

**ALLEGHENY COUNTY HEALTH DEPARTMENT
ADMINISTRATIVE HEARINGS**

BRUCE FOX AND PATRICIA	:	In re: 711 Worthington Avenue
FOX	:	Clairton, PA 15205
	:	
	:	
Appellants	:	
	:	
v.	:	
	:	
ALLEGHENY COUNTY HEALTH	:	
DEPARTMENT,	:	
	:	
Appellee.	:	

BRIEF IN SUPPORT OF APPELLANT

AND NOW COMES Plaintiffs, Bruce Fox and Patricia Fox, by and through his undersigned counsel, D. Scott Lautner, Esquire, and files the within Brief in Response and, in support thereof, avers as follows:

I. PROPOSED FINDINGS OF FACT

1. The director of the Allegheny County Health Department, herein after (ACHD) has been allocated authority, pursuant to the Federal Clean Air Act, the Pennsylvania Air Pollution Control Act, the Pennsylvania Solid Waste Management Act, the Pennsylvania Municipal Waste Planning, Recycling and Waste Reduction Act, as the local health agency and administration, who's powers and duties include enforcement of laws related to public health within Allegheny County.

2. Appellant, Bruce Fox, is the owner of the property located at 711 Worthington Avenue, Clairton, Pennsylvania 15025.

3. The property listed above is the subject of several alleged violations, according to the Allegheny County Health Department.

4. The Allegheny County Health Department alleges that Mr. Fox received monies from landscapers to “dump” on his property, an allegation which has yet to be substantiated by any fact whatsoever.

5. On or about the 14th day of July, 2017, a fire occurred on the adjacent property to Mr. Fox’s property.

6. As a result of the City of Clairton Fire Department’s dousing of water, for a period of approximately two (2) to three (3) weeks, Mr. Fox’s property has “slid” onto the adjacent property.

7. As a result of the landslide, the Allegheny County Health Department, and its officers, directors and employees, have cited Mr. Fox with various violations for which he has taken exception and appealed from the same.

8. It should be noted for this Honorable Court, that the City of Clairton had attempted to enforce very similar citations on or against Mr. Fox, approximately five (5) years prior, at which time Mr. Fox was found not guilty.

II. JULY 30, 2018 INSPECTION

It should be noted that this Honorable Court personally viewed the premises in question on July 30, 2018. However, it should also be noted that this Honorable Court view the premises **after** (emphasis added) the Fox property had been subject to two to three weeks of constant “watering” by the City of Clairton Fire Department. This watering caused the property of Mr. Fox to slide into the canyon.

III. ARGUMENT

A. Violation of Article VIII regulations by illegally dumping waste material

1. Violation of Article VIII §810.A

The Allegheny County Health Department cited Mr. Fox for various violations under Article VIII, and specifically, under §810.A, §813.B, §813.C, and §813.E, respectively. However, the Allegheny County Health Department has failed and/or refused to take into account its own Allegheny County Health Department Rules and Regulations, specifically paragraph 810.A1, “an operating permit is not requires;

(4) leaf composting or yard waste composting by a homeowner for use in or on or around the home garden;

(5) for use of clean fill;

(6) for the land application of sewage sludge or its plant nutrient values or as soil conditioner as part of an agricultural operation under NDER approval or permit.”

The section quoted above specifically grants Mr. Fox the permission to perform the work which he had been performing on his own grounds without the need for application, permit, or other artificial or invasive political subdivision permission.

2. Violation of Article VIII §813.B

The Allegheny County Health Department cited Mr. Fox for various violations under Article VIII, and specifically, under §810.A, §813.B, §813.C, and §813.E, respectively. However, the Allegheny County Health Department has failed and/or

refused to take into account its own Allegheny County Health Department Rules and Regulations, specifically paragraph 810.A1, “an operating permit is not requires;

(4) leaf composting or yard waste composting by a homeowner for use in or on or around the home garden;

(5) for use of clean fill;

(6) for the land application of sewage sludge or its plant nutrient values or as soil conditioner as part of an agricultural operation under NDER approval or permit.”

The section quoted above specifically grants Mr. Fox the permission to perform the work which he had been performing on his own grounds without the need for application, permit, or other artificial or invasive political subdivision permission.

3. Violation of Article VIII §813.C

The Allegheny County Health Department cited Mr. Fox for various violations under Article VIII, and specifically, under §810.A, §813.B, §813.C, and §813.E, respectively. However, the Allegheny County Health Department has failed and/or refused to take into account its own Allegheny County Health Department Rules and Regulations, specifically paragraph 810.A1, “an operating permit is not requires;

(4) leaf composting or yard waste composting by a homeowner for use in or on or around the home garden;

(5) for use of clean fill;

(6) for the land application of sewage sludge or its plant nutrient values or as soil conditioner as part of an agricultural operation under NDER approval or permit.”

The section quoted above specifically grants Mr. Fox the permission to perform the work which he had been performing on his own grounds without the need for application, permit, or other artificial or invasive political subdivision permission.

4. Violation of Article VIII §813.E

The Allegheny County Health Department cited Mr. Fox for various violations under Article VIII, and specifically, under §810.A, §813.B, §813.C, and §813.E, respectively. However, the Allegheny County Health Department has failed and/or refused to take into account its own Allegheny County Health Department Rules and Regulations, specifically paragraph 810.A1, “an operating permit is not requires;

(4) leaf composting or yard waste composting by a homeowner for use in or on or around the home garden;

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The section quoted above specifically grants Mr. Fox the permission to perform the work which he had been performing on his own grounds without the need for application, permit, or other artificial or invasive political subdivision permission.

5. Violation of July 19, 2017 Notice of Violation and Order

Mr. Fox has grass on site which he had just cut. Additionally, Allegheny County has attempted to use City of Clairton Police Reports, in order to prove alleged violations. Simply put, these reports are hearsay, as they can **not** (emphasis added) be cross

examined. Furthermore, no one from the City of Clairton testified to any alleged violation.

6. The Civil Penalty assessed for the Solid Waste violations

There are two (2) alleged violations of the order (\$350.00/violation), which cannot be substantiated. Consequently, \$700.00 must be removed from any civil penalty request on the part of Allegheny County.

The four violations of \$200.00 per violation have no basis in fact nor law. The fine assessed by the Allegheny County Health Department is arbitrary and/or otherwise capricious. Simple put, where there is no violation, there can be no fines.

Allegheny County assessed Mr. Fox \$160.00 for “willfulness.” This assessment is arbitrary and capricious and should be removed.

Allegheny County assessed an “economic benefit” of \$136.00 per year for a period of ten (10) years. This amount can be reasonably extrapolated by looking at the current fee of \$136.00, however the County has failed to indicate what the fee was for each of the preceding nine (9) years. Furthermore, the statute of limitations would prohibit Allegheny County from retroactively assessing a fine for ten (10) years ago, or any length of time in excess of the appropriate statute of limitations. Mr. Fox argues that said statute would be only one year. There is no evidence of how long the conduct had been occurring. There is no indication in the transcript which refers to the length of the alleged misconduct.

B. Violation of Article XXI (Air Quality)

1. Violation of Article XXI §2101.11.a.3

Mr. Fox maintains that the fire did not originate on his property. The Allegheny County's position that the fire was a result of Mr. Fox's actions are unfounded.

Additionally, Allegheny County called one witness, George Hellenberger, the Allegheny County Fire Marshall's Officer. Under cross examination the witness admitted he had no specific training for alleged mulch fires, see transcript page 16, line 24. Mr. Hellenberger further admitted he had not indicated any such training on curriculum vitae. See transcript page 17, lines 1-8.

Without Mr. Hellenberger's testimony, Allegheny County has absolutely no evidence of the cause of this "alleged" fire, let alone its originating locale.

2. Violation of Article XXI §2101.11.b.1

Mr. Fox maintains that the fire did not originate on his property. The Allegheny County's position that the fire was a result of Mr. Fox's actions are unfounded.

Additionally, Allegheny County called one witness, George Hellenberger, the Allegheny County Fire Marshall's Officer. Under cross examination the witness admitted he had no specific training for alleged mulch fires, see transcript page 16, line 24. Mr. Hellenberger further admitted he had not indicated any such training on curriculum vitae. See transcript page 17, lines 1-8.

Without Mr. Hellenberger's testimony, Allegheny County has absolutely no evidence of the cause of this "alleged" fire, let alone its originating locale.

3. Violation of Article XXI §2101.11.c

Mr. Fox maintains that the fire did not originate on his property. The Allegheny County's position that the fire was a result of Mr. Fox's actions are unfounded.

Additionally, Allegheny County called one witness, George Hellenberger, the Allegheny County Fire Marshall's Officer. Under cross examination the witness admitted he had no specific training for alleged mulch fires, see transcript page 16, line 24. Mr. Hellenberger further admitted he had not indicated any such training on curriculum vitae. See transcript page 17, lines 1-8.

Without Mr. Hellenberger's testimony, Allegheny County has absolutely no evidence of the cause of this "alleged" fire, let alone its originating locale.

4. The Civil Penalty assessed for the Air Quality violations

As a result of the foregoing, no civil penalty can be issued and/or assessed. It should be noted that Mr. Fox posted a bond in the amount of \$1,150.00 for the defense of this action. Mr. Fox seeks the refund of this amount, as Allegheny County cannot sustain its allegations.

IV. CONCLUSION

As a result of the foregoing, and due to the fact Mr. Fox was entitled to exclusions provided in the Allegheny Health Department Rule and Regulations, no fines would be appropriate.

As a result of the foregoing, and due to the fact that no fire existed on Mr. Fox's property, no civil penalty can be issued and/or assessed. It should be noted that Mr. Fox

posted a bond in the amount of \$1,150.00 for the defense of this action. Mr. Fox seeks the refund of this amount, as Allegheny County cannot sustain its allegations.

Respectfully submitted,

D. Scott Lautner, Esquire
Attorney for Plaintiffs

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DEPARTMENT,	:	
	:	
Appellee.	:	

CERTIFICATE OF SERVICE

I, D. Scott Lautner, Esquire, hereby certify that a true and correct copy of the within Brief in Support of Appellant was served on the 25th day of March, 2019, via electronic mail to the following:

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