

**ALLEGHENY COUNTY HEALTH DEPARTMENT
AIR QUALITY PROGRAM**

In the Matter of:

Bunting Graphics
20 River Road
Verona, PA 15147

: Appeal of July 12, 2019 Enforcement Order
: by Appellant Bunting Graphics

MOTION TO DISMISS

NOW COMES, the Allegheny County Health Department (hereinafter “ACHD” or the “Department”), by and through its undersigned counsel, and hereby moves this tribunal, through this Motion to Dismiss Appellant Bunting Graphics’ (“Appellant”) Appeal of the July 12, 2019 Enforcement Order, to dismiss Appellant’s appeal with prejudice. In support thereof, the Department submits the following:

1. On July 12, 2019, the Department issued an enforcement order requiring Appellant to cease all painting and coating operations at its Verona facility. Per the conditions of the July 12 enforcement order, Appellant must *inter alia* obtain an installation permit for the installation of a thermal oxidizer for the capture and control of volatile organic compounds (VOCs) emitted from Appellant’s paint line and curing ovens. Coating and painting operations may not resume until the conditions of the July 12 enforcement order have been met.

2. Article XI, Section 1104 of the Allegheny County Health Department Rules and Regulations provides, in relevant part, as follows:

A. The Notice of Appeal shall be filed no later than thirty (30) days after receipt of written notice or issuance of the action by which the Appellant is aggrieved. The notice of appeal must be filed no later than 4:00 p.m. Eastern Time on the thirtieth (30th) day after written notice or issuance of the action.

* * *

D. All actions of the Department shall become final thirty (30) days after receipt of written notice or issuance if no appeal has been perfected under the provisions of this Section.

3. The undersigned counsel transmitted the July 12 enforcement order to Appellant that same day. A true and correct copy of the electronic communication from the Department to Appellant is attached hereto and incorporated herein as Exhibit "A."

4. Here, Appellant has filed its appeal on August 16, 2019, 35 days after the date it was issued against and received by Appellant.

5. "It is well established that the failure to timely appeal an administrative agency's action is a jurisdictional defect. The time for taking an appeal therefore cannot be extended as a matter of grace or mere indulgence." *V.S. v. Dep't of Pub. Welfare*, 131 A.3d 523, 527 (Pa. Comwlth. 2015) quoting *J.C. v. Dep't of Pub. Welfare*, 720 A.2d 193, 197 (Pa.Cmwlth.1998). Indeed our Supreme Court has articulated that, "[w]hether a court has subject matter jurisdiction over an action is a fundamental issue of law which may be raised at any time in the course of the proceedings, including by a reviewing court sua sponte. *Commonwealth v. Little*, 455 Pa. 163, 314 A.2d 270, 272 (1974). Further, subject matter jurisdiction may not be conferred by consent of the parties and a defect of such jurisdiction may not be waived." *In re Admin. Order No. 1-MD-2003*, 594 Pa. 346, 355, 936 A.2d 1, 5–6 (2007) (emphasis supplied).

6. By operation of Article XI, Section 1104, Appellant's appeal is untimely and, consequently, its issues are waived.

7. Because Appellant has, as a matter of law, waived the issues on appeal, there no longer remains a legally cognizable reason to keep its action open.

8. Accordingly, this tribunal is constrained to dismiss Appellant's August 16, 2019 appeal.

CONCLUSION

For all of the aforementioned reasons, the Department respectfully requests that this tribunal dismiss with prejudice Appellant Bunting Graphics Appeal of the July 12, 2019 Enforcement Order.

BY:



Jason K. Willis, Esq.
Pa. I.D. No. 86752
Assistant Solicitor

Michael A. Parker, Esq.
Pa. I.D. No. 90979
Solicitor

301 39th Street, Bldg. No. 7
Pittsburgh, PA 15201-1891
Tel.: 412-578-8124

Attorneys for Appellee Allegheny
County Health Department

Date: 08/19/19

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion to Dismiss was served upon the following counsel of record by electronic mail, on this 19th day of August 2019:

Administrative Hearing Officer
Allegheny County Health Department
542 4th Avenue
Pittsburgh, PA 15219
max.slater@alleghenycounty.us

Avrum Levicoff, Esquire
The Levicoff Law Firm, P.C.
4 PPG Place, Suite 200
Pittsburgh, PA 15222
alevicoff@levicofflaw.com

(Attorney for Bunting Graphics)



Jason K. Willis

Willis, Jason

From: Willis, Jason
Sent: Friday, July 12, 2019 2:49 PM
To: 'Joshua Bunting'; 'Cliff Woodward'
Cc: Parker, Michael; Dettlinger, Carl
Subject: RE: Enforcement Order
Attachments: Enforcement Order 7-12-19.pdf

All—

I apologize. The last transmission did not contain the Order itself.

Please find attached.

Thank you,

Jason Willis



Jason K. Willis, Esq.

Assistant Solicitor

Legal Section

Allegheny County Health Department

301 39th Street, Bldg. No. 7

Pittsburgh, PA 15201

Telephone: 412-578-8124

Facsimile: 412-578-8144

From: Willis, Jason

Sent: Friday, July 12, 2019 2:00 PM

To: Joshua Bunting <Joshua.Bunting@buntinggraphics.com>; Cliff Woodward <Cliff.Woodward@buntinggraphics.com>

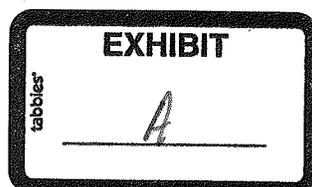
Cc: Parker, Michael <Michael.Parker@AlleghenyCounty.US>; Dettlinger, Carl <Carl.Dettlinger@AlleghenyCounty.US>

Subject: Enforcement Order

Gentlemen—

Please find attached a copy of the Enforcement Order issued today. Should you have any questions or concerns, please feel free to contact my office.

Regards,



**ALLEGHENY COUNTY HEALTH DEPARTMENT
ADMINISTRATIVE ORDER**

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|-------------------------|---|---|
| BUNTING GRAPHICS, | : | In Re: Appeal of the July 12, 2019 |
| | : | Enforcement Order |
| Appellant, | : | |
| | : | |
| | : | |
| | : | <u>Copies Sent To:</u> |
| | : | <i>Counsel for Appellant:</i> |
| | : | Avrum Levicoff, Esquire |
| | : | The Levicoff Law Firm, P.C. |
| | : | 4 PPG Place, Suite 200 |
| | : | Pittsburgh, PA 15222 |
| v. | : | |
| | : | |
| ALLEGHENY COUNTY HEALTH | : | |
| DEPARTMENT, | : | |
| | : | |
| Appellee. | : | <i>Counsel for ACHD:</i> |
| | : | Jason K. Willis, Esq. |
| | : | 301 39 th Street, Building 7 |
| | : | Pittsburgh, PA 15201 |

ORDER

AND NOW, this ____th day of August, 2019, upon consideration of Appellee’s Motion to Dismiss, and upon consideration of the legal arguments presented, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

1. The Administrative Hearing Officer makes the following findings:
 - a. The Allegheny County Health Department issued an enforcement order against Appellant on July 12, 2019;
 - b. Appellant filed its Notice of Appeal on August 19, 2019;
 - c. No fewer than thirty-five days elapsed between the imposition of the July 12, 2019 Order and Appellant’s August 16, 2019 Notice of Appeal;
 - d. By operation of Article XI, Section 1104 of the Allegheny County Health

Department's Rules and Regulations, Appellant's appeal is untimely and Appellant has waived all issues raised on appeal;

e. Absent any cognizable issues on appeal, this tribunal is constrained to grant Appellee's requested relief;

2. Appellee's Motion to Dismiss is hereby GRANTED and Appellant Bunting Graphics' appeal is hereby DISMISSED with prejudice.

Max Slater, Esquire
Administrative Hearing Officer
Allegheny County Health Department