

**ALLEGHENY COUNTY HEALTH DEPARTMENT
ADMINISTRATIVE HEARINGS**

PITTSBURGH WATER AND SEWER)
AUTHORITY,)
)
Appellant,)
)
vs.)
)
ALLEGHENY COUNTY HEALTH)
DEPARTMENT,)
)
Appellee,)
)
NATALIE LEON GOLANKIEWICZ,)
PATRICIA SCHANCK, BRYAN)
DEFRANCO, KENNETH M. FINNEGAN,)
JAMIE M. WAGNER, ARIEL and)
KAREN ABAD, ROBERT A. SELL,)
and CHRISTOPHER J. CRATSLZY,)
)
Intervenors.)

In re: Sewer Line
2805 – 2915 Homehurst Avenue
Pittsburgh, Pennsylvania 15234

**THE ALLEGHENY COUNTY HEALTH DEPARTMENT’S
POST-HEARING MEMORANDUM**

I. Introduction and Background.

The Allegheny County Health Department (hereinafter “ACHD” or “Department”) files this post-hearing memorandum summarizing and supporting its position in the appeal of the above captioned municipal authority (hereinafter “Appellant”).

The appeal was filed on March 3, 2017 and was based on an ACHD Notice of Violation dated February 22, 2017 (hereinafter “February 22nd NOV”). Exhibit D1. Pursuant to Section 1105 of Article XI, “Hearings and Appeals” of the ACHD’s Rules and Regulations (hereinafter “Article XI”), a full evidentiary hearing was held on July 13, 2017.

The appeal challenges the ACHD’s determination found in the February 22nd NOV that the Homehurst Avenue Sewer Line (hereinafter “Homehurst Sewer Line”) is a public line. The

appeal further seeks to overturn the ACHD's two-part order found in the February 22nd NOV that it must immediately eliminate the discharge of sewage and submit a plan and schedule for repairing and maintaining the sewer line in compliance with applicable laws and regulations. Appellant did not request and the ACHD Director did not unilaterally grant a stay of the proceedings, therefore, pursuant to Article XI § 1111, the ACHD's order found in the February 22nd NOV remains in full force and effect.

II. Proposed Findings of Fact.

- A. 2805, 2807, 2809, 2811, 2901, 2903, 2905, 2907, 2909, 2911, 2913, and 2915 Homehurst Avenue are connected to a sewer line (previously identified as "Homehurst Sewer Line"). Former Exhibits¹ A1 and D1, Exhibit D2. Verbatim Transcript of July 13, 2017 Hearing (hereinafter "Transcript") at pp. 17, 68, 79.
- B. In the case *Natalie Leon, et al. v. ACHD*, the ACHD Administrative Hearing Officer (hereinafter "Hearing Officer") determined that the Homehurst Sewer Line is a public line. Exhibit D2.
- C. The ACHD issued the February 22nd NOV to Appellant based on the Hearing Officer's prior decision. Exhibit D2, Tr. at pp. 129, 131–32.
- D. Appellant satisfied the first order contained in ACHD's February 22nd NOV to eliminate the sewage discharging from the Homehurst Sewer Line. Exhibit D1. Tr. at pp. 17 -18.
- E. Appellant refuses to acknowledge ownership of the Homehurst Sewer Line for future maintenance.

¹ Former Exhibits are exhibits that were admitted into evidence during the hearing held on October 24, 2016, *Natalie Leon, et al. v. ACHD*, and have been admitted into evidence in the current hearing with consent from all parties.

F. Appellant satisfied the second order contained in the February 22nd NOV to submit a plan and schedule for repairing and maintaining the sewer line in compliance with applicable laws and regulations by stating its intention to construct a public sewer line beneath Homehurst Avenue.

III. Discussion.

In an administrative appeal of a final agency action of the ACHD, the appellant, “shall bear the burden of proof and the burden of going forward with respect to all issues.” Article XI § 1105.D.7. Therefore, because this matter revolves around ACHD Rules and Regulations Article XIV “Sewage Management” (hereinafter “Article XIV”), §1404.2, and the Pennsylvania Clean Streams Law, Act 394, approved June 22, 1937, P.L. 1987 (hereinafter “PA Clean Streams Law”), §§ 201 and 202, in order to prevail in its appeal, Appellant must prove by a preponderance of the evidence that properties from 2805 through 2915 Homehurst Avenue are connected to a common sewer lateral. Appellant has never disputed that a sewer line exists on Homehurst Avenue. Therefore, the only remaining issue is whether or not the Homehurst Sewer Line is public, thus necessitating a plan and schedule for maintaining this sewer line in compliance with applicable laws and regulations as ordered in the February 22nd NOV, or private, thereby requiring the application of ACHD Rules and Regulations Article XV, “Plumbing and Building Drainage” (hereinafter “Article XV”), § 701.3.1, Existing Common Sewer Lateral.

As noted above, one regulation upon which this matter must be decided is Article XIV § 1404.2, which states as follows:

“Violations of the standards identified in §1404.1 are declared health hazards and/or nuisances and it shall be unlawful for any person to continue to allow, or fail

to eliminate the discharge of sewage in a manner which fails to conform to the requirements of §1404.1, or fail to abate the nuisance caused by such discharge of sewage.”

The health hazards referenced in this provision and enumerated in Article XIV § 1404.1 include discharges that are accessible to children, nuisance due to odor or unsightly appearance, contamination of any stream or water of the Commonwealth, and violation of the PA Clean Streams Law, PA Sewage Facilities Act, or any other statute or regulation referring to water pollution, sewage disposal, or nuisances.

The PA Clean Streams Law §§ 201 and 202 state as follows:

“Section 201. Prohibition Against Discharge of Sewage. No person or municipality shall place or permit to be placed, or discharge or permit to flow, or continue to discharge or permit to flow, into any of the waters of the Commonwealth any sewage, except as hereinafter provided in this act.

Section 202. Sewage Discharges. No municipality or person shall discharge or permit the discharge of sewage in any manner, directly or indirectly, into the waters of this Commonwealth unless such discharge is authorized by the rules and regulations of the department or such person or municipality has first obtained a permit from the department... For the purposes of this section, a discharge of sewage into the waters of the Commonwealth shall include a discharge of sewage by a person or municipality into a sewer system or other facility owned, operated or maintained by another person or municipality and which then flows into the waters of the Commonwealth. A discharge of sewage without a permit or contrary to the terms and conditions of a permit or contrary to the rules and regulations of the department is hereby declared to be a nuisance.”

In the present case, the Hearing Officer issued a decision and order on December 22, 2016 concluding that the Homehurst Sewer Line was a public line (hereinafter “Administrative Decision”). Exhibit D2. Pursuant to the Administrative Decision, the ACHD issued its order to Appellant found in the February 22nd NOV to eliminate the discharge and submit a corrective action plan for repair and maintenance of the Homehurst Sewer Line. Exhibits D1 and D2, Tr. at pp. 129, 131–32. The ACHD did not permit the discharge of sewage from the Homehurst Sewer

Line and Appellant did not claim sewage discharge was permitted. Appellant eliminated the sewage discharge and submitted a corrective action plan explaining its intention to build a public sewer line below Homehurst Avenue.

IV. Proposed Findings of Law.

- A. The Homehurst Sewer Line is a public sewer line triggering the requirements of Article XIV and the PA Clean Stream Law.
- B. The ACHD lawfully ordered Appellant to eliminate sewage discharge from the Homehurst Sewer Line and submit a plan for repair and maintenance of this line.
- C. Appellant must either construct a public sewer line below Homehurst Avenue that connects to the properties located at 2805 – 2915 Homehurst Avenue in accordance with the Pennsylvania Department of Environmental Protection and other applicable laws and regulations, or acknowledge ownership of the existing Homehurst Sewer Line and submit a plan and schedule for its maintenance to the ACHD.

V. Conclusion.

This case arose from a previous decision of the Hearing Officer concerning the ownership of the Homehurst Sewer Line. The ACHD issued the order to abate and maintain the Homehurst Sewer Line to Appellant based on the Administrative Decision. If the Hearing Officer determines that the sewer line is public, the February 22nd NOV must be enforced. If the sewer line is declared private, the Intervenors must comply with the requirements contained in Article XV § 701.3.1.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on September 8, 2017, I served a true and correct copy of the Post-Hearing Memorandum on the following persons by first class mail, postage paid, and addressed as follows:

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