centers for Disease Control and Prevention "high risk" for

◆ - Diamond Exceptional  
 Client # 200101160005

S - Satisfactory NO - Not Observed NA - Not Applicable V- Violation





# ALLEGHENY COUNTY HEALTH DEPARTMENT

FOOD SAFETY PROGRAM

3901 PENN AVE,  
PITTSBURGH, PA 15224

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

## FOOD SAFETY ASSESSMENT REPORT

### INSPECTION DETAILS

Inspector Name: Nakkeow , Varangkorn

Balance Amount:

\$142.00

Placarding: Inspected & Permitted

Contact:

Sharmon Winters

Start Time: 01:30:00 PM End Time: 02:30:00 PM

Phone:

(412) 276-0688

**Violation:**

**26 Garbage and Refuse**

**Comments:**

\*LOW RISK\*

- Dumpster placed next to the window of the adjacent home.
- Noxious odors present.

Food Code Section(s): 318

Corrective Action: - Relocate

Other Assesment observations and comments:

Exceptional Observations: