

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 <sup>th</sup> 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)<sup>1</sup>. 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;

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<sup>1</sup> 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*,<sup>2</sup> 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.

  
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Max Slater  
Administrative Hearing Officer  
Allegheny County Health Department

Dated: June 5, 2019

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<sup>2</sup> See H.T. at 167-68.