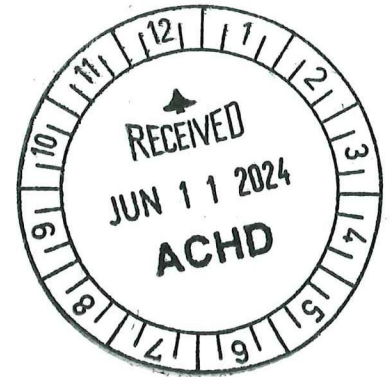


June 11, 2024

Via Hand Delivery

Patrick Dowd
Acting Director
Office of the Director
542 Fourth Avenue
Pittsburgh, PA 15219

**Re: ALCOSAN
Notice of Appeal of Enforcement Order No. 240502**



Dear Acting Director Dowd:

Pursuant to Article XI of the Rules and Regulations of the Allegheny County Health Department, the Allegheny County Sanitary Authority (ALCOSAN) submits for filing the enclosed Notice of Appeal regarding the above-referenced order, which ALCOSAN received on May 13, 2024. Included with the enclosures is a check in the amount of \$2,500, equal to the civil penalty assessed by the above-referenced order, to be held in escrow. If you have any questions or wish to discuss this matter further, please contact me at gsteinbauer@babstcalland.com or (412) 394-6590.

Sincerely,

Gary E. Steinbauer, Esq.
Counsel for ALCOSAN

Enclosures

cc: John G. McGowan, Esq. (via email – John.McGowan@AlleghenyCounty.US)
Jason Willis, Esq. (via email – Jason.Willis@AlleghenyCounty.US)



CHECK NO. 245720
 CHECK DATE: 06/06/2024
 ADDRESS NO.: 77833

3300 PREBLE AVENUE
 PITTSBURGH, PA 15233-1092

INVOICE NUMBER	DATE	DESCRIPTION	GROSS	DEDUCTIONS	AMOUNT PAID
04JUN2024	06/04/2024	Enforcement Order 2405	2,500.00		2,500.00
TOTALS			2,500.00		2,500.00

THE KEY TO DOCUMENT SECURITY • HEAT ACTIVATED THUMB PRINT • ADDITIONAL SECURITY FEATURES INCLUDED • SEE BACK FOR DETAILS



3300 PREBLE AVENUE
 PITTSBURGH, PA 15233-1092

PNC Bank N.A. 001
 PITTSBURGH, PA

CHECK NO. 245720

8-9
 430

DATE	AMOUNT
06/06/2024	\$*****2,500.00

VOID IF NOT CASHED IN 60 DAYS

PAY TWO THOUSAND FIVE HUNDRED AND 00/100*****

TO THE ORDER OF:

Allegheny County Clean Air Fund
 Allegheny County Health Department
 836 Fulton Street
 Pittsburgh PA 15233

REVENUE FUND

BY Alex S. Fantoni

BY Allegheny County Health Department

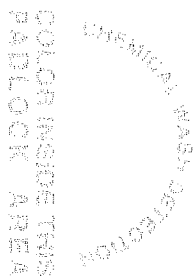
AUTHORIZED SIGNATURES



⑈ 245720 ⑈ ⑆043000096⑆ 0001097721⑈

CHECK HERE IF MOBILE DEPOSIT

AT _____
(FINANCIAL INSTITUTION)



SHOULD BE WHITE



The security features listed below protect Treasury securities.
Change Appearance - Printed under certain angles, genuine
Real Sensitive Ink - Produces a red color which is not
visible.
Optical Variable Paper - Shows red to green depending on the angle
viewed. Serial - Each number is unique and cannot be copied.
Color and Paper - Uses colors and paper that are not
available to counterfeiters.
Security Features - Each paper includes a set of security
features.
Security Features - Each paper includes a set of security
features.
FEDERAL RESERVE BOARD OF GOVERNORS, WASHINGTON, D.C.

BEFORE THE ALLEGHENY COUNTY HEALTH DEPARTMENT

**542 FOURTH AVENUE
PITTSBURGH, PA 15219**

**ALCOSAN
3300 Preble Avenue
Pittsburgh, PA 15233**

Appellant

)
) **In re:**
) **Enforcement Order #240502**
)
)
)

NOTICE OF APPEAL

Pursuant to Article XI of the Rules and Regulations of the Allegheny County Health Department (“the Department”), Appellant Allegheny County Sanitary Authority (“ALCOSAN”) appeals the Department’s issuance of Enforcement Order #240502 (“Enforcement Order”). ALCOSAN received the Enforcement Order on May 13, 2024. A copy of the Enforcement Order is attached as Exhibit A to this Notice of Appeal. Consistent with Sections 1103 and 1104 of Article XI of the Department’s Rules and Regulations, this submission constitutes timely filing of the Notice of Appeal of the applicable Department action, and properly specifies the manner in which ALCOSAN is aggrieved by the Department’s action and related grounds in support of this appeal, as well as the nature of ALCOSAN’s direct interest in the action being appealed.

A. Manner in Which ALCOSAN is Aggrieved and Grounds of Appeal

1. ALCOSAN is a publicly owned treatment works located at 3300 Preble Avenue, Pittsburgh, PA 15233, where it processes an average of 205 million gallons of wastewater per day, serving eighty-three local municipalities within Allegheny County. The facility is a minor source of all criteria pollutants and hazardous air pollutants as defined in section 2101.20 of Article XXI. However, ALCOSAN is required to have a Title V Operating Permit because it

owns and operates two sewage sludge incineration units subject to requirements established pursuant to Section 129 of the Clean Air Act. 42 U.S.C. § 7429; 40 C.F.R. § 62.16035.

2. ALCOSAN is subject to certain requirements in 40 C.F.R. Part 62, Subpart LLL, Federal Plan Requirements for Sewage Sludge Incineration Units Constructed on or Before October 14, 2010 (“Subpart LLL”). Subpart LLL requires that sewage sludge incineration units comply with emissions limitations for several parameters, including lead. The Subpart LLL emission limitation for lead is 0.0074 milligrams per dry standard cubic meter (“mg/dscm”).

3. From October 17 through October 19, 2023, ALCOSAN performed emissions testing on its Fluidized Bed Incinerator #1 (“FBI-1”), a sewage sludge incineration unit subject to applicable Subpart LLL requirements. This testing detected an average of 0.0087 mg/dscm of lead, with two of the three sampling runs being below 0.0074mg/dscm. During previous emissions testing on FBI-1, the measured average levels of lead were 0.0005 mg/dscm, 0.0073 mg/dscm, 0.0007 mg/dscm, 0.0003 mg/dscm, and 0.0015 mg/dscm in 2016, 2017, 2018, 2019, and 2020, respectively.

4. ALCOSAN first learned of the results of the October 2023 emissions testing on FBI-1 when it received the final report from the third-party testing company on or about December 15, 2023. On December 19, 2023, ALCOSAN timely submitted the report from the October sampling to the Department, indicating that it would be contacting the Department for availability to schedule a re-test of FBI-1 for lead. On December 29, 2023, ALCOSAN submitted a retesting protocol, and on January 5, 2024, retested FBI-1 for lead. The average lead test result of the January 2024 test was 0.0010 mg/dscm.

5. On May 13, 2024, ALCOSAN received the Enforcement Order, which assesses a civil penalty of \$2,500 for an alleged violation described as “the average Lead test result for the

October 2023 emission testing was 0.0087 mg/dscm, in excess of the Subpart LLL and Title V permit limitations” and an alleged violation of Article XXI, § 2103.12.g.

6. ALCOSAN objects to the Enforcement Order. For the following reasons, the Department has abused its discretion and acted unreasonably, arbitrarily, capriciously, contrary to law and/or in a manner not supported by evidence:

- a. The civil penalty assessed by the Enforcement Order is inappropriately based on alleged violations of 40 C.F.R. Part 62, Subpart LLL and Art. XXI, § 2103.12.g.;
- b. The civil penalty assessed by the Enforcement Order is inappropriate, unwarranted, and not commensurate with the claim in the Enforcement Order; and
- c. The civil penalty assessed by the Enforcement Order is an abuse of discretion and the product of a flawed application of the Department’s *Civil Penalty Policy* (Jan. 10, 2018).

B. Nature of ALCOSAN’s Direct Interest in the Department’s Action and this Appeal


1. ALCOSAN is the named entity to which the Enforcement Order has been issued, and against whom the Department assessed a civil penalty. As a result, ALCOSAN has a direct interest in the Enforcement Order and in this Appeal.

2. Through this Notice of Appeal, ALCOSAN has identified its objections to the Enforcement Order, but reserves the right to amend or supplement the factual and legal basis of its Appeal as authorized by the Department’s Rules and Regulations. More specifically, ALCOSAN reserves its right to amend this Appeal based on any other objections that may

become known based on discovery, changes in law or fact, action by the Department, or other pertinent circumstances or changes.

3. For the foregoing reasons, ALCOSAN respectfully requests that the Director vacate the Enforcement Order, or alternatively, vacate and remand the Order to the Department for consideration consistent with the Director's opinion.

Respectfully submitted,



Gary E. Steinbauer, Esq.
Christina M. Puhnaty, Esq.
Babst, Calland, Clements, & Zomnir, P.C.
Two Gateway Center
Pittsburgh, PA 15222
(412) 394-6500
gsteinbauer@babstcalland.com
cpuhnaty@babstcalland.com

June 11, 2024

Date

Counsel for Appellant

EXHIBIT A

COUNTY OF



ALLEGHENY

SARA INNAMORATO
COUNTY EXECUTIVE

May 3, 2024

CERTIFIED MAIL – 9489 0090 0027 6045 5253 44

ALCOSAN
c/o Michelle Buys, P.E.
Director of Environmental Compliance
3300 Preble Avenue
Pittsburgh, PA 15233-1092

RE: Enforcement Order[240502]– ALCOSAN at 3300 Preble Avenue, Pittsburgh, PA – Article XXI, and 40 CFR 62, subpart LLL, §62.15855-62.16050 (Federal Plan Requirements for Sewage Sludge Incineration Units Constructed on or Before 10/14/2010), Table 2: Pb emission limit of 7.4 µg/dscm.

Dear Ms. Buys,

Enclosed please find a copy of the Enforcement Order regarding the lead emission exceedance found during the October 2023 compliance test on fluidized bed incinerator #1. Also attached is an 'Important Notice' for your review.

Thank you for your anticipated prompt attention to this matter and future increased efforts to comply with all applicable regulations. Any questions concerning this Order should be directed to the ACHD's representative, Hudson Tiffany via email Hudson.Tiffany@AlleghenyCounty.US.

Sincerely,

Allason Holt
Air Quality Manager, Compliance and Enforcement Program

cc: Michelle Buys, P.E.
Hudson Tiffany, ACHD Enforcement Engineer (via email)
File



**ALLEGHENY COUNTY HEALTH DEPARTMENT
AIR QUALITY PROGRAM**


836 FULTON STREET • PITTSBURGH, PA 15233
PHONE (412) 578-8103 • FAX (412) 578-8144
24-HR (412) 687-ACHD (2243)
WWW.ALLEGHENYCOUNTY.US/HEALTHDEPARTMENT



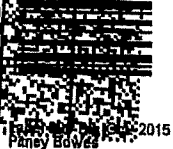
PLACE STICKER AT TOP OF ENVELOPE
OF THE RETURN ADDRESS. FOLD AT
UNITED STATES
POSTAL SERVICE

CERTIFIED MAIL

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POSTAL ADDRESS



© 2015
Pammy Edwas

To: Michelle Buys, P.E.
ALCOSAN
3300 Preble Avenue
Pittsburgh, PA 15233-1092

Re: **May 3, 2024 - Enforcement Order**

IMPORTANT NOTICE

An Enforcement Order dated **May 3, 2024**, was mailed to you by the Allegheny County Health Department (ACHD) notifying of the possibility that a Civil Penalty will be levied by virtue of your failure to take certain action.

If you fail to take action pursuant to said enforcement order, a judgment may be entered against you in the Court of Common Pleas of Allegheny County. The sheriff may take your money or other property to pay the judgment any time after the judgment is entered.

YOU ARE WARNED THAT IF YOU FAIL TO CORRECT VIOLATIONS AND/OR PAY FINES OR PENALTIES LEVIED AGAINST YOU IN THE ENFORCEMENT ORDER THAT THE ALLEGHENY COUNTY HEALTH DEPARTMENT MAY PROCEED WITHOUT YOU AND A JUDGMENT MAY BE ENTERED AGAINST YOU WITHOUT FURTHER NOTICE. YOU MAY LOSE MONEY OR PROPERTY OR OTHER RIGHTS IMPORTANT TO YOU.

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 thirty (30) days in which to file an appeal from the receipt of this Order. Such a Notice of Appeal shall be filed in the Office of the Director at 542 Fourth Avenue, Pittsburgh, PA 15219. Failure to forward the money or the appeal bond at the time of the appeal shall result in a waiver of all legal rights to contest the violation or the amount of the civil penalty unless you allege financial inability to prepay the penalty or to post the appeal bond. If you allege financial inability to prepay or post, then you have the burden to prove it.

In the absence of a timely appeal, the terms of this Order shall become final. Please be aware that any appeal of this Order shall not act as a stay unless the Director of the ACHD so orders.

Allegheny County Health Department
Air Quality Program
836 Fulton Street
Pittsburgh, PA 15233



ENFORCEMENT ORDER

Allegheny County Health Department

Air Quality Program

836 Fulton Street, Pittsburgh, PA 15233

Phone: (412) 578-8103

Address of Alleged Violation 3300 Preble Avenue, Pittsburgh, PA 15233			
Name of Alleged Violator #1 Allegheny County Sanitary Authority (ALCOSAN)			
Address of Alleged Violator #1 3300 Preble Avenue, Pittsburgh, PA 15233			
Contact Person	Title	Phone Number	Email
Michelle Buys	Director of Environmental Compliance	412-734-6216	Michelle.Buys@ALCOSAN.org

PART 1: DESCRIPTION OF INSPECTION(S)

The Allegheny County Health Department (ACHD) issued a Title V Operating Permit and Federally Enforceable State Operating Permit (ACHD Permit No. 0035-OP22) to the Allegheny County Sanitary Authority (ALCOSAN) on September 21, 2022. ALCOSAN is also subject to 40 C.F.R. § 62.15955. 6 Subpart LLL, Federal Plan Requirements for Sewage Sludge Incineration (SSI) Units Constructed on or Before October 14, 2010. Subpart LLL requires, among other things, that affected SSI units meet specified emission limitations for cadmium, carbon monoxide, dioxins/furans, hydrogen chloride, lead, mercury, nitrogen oxides, particulate matter, and visible emissions. The Subpart LLL emission limitations are set forth in Table 2 of that subpart and apply at all times when an affected SSI unit is in operation. 40 C.F.R. § 62.15955. 6. Subpart LLL requires periodic emissions testing to demonstrate compliance with the applicable emission limits.

From October 17 through 19, 2023, ALCOSAN performed emissions testing on Fluidized Bed Incinerator #1 (FBI-1). The Subpart LLL emission limitation for Lead is 0.0074 milligrams per dry standard cubic meter. The average Lead test result for the October 2023 emission testing was 0.0087 milligrams per dry standard cubic meter, in excess of the Subpart LLL and Title V permit limitations. The FBI-1 continued to operate after the emissions testing was completed. On December 19, 2023, the final emission testing report was submitted to ACHD, reporting the exceedance of the Lead limit. On December 29, 2023, ALCOSAN submitted the retesting protocol and scheduled the retest for January 5, 2024. The FBI-1 was operated until January 5, 2024, the date of the retest.

On January 5, 2024, ALCOSAN retested FBI-1 for Lead. The average Lead test result of the January 2024 test was 0.0010 milligrams per dry standard cubic meter which is in compliance with the Subpart LLL and ACHD Permit No. 0035-OP22 limitations of 0.0074 milligrams per dry standard cubic meter. Immediately following the Lead re-test, FBI -1 was shut down. The sludge feed was either trucked offsite or transferred to Fluidized Bed Incinerator #2.

From October 19, 2023 through January 4, 2024, ALCOSAN operated in excess of the Lead emission limit in ACHD Permit No. 0035-OP22 and 40 C.F.R. § 62.15955. 6 Subpart LLL, Federal Plan Requirements for Sewage Sludge Incineration Units Constructed on or Before October 14, 2010

Did the individual/company cooperate with ACHD personnel? If not, explain:	Yes
Inspection Date(s) 12/19/2023	Inspector Name(s) Hudson Tiffany

PART 2: YOU ARE IN VIOLATION OF THE FOLLOWING REGULATION(S):

1	Regulation Section	Regulation Requirement
	§62.16000(a), Subpart LLL of Part 62	Exceedance of Lead Emission Limitations Operate in Compliance with 40 C.F.R. § 62.15955. 6. Subpart LLL Lead Limitation of is 0.0074 milligrams per dry standard cubic meter
	Description of Violation	
	The average Lead test result for the October 2023 emission testing was 0.0087 milligrams per dry standard cubic meter, in excess of the Subpart LLL and Title V permit limitations.	
	What You Must Do to Correct the Violation	
	The violation has been corrected. Operate in compliance of all applicable rules.	

PART 3: YOU ARE HEREBY ORDERED AS FOLLOWS:

- Immediately stop all work and/or cease operations at the following location(s):

- You are hereby Ordered to correct the violations(s) listed in Part 2 within _____ days of the service of this Enforcement Order.
- You are hereby Ordered to comply with the following requirements within _____ days of the service of this Enforcement Order:

The Order(s) in this Part is enforceable upon issuance and any appeal shall not act as a stay. The Order(s) shall remain in effect until you are notified in writing by the Department. Please contact the ACHD Air Quality Program at (412) 578-8103 to arrange for a reinspection or to request that the Order(s) be rescinded.

Please be advised that failure to comply with this Order within the times specified herein is a violation of Article XXI giving rise to the remedies provided by Article XXI § 2109.02 including civil penalties of up to \$25,000 per violation per day.

PART 4: CIVIL PENALTY

For the violations listed in Part 2, you are hereby assessed a civil penalty of \$ 2,500.00. The determination of the civil penalty is attached as Exhibit No. 1 and is incorporated as part of this Enforcement Order.

Please be aware that if the Department did not assess a civil penalty, the Department may issue a subsequent enforcement order in which a civil penalty is assessed.

You shall pay the civil penalty amount within thirty (30) days of receipt of this Order. Payment shall be made by corporate or certified check, or the like, made payable to the "Allegheny County Clean Air Fund", and sent to Air Quality Program Manager, Allegheny County Health Department, 836 Fulton Street, Pittsburgh, PA 15233.

PART 5: REQUEST FOR ADMINISTRATIVE HEARING

Pursuant to Article XI, § 1104.A (“Hearings and Appeals”), of the Allegheny County Health Department Rules and Regulations, you are notified that if you are aggrieved by this Order, a Notice of Appeal shall be filed no later than thirty (30) days after receipt of written notice or issuance of this Order. Such a Notice of Appeal shall be filed in the Office of the Director at 542 Fourth Avenue, Pittsburgh, PA 15219.

This Order is enforceable upon issuance and any appeal of this Order shall not act as a stay unless the Director of the ACHD so orders. In the absence of a timely appeal, the terms of this Order shall become final.

Please be aware that if you wish to appeal this Order and a civil penalty has been assessed under Part 4, you are required within 30 days of receipt of this Order to either forward the penalty amount to the ACHD for placement in an escrow account or post an appeal bond to the ACHD in the amount of the penalty. Failure to forward the money or the appeal bond at the time of the appeal shall result in a waiver of all legal rights to contest the violation or the amount of the civil penalty unless you allege financial inability to prepay the penalty or to post the appeal bond. If you allege financial inability to prepay or post, then you have the burden to prove it. Please review the specific requirements for prepaying the penalty or posting the appeal bond found in Article XXI § 2109.06.a.2-3.

A copy of Article XXI and Article XI may be found at <https://www.alleghenycounty.us/Health-Department/Health-Department-Regulations.aspx>.



Air Quality Program Manager

5/3/2024
Date

EXHIBIT NO. 1

CIVIL PENALTY DETERMINATION AND CALCULATION

PURPOSE: The primary purpose for assessing civil penalties is to deter future violations not only at the specific facilities that are involved in the enforcement actions taken by the Department, but also at all the facilities within Allegheny County that are subject to the Article XXI regulations. In order to achieve the goal of deterrence, a civil penalty should remove any significant economic benefit resulting from noncompliance and include an amount beyond recovery of the economic benefit to reflect the seriousness of the violation.

CIVIL PENALTY FACTORS: The ACHD has determined the civil penalty to be in accordance with Article XXI, § 2109.06.b, reflecting relevant factors including, but not limited to: the nature, severity and frequency of the alleged violations; the maximum amount of civil and criminal penalties authorized by law; the willfulness of such violations; the impact of such violations on the public and the environment; the actions taken by the violator to minimize such violations and to prevent future violations; and the violator's compliance history.

CIVIL PENALTY FORMULA: The following calculation is used to assess the civil penalty:

$$\text{Civil Penalty} = (\text{Gravity Based Component} \times \text{Adjustment Factor}) + \text{Economic Benefit} + \text{Cost to the Department} + \text{Additional Deterrent Penalty}$$

Gravity Based Component: A gravity based component reflects the potential harm that the violation may have on the public or environment and the severity of the violation.

Adjustment Factor: The gravity based component may be adjusted for factors and circumstances unique to the violator. These adjustment factors include the violator's degree of cooperation with the ACHD during the investigation, the compliance history of the violator, the degree of willfulness that violator exhibited with regard to the violation, the size of the violator, and whether the violator is a Title V source or a Synthetic Minor source.

Economic Benefit: This component is a measure of the economic benefit gained by the violator as a result of noncompliance with the regulatory, statutory, or permit requirements.

Cost to the Department: Extra monetary costs for the investigation and preparation of the case, such as source sampling costs and laboratory costs, may be identified and added to the adjusted civil penalty.

Additional Deterrent Penalty: An additional deterrent penalty may be assessed if justified by the circumstances of the case.

CIVIL PENALTY CALCULATION

A. Gravity Based Component

Violation	Gravity Based Penalty	Violation Days	Total Gravity Penalty
§2103.12.g, Exceedances of Lead emission limit for FBI 1	\$2,500	1	\$2,500.00
	\$		\$
	\$		\$
	\$		\$
Gravity Component Total			\$2,500.00

B. <u>Adjustment Factors</u>	Factor	Adjustment Amount
Degree of Cooperation:		\$
Compliance History: 1 Enforcement Action	0.25	\$625.00
Degree of Willfulness:		\$
Size of Violator: Governmental Entity	(0.45)	-\$1,125.00
Title V source or a Synthetic Minor source: TV Source	0.2	\$500.00
Adjustment Factors Total		\$0.00

C. <u>Other Adjustments</u>		
Economic Benefit: None Identified	\$	
Cost to the Department:	\$	
Additional Deterrent Penalty:	\$	
Other Adjustments Total		\$0.00

TOTAL CIVIL PENALTY		\$2,500.00
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