

AVRUM LEVICOFF†
ELIZABETH E. DEEMER‡
EDWARD I. LEVICOFF†
SUNSHINE R. FELLOWS†
DAVID A. JONES, JR.
STEPHANIE K. GOLDIN
CYNTHIA L. O'DONNELL†
JOSEPH E. STARKEY, JR. †

† Admitted in West Virginia
‡ Admitted in Ohio



THE LEVICOFF LAW FIRM, P.C.
ATTORNEYS AT LAW

4 PPG Place, Suite 200
Pittsburgh, Pennsylvania 15222

Telephone (412) 434-5200
Facsimile (412) 434-5203

August 16, 2019

ALevicoff@Levicofflaw.com

Via Hand Delivery

Allegheny County Health Department
Attention: Hearing Officer
542 4th Avenue
Pittsburgh, PA 15219

RE: BUNTING GRAPHICS, INC., V. ALLEGHENY COUNTY HEALTH DEPARTMENT
C.A. NO.: ACHD-18-002
OUR FILE NO.: 03857.902

Dear whom it may concern:

We are delivering herewith a *Notice of Appeal* in the above captioned matter. If you have any questions please contact my office at your earliest convenience. Thank you.

Very truly yours,



AVRUM LEVICOFF

AL/ct
Enclosure

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AUG 16 2019

LEGAL SECTION
Allegheny County
Health Department

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AUG 16 2019

LEGAL SECTION
Allegheny County
Health Department



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 Bunting Graphics, Inc. d/b/a Bunting Architectural Metals

Mailing Address 20 River Road

City Verona State PA Zip 15147 Email jody.bunting@buntinggraphics.com

Phone 412-820-2200 Fax (optional) 412-423-0240

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

Name Avrum Levicoff

Mailing Address 4 PPG Place, Suite 200

City Pittsburgh State PA Zip _____ Email alevicoff@levicofflaw.com

Phone 412-434-5200 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.*)

The Defendant's Enforcement Order dated July 12, 2019 must be vacated and/or set aside. That Order is founded upon a decision of the Department dated July 5, 2019 and an earlier determination dated December 1, 2017, both of which are erroneous, not founded on the applicable regulatory law and/or competent evidence as are in consistent with the evidence for all of the reasons hereinafter stated (see attached):

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 8/16/19

Appeals should be submitted in person or by mail to:

Allegheny County Health Department
Attention: Hearing Officer
542 4th Avenue
Pittsburgh, PA 15219

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AUG 16 2019

**LEGAL SECTION
Allegheny County
Health Department**

1. Based upon a correct interpretation and application of the relevant regulatory law to the competent evidence, Bunting Graphics possesses any and all permits necessary for the proper and lawful operation of the processes operated at it Verona facility and Bunting Graphics reasonably believed that no additional installation permit was necessary for the process equipment installed in 2015;

2. The installation of a regenerative thermal oxidizer is both unnecessary in light of the regulatory law and the facts, and in any event would be economically infeasible. Given the emissions likely from combustion of natural gas, the installation of such a device would not materially reduce total emissions, and the impact of such a device on total emissions, if any, is insufficient to justify the cost;

3. The Department's determination that a thermal oxidizer is necessary, and economically feasible is arbitrary, capricious and not properly based upon a correct interpretation of the regulatory law and the evidence. The determination is not founded on competent evidence, because the testimony of the Department's witness on the issue was neither competent nor credible;

4. Bunting Graphics' 2015, 2016 and its revised 2017 permit applications are complete, comprehensive, and in accord with applicable legal requirements, has properly construed;

5. The finding, or observation of the Department in its July 12, 2019 Enforcement Order that Bunting Graphics' permit applications are incomplete, inconsistent or contradictory is arbitrary, capricious, and predicated upon a misunderstanding of the contents of the applications and/or a misapprehension of the pertinent facts;

6. The Department's determination that there were absent from the premises appropriate devices for the capturing of volatile organic compounds presumably emanating from the subject operations is baseless, arbitrary, capricious, and not founded upon a correct interpretation of applicable regularity law and the competent evidence;

7. The Department erred in concluding that Bunting Graphics was required to procure an installation permit for the paint coating process that it installed in 2015;

8. The Department erred in concluding that the paint line installed by Bunting Graphics in 2015 is a regulated pollution source within the meaning and purport of Article XXI § 2102.4 of the Regulations;

9. The Department erred in finding that Bunting Graphics' Verona facility is a "major source" of pollution under Article XXI § 2101.20;

10. In the alternative, the Department erred in failing to conclude that Bunting Graphics' Verona facility was properly designated as a "synthetic minor source" under the applicable regulations;

11. The information presented by Bunting Graphics in its revised permit application is sufficient to demonstrate Bunting Graphics' qualifications as a "synthetic minor source" and the Department's conclusion to the contrary is arbitrary, capricious and erroneous;

12. The Department erred in rejecting Bunting Graphics effort to prove that it was a "synthetic minor source" on the grounds that it failed to prove how it would limit potential to emit. To the contrary Bunting Graphics set forth that it could limit emissions to 30 ton per year by curtailing production; a fact which the Department utterly disregarded in its findings;

13. The Department erred in rejecting Bunting Graphics' expert testimony regarding its emissions analysis, and cost analysis, and further erred in crediting the Departments recalculation of the potential of the paint process to emit. The Department's determination in that regard represents a manifest abuse of discretion, as well as an error of law;

14. The Department erred in accepting a calculation of potential to emit based on 327.05 tons per year, rather than Bunting Graphics estimate of 30 tons per year, in part because the 327.05 tons per year estimate was improperly based on the highest possible rate of application of paint, instead of a reasonably expected rate;

15. The Department erred in concluding that the standards for assessing potential to emit set forth in the EPA Guidance Manual are not controlling when, in fact, those standards are the most appropriate standards available on the issue in this case;

16. The Department committed legal error in imposing a civil penalty, and the amount of the civil penalty imposed by the Department is unsupported by applicable regulatory law and the evidence;

17. The amount of the civil penalty imposed upon Bunting Graphics is excessive and manifestly unreasonable;

18. The imposition upon Bunting Graphics of the necessity of installing a thermal oxidizer is not only arbitrary and capricious, it rises to the level of the inappropriate imposition of a financial penalty;

19. To the extent not previously covered Bunting Graphics objects to certain contents of the July 12, 2019 Enforcement Order as follows:

- a. The remark in Paragraph 7 that “Upon review of the 2016 permit application, it was discovered that Bunting still failed to provide information concerning the equipment onsite but not mentioned in the 2015 permit application.” is not founded on competent evidence;
- b. The observation in Paragraph 8 that “On March 27, 2017, Bunting submitted to the Department a revised permit application with respect to both the 2016 installation and operating permit applications, yet still lacked pertinent information necessary for evaluating the processes at the facility” is inconsistent with the evidence;
- c. The comment in Paragraph 9 that Bunting Graphics failed “to provide complete information,” and/or failed to “export the presence of dip tanks (of which there was one sodium hydroxide and one hydrofluoric acid/ chrome VI dip tanks) and two dip tank heaters” is not consistent with the evidence;
- d. The remark in Paragraph 10 that “The Department notes further substantive discrepancies as between the various permit applications themselves. Specifically, the 2015 permit application lists a single emission source; namely, the paint process which Bunting claimed it installed in 1980. Conversely, the 2016 permit application indicates that a new paint line was installed in August 2015 by Tell Kamp Systems, Inc.” is evidently a consequence of a misunderstanding of the applications and or the evidence;
- e. The implication of the comment in Paragraph 11 that Bunting Graphics misrepresented the facts (“The 2015 permit application indicates that Bunting operates 2000 hours per year; however, the 2016 permit application indicates that Bunting operates 5500 hours per year, more than twice the preceding application”) is clearly founded on a misunderstanding of the facts; or it reflects prejudice and partiality;
- f. Similarly, the comment in Paragraph 12 that “The 2015 permit application indicates that there is no fuel burning equipment at the facility. This has subsequently been proven not to be the case” is predicated on a misunderstanding of the facts, and/or reflects improper bias, prejudice and partiality against Bunting Graphics not founded on competent evidence and is not consistent with applicable regulatory law;
- g. The assertion at Paragraph 14 that “Upon the inspectors' review, it was noted that Bunting had no pollution controls for particulate matter ("PM") emissions associated with the cutting and milling operations. Inspectors observed no pollution controls (for either PM or VOCs) associated with the laser cutting processes.

There was no discernable ventilation hood associated with the dip tanks. They found no replacement filters at the facility for most processes present. Though there appeared to be existing duct work for the capture of particulate matter emanating from Bunting's cutting and grinding operations, there was no observed functioning control device or replacement filters for such a device. No pollution controls were observed at all which would address the emission of VOCs from Bunting's various coating or equipment cleaning processes" is not founded on competent evidence;

- h. The assertion in Paragraph 15 that "Notably, there was no discernable enclosure around the new paint line insofar as one would be required under 40 C.F.R. 63.3880 Subparts MMMM or HHHHHH" is not founded on competent evidence, and it is not consistent with a correct interpretation of the requirement of applicable federal regulatory law;
- i. The purported finding in Paragraph 16 that "Based on its potential to emit controlled pollutants, Bunting proffered its BACT (Best Available Control Technology) Analysis. The Department, having observed that Bunting's facility lacks the required walls and wall curtains as proscribed by federal regulations under subsection MMMM or HHHHHH and lacks any ventilation system that would isolate VOC capture to the pertinent emission point, has concluded that said BACT analysis does not correctly contemplate costs as though the facility were operating in a manner consistent with federal regulations On closer review of Bunting's BACT analysis, the Department has also concluded that the control technologies presented in the BACT analysis do not reflect what should be the proper collection of VOCs from the facility. Moreover, upon review of similar sized facilities and operations, the Department has concluded that Bunting's figures, as well as its conclusion that such controls are not economically feasible, are not defensible" is not founded on competent evidence of record and/or reflects a misapprehension of federal regulatory law;
- j. The Department's analysis of Bunting Graphics' expert's BACT analysis as set forth in Paragraph 17 that erroneous and the rejection of the testimony of the expert witness in Paragraphs 18-22 represents an abuse of discretion and/or an error of law;
- k. The gratuitous comment in Paragraph 23 "that Bunting has not been completely forthcoming with information concerning omitted processes, calculations and data provided across its various applications" is not founded on competent evidence and reflects bias and prejudice against Bunting Graphics;
- l. The criticism in Paragraph 31 that "To date not only has Bunting failed to install a thermal oxidizer in the time allowed, it has not submitted a permit application contemplating the installation of said thermal oxidizer" is unfounded, given that a thermal oxidizer is neither necessary or economically feasible under applicable law.

**ALLEGHENY COUNTY HEALTH DEPARTMENT
AIR QUALITY PROGRAM**

In the Matter of: Bunting Graphics, Inc.
 dba Bunting Architectural Metals
 20 River Road
 Verona, PA 15147

ENFORCEMENT ORDER

AND NOW, this 12th day of July, 2019 (hereinafter “Effective Date”), the Allegheny County Health Department (hereinafter “ACHD”) has found as a factual matter and has legally concluded the following:

1. The Director of the ACHD has been delegated authority pursuant to the federal Clean Air Act, 42 U.S.C. Sections 7401 -7671q (hereinafter “CAA”), and the Pennsylvania Air Pollution Control Act, 35 P.S. Sections 4001-4014 (hereinafter “APCA”), and the ACHD is a local health agency organized under the Local Health Administration Law, 19 P.S. §§ 12001-12028, whose powers and duties include the enforcement of laws relating to public health within Allegheny County, including but not limited to, the ACHD’s Rules and Regulations, Article XXI, Air Pollution Control (Allegheny County Code of Ordinances Chapters 505, 507 and 535) (hereinafter “Article XXI”).

2. Bunting Graphics, Inc. (hereinafter “Bunting”) is a Pennsylvania Corporation situated at 20 River Rd., Verona, Allegheny County, Pa 15147. Bunting is a specialty contractor offering products and services in the architectural signage and ornamental metals markets. Specifically, Bunting fabricates and coats specialty metals with paints and other surface coatings.

3. On December 15, 2015, Bunting submitted to the Department its first application for an operating permit which would allow Bunting to operate as a synthetic minor source of pollution in Allegheny County (hereinafter the “2015 permit application”).

4. Upon review of the 2015 permit application, it was discovered that Bunting failed to provide information concerning the following:

- a. 11kW Generac Guardian generator
- b. Bystronic Bystar 4020 laser (a source of methyl methacrylate emissions)
- c. Universal Laser Systems M300 laser
- d. Universal Laser System X2 660 laser
- e. newly installed paint booths
- f. 3.5 MMBtu baking oven attached to the also new paint line
- g. 4.3 MMBtu Absolutaire furnace
- h. 6 MMBtu bake oven
- i. Welding guns
- j. and sundry saws, routers sanders and grinders.

5. All of the aforementioned equipment constitute devices which, in their ordinary operation, emit pollutants and particulate matter intended to be regulated under Article XXI.

6. On December 12, 2016, following the entry of a consent order and final determination requiring the filing of an application for a permit, Bunting submitted an application for both an installation and operating permit (hereinafter the “2016 permit application”).

7. Upon review of the 2016 permit application, it was discovered that Bunting still failed to provide information concerning the equipment onsite but not mentioned in the 2015

permit application. However, the 2016 permit application contained information concerning the Bystronic Bystar 4020 laser, not previously present.

8. On March 27, 2017, Bunting submitted to the Department a revised permit application with respect to both the 2016 installation and operating permit applications, yet still lacked pertinent information necessary for evaluating the processes at the facility.

9. In addition to the failure to provide complete information concerning all of the processes at Bunting's facility, Bunting failed to report the presence of dip tanks (of which there was one sodium hydroxide and one hydrofluoric acid/ chrome VI dip tanks) and two dip tank heaters.

10. The Department notes further substantive discrepancies as between the various permit applications themselves. Specifically, the 2015 permit application lists a single emission source; namely, the paint process which Bunting claimed it installed in 1980. Conversely, the 2016 permit application indicates that a new paint line was installed in August 2015 by TellKamp Systems, Inc.

11. The 2015 permit application indicates that Bunting operates 2000 hours per year; however, the 2016 permit application indicates that Bunting operates 5500 hours per year, more than twice the preceding application.

12. The 2015 permit application indicates that there is no fuel burning equipment at the facility. This has subsequently been proven not to be the case.

13. Rather, on or about August 15, 2017, ACHD inspectors were present at the Bunting facility to ascertain what processes occurred at the facility along with attempting to discern any available pollution control solutions.

14. Upon the inspectors' review, it was noted that Bunting had no pollution controls for particulate matter ("PM") emissions associated with the cutting and milling operations. Inspectors observed no pollution controls (for either PM or VOCs) associated with the laser cutting processes. There was no discernable ventilation hood associated with the dip tanks. They found no replacement filters at the facility for most processes present. Though there appeared to be existing duct work for the capture of particulate matter emanating from Bunting's cutting and grinding operations, there was no observed functioning control device or replacement filters for such a device. No pollution controls were observed at all which would address the emission of VOCs from Bunting's various coating or equipment cleaning processes.

15. Notably, there was no discernable enclosure around the new paint line insofar as one would be required under 40 C.F.R. 63.3880 Subparts MMMM or HHHHHH¹.

16. Based on its potential to emit controlled pollutants, Bunting proffered its BACT (Best Available Control Technology) Analysis. The Department, having observed that Bunting's facility lacks the required walls and wall curtains as proscribed by federal regulations under subsection MMMM or HHHHHH and lacks any ventilation system that would isolate VOC capture to the pertinent emission point, has concluded that said BACT analysis does not correctly contemplate costs as though the facility were operating in a manner consistent with federal regulations. On closer review of Bunting's BACT analysis, the Department has also concluded that the control technologies presented in the BACT analysis do not reflect what should be the proper collection of VOCs from the facility. Moreover, upon review of similar sized facilities and

¹ Depending on whether Bunting ultimately obtains a major or minor source operating permit, either Subpart MMMM or HHHHHH will be applicable.

operations, the Department has concluded that Bunting's figures, as well as its conclusion that such controls are not economically feasible, are not defensible.

17. The Department notes that Bunting begins its analysis on the presupposition that the proposed pollution control device would involve air flow through exhaust stacks servicing the entire facility (hence the 62,000 CFM). However, if the emissions from the paint lines were limited pursuant to either Subpart MMMM or HHHHHH, that figure could be dramatically reduced. This limiting factor would affect the downstream annualized cost projections in Bunting's BACT analysis significantly. Additionally, the thermal oxidizer featured in its BACT analysis has an air flow capacity of 35,000 cfm, significantly less than the purported 62,000 cfm from the existing exhaust stacks. With the pollution control device as the air flow bottleneck, 62,000 would no longer be the limiting factor for purposes of determining economic feasibility; rather, estimates of the VOC concentrations should have been performed using 35,000 cfm. Without further analysis, it is likely that the reduced air flow and greater concentration of VOCs would reduce the purported annualized costs below what would be deemed to be economically feasible.

18. Bunting also posits in its BACT analysis that the annual cost for utilities attributable to the operation of the control device would be \$111,225, whereas Anguil (the vendor proposing the installation of the pollution control device) proffered an estimate, which annualized, was no more than \$85,000.

19. Oddly, the BACT analysis provided by Bunting contains itemized costs (e.g., "Instrumentation, "Handling & Erection") that appear to be contemplated in Anguil's estimate.

20. The BACT analysis presumes that the molecular weight "for the combined VOCs" is 44 g/mol. However, at least with respect to ethylbenzene (a VOC emanating materials used in the facility), the molecular weight is 106.16 g/mol.

21. Further, there is an estimated life of the pollution control equipment that is used in the determination of the capital recovery cost factor, which is set at 15 years. While this may be a reasonable lifespan, there is no basis provided in the analysis. Given that such control technology is designed to last at least 20 years, such shorter life merits some explanation.

22. The BACT analysis concludes with no further analysis that at \$29,568/ton (or \$14.78/lb.), the thermal oxidizer is not economically feasible. Bunting provides no comparison to costs for similar pollution control solutions employed by similarly situated sources which also are required to remove the same or similar pollutants. Absent a showing that the requirements for meeting BACT requirements result in a substantially greater cost than for that of similar sources, or sufficient explanation of the issues noted above, the Department also rejects Bunting's BACT analysis.

23. While the Department recognizes that Bunting has responded to its various inquiries, it finds that Bunting has not been completely forthcoming with information concerning omitted processes, calculations and data provided across its various applications.

24. As a consequence of Bunting's failures to comply, the Department issued its December 1, 2017 Enforcement Order wherein the Department 1) rejected permit applications submitted by Bunting in 2015, 2016, and 2017; 2) required Bunting to submit another permit application within 30 days or cease operation; 3) provide a BACT analysis and 4) imposed a \$25,000 civil penalty.

25. Importantly, the December 1, 2017 Enforcement Order required Bunting to install a thermal oxidizer if it could not "demonstrate a BACT costs estimate is not economically feasible in comparison to other similarly-situated sources."

26. Bunting filed a timely appeal of the order. However, because no stay was granted, and because Bunting failed to timely submit a permit application, the Department required Bunting to cease all operations until it ultimately provided that application to the Department.

27. Upon receipt of Bunting's 2018 permit application, it was further determined that Bunting was unable to demonstrate that the installation of a thermal oxidizer was infeasible and therefore per the terms of the December 1, 2017 Enforcement Order, Bunting was required to install a thermal oxidizer.

28. On December 11, 2018, the ACHD Hearing Officer conducted a day-long hearing on the merits of Bunting's appeal.

29. On June 5, 2019, the Hearing Officer dismissed Bunting's appeal, disagreeing with Bunting's position that the installation of a thermal oxidizer was not economically feasible.

30. Based on the Hearing Officer's decision upholding the December 1, 2017 Enforcement Order, coupled with that Order's requirement that "Bunting shall no later than six months from the date of this Order, install a thermal oxidizer sufficient to destroy 99% of the VOCs originating from its facility," Bunting was required to have installed a thermal oxidizer no later than June 2018.

31. To date not only has Bunting failed to install a thermal oxidizer in the time allowed, it has not submitted a permit application contemplating the installation of said thermal oxidizer.

32. This Enforcement Order represents the fourth such Order compelling Bunting to take action with respect to emission controls lacking at its Verona facility.

33. The Department has afforded Bunting numerous and ample opportunity to meet the regulatory requirements over the years.

34. Article XXI contemplates the Department's broad authority to take a wide array of actions as deemed necessary to aid in the enforcement of its provisions. Specifically, Article XXI, Section 2109.03 permits the following, in relevant part:

§2109.03 ENFORCEMENT ORDERS

{Paragraph b.5 amended September 6, 1995, effective October 20, 1995. Subsection d, and Paragraphs b.1 and d.1 amended August 29, 2013, effective September 23, 2013.}

- a. **General.** Whenever the Department finds, on the basis of any information available to it, that any source is being operated in violation of any provision of this Article, including any provision of any permit or license issued pursuant to this Article, it may order the person responsible for the source to comply with this Article or it may order the immediate shutdown of the source or any part thereof. The issuance of an order to address any violations, including of permit conditions, need not be preceded by the revocation of a permit.
 - 1. The Department may also issue any such other orders as are necessary to aid in the enforcement of the provisions of this Article. These orders shall include, but shall not be limited to, orders modifying, suspending, terminating or revoking any permits, orders requiring persons to cease unlawful activities or cease operation of a facility or air contaminant source which, in the course of its operation, is in violation of any provision of this Article, or any permit, orders to take corrective action or to abate a public nuisance or to allow access to a source by the Department or a third party to take such action, orders requiring the testing, sampling, or monitoring of any air contaminant source, and orders requiring production of information. Such an order may be issued if the Department finds that any condition existing in or on the facility or source involved is causing, contributing to, or creating danger of air pollution, or if it finds that the permittee or any person is in violation of any provision of this Article.
 - 2. The Department may, in its order, require compliance with such conditions as are necessary to prevent or abate air pollution or effect the purposes of this Article.

35. As a consequence of its inaction with respect to the requirements of Article XXI and its failure to comply with the December 1, 2017 Enforcement Order, the Department hereby order Bunting Graphics to perform as follows:

THEREFORE, pursuant to the authority granted to the ACHD by Article XXI Sections 2109.03(a) and 2105.62.e and the Local Health Administration Law, 19 P.S. Section 12010, it is hereby **ORDERED** as follows:

36. No more than ten (10) days from the date of this Order, Bunting shall have ceased all painting or coating operations at its Verona facility.

37. Bunting shall not resume operations until such time Bunting has successfully demonstrated compliance with all of the following: 1) meet all of the regulatory prerequisite under Article XXI of the Allegheny County Health Department Rules and Regulations for obtaining an installation and operating permit, 2) obtain an installation permit for a thermal oxidizer--to be issued by ACHD, 3) install a thermal oxidizer at its facility and 3) demonstrate that said oxidizer, as installed, captures and controls no less 99% of the VOC anticipated to be emitted from both Bunting's paint line as well as emissions from the curing ovens situated at the facility. Following 1) the issuance of an installation permit for the installation of the thermal oxidizer, 2) the subsequent installation of said thermal oxidizer and 3) a satisfactory inspection by the Department to ensure the thermal oxidizer meets the requirements of this Order, (in addition to requirements imposed in the installation permit and by Article XXI), ACHD shall issue a written determination or order releasing Bunting from the injunction imposed at paragraph 36, *supra*.

38. The requirements of this Order are intended to supplement legal requirements to which Bunting is already subject. If there is a conflict between any requirement of this Order and other statutory or regulatory requirements, the more stringent requirement shall control. If Bunting believes that a conflict between the requirements of this Order and other legal obligations is irreconcilable, such that compliance with this Order will require it to be in non-compliance with other legal obligations, Bunting shall provide the ACHD with an explanation of such conflict

within ten (10) days of the date of this Order. ACHD may notify Bunting whether it concurs with Bunting's position and whether such provision in this Order is modified, suspended, terminated, or continues in effect.

39. Any documentation required by this Order and correspondence with the ACHD shall be sent to the following:

Jayne Graham
Air Quality Program Manager
Allegheny County Health Department
301 39th Street, Bldg. No. 7
Pittsburgh, PA 15201-1811
Tel: 412-578-8103
Fax: 412-578-8144
E-Mail: jayne.graham@alleghenycounty.us

40. Pursuant to Article XI, Allegheny County Rules and Regulations, Hearings and Appeals, you are notified that if you are aggrieved by this Order you have ten (10) days from the date of receipt of this Order in which to file an appeal. Such Notice of Appeal shall be filed in the Office of the Director at 542 Fourth Avenue, Pittsburgh, PA 15219. In the absence of a timely appeal, the terms of this Order shall become final.

41. This Order is enforceable upon issuance and any appeal of this Order shall not act as a stay unless the Director of ACHD so orders.

42. Failure to comply with this Order within the times specified herein shall constitute a violation of Article XXI, giving rise to the remedies provided by Article XXI, Section 2109.02 including civil penalties of up to \$25,000 per violation, per day.

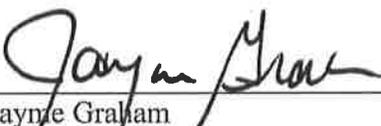
43. The provision of this Order shall apply to, be binding upon and inure to the benefit of ACHD and Bunting as well as upon their respective officers, directors, agents, contractors, employees, servants, successors and assigns.

44. The duties and obligations under this Order shall not be modified, diminished, terminated, or otherwise altered by the transfer of any legal or equitable interest in the Facility or any part thereof.

45. The imposition of this civil penalty shall not, in any manner, prohibit or preclude the Department from exercising its authority to enforce the regulations under Article XXI of the Allegheny County Rules and Regulations. Moreover, the imposition and any resolution of this civil penalty shall not, in any manner, prohibit or preclude any other party or governmental agency or entity from pursuing legal action (civil or criminal) against Bunting for violations that are the subject of this enforcement order.

SO ENTERED, this 12th day of July, 2019, Allegheny County, Pennsylvania.

For: **ALLEGHENY COUNTY HEALTH DEPARTMENT**



Jayne Graham
Air Quality Program Manager

7/12/2019
Date

**ALLEGHENY COUNTY HEALTH DEPARTMENT
ADMINISTRATIVE HEARING**

BUNTING GRAPHICS, INC.,	:	In Re: Bunting Graphics, Inc.
	:	
Appellant,	:	Docket No. ACHD-18-002
	:	
v.	:	<u>Copies Sent To:</u>
	:	<i>Representative for Bunting Graphics:</i>
ALLEGHENY COUNTY HEALTH	:	Joshua Bunting, President
DEPARTMENT,	:	20 River Road
	:	Verona, PA 15147
Appellee.	:	
	:	<i>Counsel for Allegheny County Health</i>
	:	<i>Department:</i>
	:	Jason K. Willis, Esq.
	:	301 39 th Street, Building 7
	:	Pittsburgh, PA 15201

**DECISION AND ORDER OF THE ALLEGHENY COUNTY HEALTH
DEPARTMENT HEARING OFFICER**

I. INTRODUCTION

This case involves a civil penalty issued against a graphic design firm. In December of 2017, the Allegheny County Health Department ("ACHD" or the "Department") issued a \$25,000 civil penalty against Bunting Graphics, Inc. ("Bunting" or "Appellant"), a specialty contractor in the architectural signage and ornamental metals markets, for failing to obtain the required installation and operation permits. The ACHD also required Bunting to install a thermal oxidizer in order to reduce air pollution at its facility. Bunting timely appealed, contending that installing a thermal oxidizer would be economically infeasible, and that the civil penalty was unreasonable in light of the alleged violations.

The two central issues are: (1) Does Bunting need to install a thermal oxidizer? and (2) Was the \$25,000 civil penalty levied by the ACHD against Bunting reasonable?

After considering the factual and legal arguments presented in this case, this tribunal finds that Bunting has failed to prove by a preponderance of the evidence either that installing a thermal oxidizer would be economically infeasible or that the civil penalty was unreasonable. Bunting's appeal is therefore dismissed.

II. ABBREVIATIONS KEY

As with many air pollution cases, this matter is rife with abbreviations.

Below are the most common ones:

ACHD—Allegheny County Health Department
BACT—Best Available Control Technology
DEP—Pennsylvania Department of Environmental Protection
EPA—Environmental Protection Agency
PTE—Potential to Emit
RTO—Regenerative Thermal Oxidizer
TPY—Tons Per Year
VOC—Volatile Organic Compound

III. EVIDENCE

The following exhibits were offered by Bunting, and admitted:

B-00: Order on Appeal
B-3: 6/15/2016 Enforcement Order
B-4: Letter dated 9/9/2016
B-5: Bunting Graphics Visitor Information
B-6: ALCOSAN Permit
B-11: Physical Limitations Analysis
B-12: Analysis of Potential to Emit
B-13: Actual Emissions of 2017
B-14: Actual Emissions of 2017
B-15: August 2018 BACT Analysis
B-17: EPA Memorandum dated 1/25/2018

B-18: 1990 EPA BACT Guidance
B-20: Letter from Jayme Graham
B-24: 2018 Permit Application

The following exhibits were offered by the ACHD, and admitted:

ACHD1: Revised BACT Analysis
ACHD2: Air Quality Application
ACHD3: Air Quality Permit Application, dated 12/9/2016
ACHD4: BACT Analysis, Including Letter

IV. FINDINGS OF FACT

Based on this tribunal's review of the evidence and having resolved all issues of credibility, the following facts are established:

1. Bunting Graphics, Inc. ("Bunting") is a corporation that provides products and services in the architectural signage and ornamental metals markets. Specifically, Bunting fabricates and coats specialty metals with paints and other surface coatings. (Ex. B-3).
2. The Allegheny County Health Department ("ACHD" or the "Department") is a local health agency whose powers and duties include the enforcement of laws relating to public health within Allegheny County, including the Allegheny County Health Department's Rules and Regulations, Article XXI, Air Pollution Control ("Article XXI"). (Ex. B-3).
3. On June 11, 2015, the Pennsylvania Department of Environmental Protection ("DEP") received a complaint that Bunting was installing a paint line for the application of high VOC coatings without applying for or obtaining the required permits. (Hearing Transcript ("H.T.") at 150).
4. On October 30, 2015, the ACHD issued a Notice of Violation to Bunting for failure to apply for the requisite permit. The Notice of Violation required Bunting to submit an installation and operating permit for its facility, and imposed a civil penalty of \$11,450. (Ex. B-3; H.T. at 151).
5. On December 15, 2015, Bunting submitted an application for an operating permit to the ACHD. (Ex. B-3).
6. On March 31, 2016, the ACHD deemed Bunting's December 15, 2015 application "administratively incomplete, and issued an enforcement

order directing Bunting to pay the \$11,450 and to file complete applications for the installation and operating permit. (Ex. B-3).

7. After Bunting appealed the March 31, 2016 enforcement order, the parties held a settlement conference in May 2016 at which Bunting claimed that it had misrepresented the volatile organic compound ("VOC") content of its coatings, and that based on the correct data, it would not be required to obtain a permit. (Ex. B-3).
8. On June 15, 2016, the ACHD and Bunting entered into a Consent Order and Agreement ("June 2016 Consent Order"), which required, among other things, that Bunting would be required to pay a \$2,500 penalty for past Article XXI violations, and would be required to submit an installation permit application to the ACHD for review. (Ex B-3).
9. On December 9, 2016, Bunting submitted an installation permit application, which the ACHD rejected on the grounds that Bunting's Best Available Control Technology ("BACT") analysis was faulty. (Ex. B-20; H.T. at 20, 27).
10. On March 17, 2017, Bunting submitted its revised permit application. This application indicated that Bunting's facility had the potential to emit 343,260 pounds, or 171.36 tons of VOCs per year. (Ex. ACHD-2)
11. On August of 2017, ACHD personnel inspected Bunting's facility and found that there were no pollution controls for capturing VOCs emanating from paint lines or curing ovens. (H.T. at 22-23).
12. Based on its inspections of Bunting's facilities, the ACHD issued its present Enforcement Order against Bunting on December 5, 2017. The Enforcement Order levied a \$25,000 civil penalty against Bunting for failing to implement proper pollution controls, and instructed Bunting to install a regenerative thermal oxidizer ("RTO") if economic feasibility was out of line with similarly situated sources of VOCs. (Ex. B-00).
13. On January 18, 2018, Bunting filed its notice of appeal.
14. On August 27, 2018, following attempts to settle this matter, this tribunal issued an order narrowing the scope of the hearing regarding the December 2017 Enforcement Order to two issues: (1) the installation of a thermal oxidizer by Bunting, and (2) the civil penalty that the ACHD levied against Bunting. (H.T. at 12).
15. On December 11, 2018, an administrative hearing in this matter was held.

V. DISCUSSION

Under ACHD Rules and Regulations, Article XI, Hearings and Appeals (“Article XI”), the Appellant bears the burden of proof when the ACHD denies a license, permit, approval, or certification. (Article XI, § 1105.C.7.b.i). To prevail in its appeal, Bunting must prove by a preponderance of the evidence that it is not required to install a thermal oxidizer, and that the \$25,000 civil penalty was unreasonable. Bunting makes two core arguments: First that installing the thermal oxidizer would be impractical because it would be prohibitively expensive, and would cause more pollution than it would reduce. Second, that the civil penalty is unreasonable because the June 2016 Consent Order resolved all Article XXI violations against Bunting. This tribunal finds that Bunting has not met its burden of proof on either of these points.

A. Regulatory Framework

There are several provisions of Article XXI relating to permitting facilities that are sources of air pollution that are relevant to this appeal. Article XXI, § 2102.04 provides, in pertinent part:

“§ 2102.04. INSTALLATION PERMITS

- a. General Requirements.**
 - 1. It shall be a violation of this Article...for any person to install, modify, replace, reconstruct, or reactivate any source or air pollution control equipment to which this Part applies unless:**
 - A. The Department has first issued an Installation Permit for such source or equipment[.]”**

Article XXI also lays out the requirements each source must meet in order to obtain an installation permit. Section 2102.04 goes on to note:

b. **Standards for issuance.** The Department shall not issue any Installation Permit unless it has complied with all applicable requirements under this Article for public notice and received a complete application meeting the requirements of this Part, which application includes, or demonstrates that:

[...]

3. The location, design, construction and operation of the sources affected as they relate to emission characteristics;

[...]

6. For new sources, BACT has been applied[.]”

These provisions of Article XXI indicate that a source must apply for and obtain an installation permit before the actual installation of a regulated pollution source occurs. Additionally, these provisions indicate that a facility must demonstrate that the installation of new equipment constituting a source of air pollution applies BACT.

B. Major vs. Minor Source

The parties disagree over whether Bunting is defined as a “major” or “minor” source under Article XXI. This threshold dispute is key to determining Bunting’s PTE, which, in turn, informs whether Bunting needs to reduce its emissions.

Article XXI defines a “major source” as a facility with a potential to emit 50 tons of VOCs per year or more in an area designated an ozone transport region by the Clean Air Act. (Art. XXI § 2101.20; H.T. at 166-67). Section 7511(c) of the Clean Air Act identifies Pennsylvania as being such a region. (42 U.S.C. § 7511(c) (2018); H.T. at 166).

But even if a facility is considered a "major source," it can still be designated a "synthetic minor source" if the owner or operator applies for an exemption and outlines certain operational changes they will make to keep them below the threshold limit of 50 tons per year ("TPY"). (Ex. ACHD-3; H.T. at 205). The owner/operator must calculate the facility's potential to emit ("PTE"), and precisely indicate how they will "take their limits." (H.T. at 207). This may include limiting the amount of work hours at the facility. (H.T. at 186-87).

The Department argues that Bunting did not follow this process to limit their emissions. (*ACHD Brief* at 8; Ex. ACHD-3; H.T. at 205-06). At the hearing, Jayme Graham ("Ms. Graham"), the ACHD's Air Quality Program Manager, explained that Bunting improperly failed to take a limit in its PTE in its 2015 Permit Application, violating ACHD procedures. (*ACHD Brief* at 8; Ex. ACHD-2; H.T. at 207).

Bunting responds that it submitted an "administratively complete application" in 2018 that properly indicated that it would take a limit in its PTE, and that therefore, Bunting should be designated a synthetic minor source. (H.T. at 207-09). However, this argument fails because Bunting never explained *how* it would limit its PTE. The following exchange is illustrative:

"Q (by Joshua Bunting, President of Bunting Graphics, Inc.): So the mistake on the—on the applications was corrected in this application?

A (by Ms. Graham): For that section, yes.

Q: Well, for the request to be a synthetic minor, correct?

A: Yes. I mean, you still would have to explain what your restrictions are that you are going to take to reach 30 tons per year." (H.T. at 209).

Bunting then argues that the ACHD should have notified it about this issue. (H.T. at 209-10). But it is not the ACHD's duty to fix mistakes in a source's permit application. It's the source's. And Bunting failed to fix its mistake.

C. Bunting's Potential to Emit

Bunting argues that the civil penalty should not be assessed because a permit was not necessary for the amount of pollution that Bunting emitted. (*Bunting Brief* at 7). At the hearing, Joe Pezze ("Mr. Pezze"), an air pollution consultant who was qualified as an expert on BACT analyses, testified on Bunting's behalf. (H.T. at 31-32). The crux of Mr. Pezze's testimony was that the ACHD's framework for rejecting Bunting's BACT analysis was flawed because the ACHD did not follow proper protocols outlined by the Environmental Protection Agency ("EPA"). (*Bunting Brief* at 5-6; H.T. at 28-29). In support of his argument, Mr. Pezze cited to a 1990 BACT guidance manual drafted by the EPA, called the New Source Review Workshop Manual ("EPA Guidance Manual"). (Ex. B-18; H.T. at 24-27).

According to Mr. Pezze, it would be "physically impossible" for Bunting's facility to emit 327.05 tons of VOC per year, the amount that the ACHD claims the facility had the potential to emit. (Ex. B-20; H.T. at 29-30). Rather, Bunting argues that the BACT analysis should be based on a Potential to Emit ("PTE") of 30 tons per year, not 327 tons. (H.T. at 30).

Bunting posits that the ACHD's review of the BACT analysis was faulty. In its brief, Bunting asserts, "In determining a baseline emission for Cost Effectiveness[, the] ACHD used the exact methodology the manual states not to use

on page B.40 (3rd Paragraph)[.] (*Bunting Brief* at 6). Bunting states that because the ACHD's methodology contradicted the EPA Guidance Manual and the ACHD did not know specifically who was involved in reviewing the BACT analysis, this tribunal should "rely on the expert testimony from the party who did perform the BACT Analysis for Bunting and their findings. (*Id.*). In other words, because Bunting presented the only expert witness in this case (Mr. Pezze), that expert's testimony should be accorded great weight.

The ACHD counters that Bunting's BACT analysis is flawed for several reasons. In her letter to Bunting rejecting its BACT analysis, Ms. Graham calculated that Bunting's PTE was actually 327.05 tons of VOCs per year, which was calculated by multiplying the potential amount of paint in an eight-hour shift over the course of a year. (Ex. B-20). This figure was derived from the operations manual drafted by Ransburg, the company that manufactured the sprayers used in Bunting's paint operation, as well as Bunting's calculation that it would operate for 8,760 hours per year. (Exs. B-20, ACHD-3). Even if Bunting were to cut its operation time in half, this would still amount to 163.5 tons per year of VOC, which would qualify as a major source. (*Id.*). Also, Bunting's economic infeasibility is undercut by the fact that other major sources of VOC are required to install thermal oxidizers. (*Id.*). In addition, the ACHD points out that the EPA Guidance Manual on which Bunting relied for its BACT analysis is not a regulation, and thus is not binding on the ACHD. (H.T. at 55).

This tribunal finds that the Department has the better argument here. The conclusions that Ms. Graham reaches in her letter are well-grounded. The figure of 327.05 tons per year of VOCs was based directly on information provided by the manufacturer, and was in line with the quotation from the trade group Society for Experimental Graphic Design. (Ex. B-20)¹. Further, the EPA Guidance Manual is not binding on the ACHD and was written nearly three decades ago.

Additionally, Mr. Pezze's testimony isn't quite the sockdolager that Bunting had hoped for. Even the more recent EPA guidance that Mr. Pezze cites is for hazardous air pollutants ("HAPs"), rather than VOCs. (H.T. at 35-36). Moreover, his economic feasibility calculation was based on Bunting's self-imposed limit of 30 tons of VOCs per year, which this tribunal has found to be inaccurate, as Bunting has never demonstrated how it would only emit 30 tons of VOCs per year. Finally, Mr. Pezze admitted on cross-examination that the BACT analysis that Bunting provided was not to the satisfaction of the permitting agency, which is a requirement under the EPA Guidance Manual on which Mr. Pezze based his conclusions. (Ex. B-18, p. B.44). This tribunal finds that the ACHD's calculation of Bunting's PTE of 327.05 tons per year of VOCs is more accurate than Bunting's self-calculated PTE of 30 tons per year.

D. Economic Feasibility of Installing the RTO

The ACHD insists that the BACT for reducing VOCs and odors at Bunting's facility is installing a Regenerative Thermal Oxidizer ("RTO"). (*ACHD Brief* at 9;

¹ See <https://segd.org/bunting-adds-new-paint-line>.

H.T. at 174). Bunting argues, however, that installing an RTO would be economically infeasible. (*Bunting Brief* at 6; H.T. at 161-62). Bunting contends that its own BACT analysis shows that the actual emission cost to remove a VOC pollutant is \$103,484 per ton. (*Bunting Brief* at 6; Ex. B-15). In support of its economic infeasibility argument, Bunting cites to Ms. Graham's testimony that \$50,000 or more per ton of VOC would be too expensive. (*Bunting Brief* at 6; H.T. at 195).

The ACHD responds that while the cost of installing an RTO should be factored into a BACT analysis, it is Bunting's own conduct that has driven up the cost. (*ACHD Brief* at 9). Specifically, the Department points to the fact that Bunting's paint booth was built without a permit, and that the paint process could have been constructed in such a way that an oxidizer could have been added afterward. (H.T. at 223). The ACHD concludes, "[B]ecause Appellant violated [Article] XXI by its initial actions, it is now substantially more expensive to add a thermal oxidizer—which Appellant is now using as a defense against conduct prescribed by the same regulations." (*Id.*).

This tribunal finds that the ACHD has the better argument here. The bottom line is that Bunting has been operating for years without the required permits. (H.T. at 169, 175, 223). Bunting even admitted that its installation permit application was incomplete. (H.T. at 131). At the hearing, ACHD permitting engineer Gregson Vaux ("Mr. Vaux") testified in detail that the paint booth should have been built to accommodate an RTO, and that because it was not built this way,

there will now be an additional cost to retrofit it to comply with Article XXI regulations. (H.T. at 223, 228-29). Mr. Vaux also provided uncontradicted testimony that Bunting's competitors have successfully installed thermal oxidizers, illustrating the technology's feasibility. (H.T. at 223-24, 236). In sum, Bunting has painted itself into a corner.

E. Causing vs. Reducing Pollution

As an ancillary point, Bunting argues that installing an RTO will cause more pollution than it will reduce. Bunting asserts, "[T]he simple reality is that the natural gas to run the thermal oxidizer would create more pollutants than it would remove because [Bunting] is not emitting enough VOCs to offset the emissions of the RTO." (*Bunting Brief* at 6).

This tribunal finds Bunting's argument lacking because Bunting provides no evidentiary support for its conclusion that a thermal oxidizer would create more pollution than it would reduce.

F. Reasonableness of the Civil Penalty

Bunting argues that the \$25,000 civil penalty should be nullified because the June 2016 Consent Order resolved all Article XXI violations issued against it. (*Bunting Brief* at 7). Bunting contends that the June 2016 Consent Order not only covered past Article XXI violations, but future ones as well. (*Id.*).

The Department retorts that while the June 2016 Consent Order resolved Bunting's past violations, it did not absolve Bunting from future ones. (*ACHD Brief*

at 11). The ACHD also points out that Bunting has not properly applied for its operating permit and is operating without the requisite BACT. (*Id.*).

The language of the June 2016 Consent Order supports the ACHD's position. It states, "Nothing herein is intended to limit the authority of the ACHD...to seek further enforcement of this Agreement in the event that Bunting fails to comply with its terms and conditions." (Ex. B-3, ¶ 7). This language plainly indicates that the ACHD may attempt to enforce the terms of the June 2016 Consent Order if Bunting fails to comply with it in the future.

Bunting seizes on language in Paragraph 5 of the June 2016 Consent Order which states that the agreement "is intended to resolve all outstanding issues between the Parties relating to Bunting's compliance with Article XXI and its obligation to obtain the requisite permits in Allegheny County." (Ex. B-3, ¶ 5). Bunting argues, "Obtain is a future tense, and the agreement contemplates the penalty for not being in compliance in the future as it relates to the [*sic*] not having requisite permits for Allegheny County." (*Id.*).

But this argument falls flat. As stated above, Paragraph 7 of the June 2016 Consent Order plainly states that the ACHD may pursue future action against Bunting for lack of compliance. Second, there is nothing in the language of Paragraph 5 that contemplates future violations.

Here, Bunting violated Article XXI §§ 2102.04(a) and (b) by operating without a proper installation permit, long after the June 2016 Consent Order was in place.

Considering the maximum civil penalty that the ACHD could issue to a violator is \$25,000 *per day*,² this tribunal finds that the \$25,000 civil penalty was reasonable.

VI. CONCLUSION

Based on the evidence and testimony presented at the hearing, the relevant Rules and Regulations, and the arguments in the parties' briefs, this tribunal finds that Bunting has failed to prove by a preponderance of the evidence either that installing an RTO would be impractical or that the civil penalty was unreasonable. Bunting's appeal is therefore dismissed. This administrative decision may be appealed to the Court of Common Pleas of Allegheny County, Pennsylvania.



Max Slater
Administrative Hearing Officer
Allegheny County Health Department

Dated: June 5, 2019

² See H.T. at 167-68.