

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

FOOD & WATER WATCH,	)	CIVIL DIVISION
)	
Plaintiff,	)	GD-23-013164
)	
v.	)	JOINT MOTION FOR ENTRY OF
	)	CONSENT DECREE
ALLEGHENY COUNTY HEALTH)	
DEPARTMENT,	)	Filed on behalf of Allegheny County
	)	Health Department
Defendant.)	
	)	Counsel of Record for this Party:
)	
	)	Brendan Turley, Esq.
	)	PA ID # 326538
	)	Assistant Solicitor
	)	Allegheny County Health Department
	)	301 39 th Street
	)	Building #7
	)	Pittsburgh, PA 15201
)	
	)	Counsel of Record for Food & Water
	)	Watch:
)	
	)	Lisa W. Hallowell, Esq.
	)	PA ID # 207983
	)	Sanghyun Lee, Esq.
	)	Pro Hac Vice Admission Pending
	)	Environmental Integrity Project
	)	1000 Vermont Ave. NW, Suite 1100
	)	Washington, DC 20005

THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

FOOD & WATER WATCH,	)	CIVIL DIVISION
)	
Plaintiff,	)	GD-23-013164
)	
v.	)	JOINT MOTION FOR CONSENT
	)	DECREE
ALLEGHENY COUNTY HEALTH)	
DEPARTMENT,)	
)	
Defendant.)	

JOINT MOTION FOR ENTRY OF CONSENT DECREE

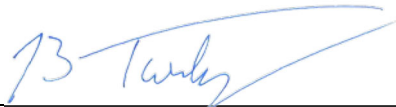
1. On November 15, 2023, Plaintiff, Food & Water Watch (“FWW”) initiated this action by filing a Complaint in Mandamus (the “Complaint”) seeking to compel the Allegheny County Health Department (“ACHD”) to take final action on two permit applications.

2. FWW and ACHD have conferred and agreed upon a set course of action regarding these permit applications, subject to this Honorable Court’s approval of the terms and conditions contained in the attached Consent Decree.

WHEREFORE, Petitioners respectfully request that this Honorable Court approve the proposed Consent Decree.

Date: March 7, 2023

Respectfully Submitted,



Brendan James Turley, Esq.
Assistant Solicitor
Allegheny County Health Department
Air Quality Program
Pa. Id. No.: 326538
301 39th Street, Building 7
Pittsburgh, PA 15201

**ATTACHMENT:
CONSENT DECREE**

THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

FOOD & WATER WATCH,	)	CIVIL DIVISION
)	
Plaintiff,	)	GD-23-013164
)	
v.	)	CONSENT DECREE
)	
ALLEGHENY COUNTY HEALTH)	
DEPARTMENT,)	
)	
Defendant.)	

CONSENT DECREE

This CONSENT DECREE is entered into this 7th day of March, 2024, by and between the Allegheny County Health Department (“ACHD” or the “Department”) and Food & Water Watch (“FWW”), and the Parties hereto agree and consent to be bound by the following:

WHEREAS, the Director of ACHD has been delegated authority pursuant to the federal Clean Air Act, 42 U.S.C. §§ 7401 et seq., and the Pennsylvania Air Pollution Control Act, 35 P.S. §§ 4001 et seq.;

WHEREAS, ACHD’s Rules and Regulations pertaining to air pollution control and prevention are found in Article XXI, “Air Pollution Control” (Allegheny County Code of Ordinances Chapters 505, 507, and 535) (“Article XXI”);

WHEREAS, FWW has identified two major sources within Allegheny County that currently lack Title V operating permits: (1) the Synthomer Plant, a resin manufacturing plant located at 2200 State Highway 837, West Elizabeth, PA 15088; and (2) the Neville Chemical Company (“Neville Chemical”), a synthetic hydrocarbon resin, plasticizer, and plasticizing oil manufacturer located at 2800 Neville Road, Neville Township, PA 15225;

WHEREAS, Article XXI, Section 2103.11.g requires that ACHD take final action on Title V operating permit applications “within 18 months of a submittal of a complete application, including all applicable fees...;” Art. XXI § 2103.11.g;

WHEREAS, ACHD received a completed Title V permit application for Neville Chemical on April 29, 2020, and a completed Title V permit application for the Synthomer Plant on February 4, 2022;

WHEREAS, FWW filed a Complaint in Mandamus (the “Complaint”) on November 11, 2023, asking the Court of Common Pleas of Allegheny County to mandate that the Department take final action on the Title V permit applications for the Synthomer Plant and Neville Chemical;

WHEREAS, Article XXI requires a 30-day notice and comment period for all Title V permit applications, including a public hearing; Art. XXI §§ 2103.11.e, f;

WHEREAS, ACHD released Neville Chemical’s draft Title V permit for public comment on February 1, 2024;

WHEREAS, after such notice and comment period is concluded, ACHD must send the proposed permit, along with the comment and comment response document, and a technical support document, to the U.S. Environmental Protection Agency (“EPA”) for a 45-day review; Art. XXI § 2103.21.c.2, 5; and

WHEREAS, in order for ACHD to issue Title V permits for the Synthomer Plant and Neville Chemical, ACHD will need to adhere to a minimum timeline.

NOW, THEREFORE, without any final determination or admission of fact or law, intending to be legally bound hereby, and with the consent of the Parties, it is hereby ADJUDGED, ORDERED, and DECREED as follows:

I. JURISDICTION

1. Solely for the purposes of this Consent Decree, ACHD waives all objections and defenses that it may have to jurisdiction or venue. ACHD shall not challenge the Court of Common Pleas of Allegheny County's jurisdiction to approve or adjudicate enforcement of this Consent Decree.

II. APPLICABILITY

2. The provisions of this Consent Decree shall apply to, be binding upon, and inure to the benefit of ACHD and FWW and upon their respective officers, directors, agents, contractors, employees, servants, successors, and assigns.

3. The undersigned representatives of ACHD and FWW certify that they are fully authorized to execute this Consent Decree on behalf of their respective party and to legally bind their respective party to this Consent Decree.

III. GENERAL TERMS

4. This Consent Decree addresses and is intended to address the outstanding Title V permit applications for Neville Chemical and the Synthomer Plant;

5. All correspondence with the ACHD concerning this Consent Decree shall be addressed to:

JoAnn Truchan, MPM, PE
Program Manager, Engineering & Permitting
Air Quality Program
Allegheny County Health Department
836 Fulton Street
Pittsburgh, PA 15233-2124
Phone: 412.578.7981
Email: joann.truchan@alleghenycounty.us

With a copy to:

Brendan Turley, Esq.
Assistant Solicitor
Allegheny County Health Department
301 39th Street, Building 7
Pittsburgh, PA 15201-1811
Phone: (412) 578-8398
Email: brendan.turley@alleghenycounty.us

6. All correspondence with the FWW concerning this Consent Decree shall be addressed to:

Erin Doran, Esq.
Senior Staff Attorney
1616 P Street NW, Suite 300
Washington, DC 20036
Phone: 202-683-2451
Email: edoran@fwwatch.org

With a copy to:

Lisa Hallowell, Esq.
Senior Attorney
Environmental Integrity Project
1000 Vermont Avenue NW, Suite 1100
Washington, DC 20005
Phone (202) 294-3282
Email: lhallowell@environmentalintegrity.org

7. Service of any notice or legal process for any purpose under this Consent Decree, including its enforcement, may be made by mailing an original or true and correct copy by First Class mail to the above contacts and addresses.

Neville Chemical Title V Permit

8. On March 12, 2024, the 30-day public comment period for the draft Neville Chemical Title V Permit will conclude;

9. ACHD shall then have 30 days to review and prepare response to any comments submitted;

10. On April 11, 2024, ACHD shall forward a final proposed permit, along with all supporting documentation required by Article XXI or the U.S. EPA, to the U.S. EPA, for the required 45-day review period. The 45-day review period has a projected end date on or about May 28, 2024;

11. Absent any objection(s) from the U.S. EPA pursuant to Article XXI § 2103.22(b) and/or 40 C.F.R. § 70.8(c), ACHD shall issue an operating permit by June 4, 2024;

12. If, during its 45-day review period referenced in Paragraph 10, the U.S. EPA raises objection(s) pursuant to Article XXI § 2103.22(b) and/or 40 C.F.R. § 70.8(c):

- a. ACHD agrees to issue a new draft permit within: 1) 90 days from the date of the correspondence from U.S. EPA that raised the objections referenced in this paragraph, or 2) the deadline provided by U.S. EPA in its correspondence that raised the objections, whichever date is later; and
- b. ACHD will then commence a 30-day public comment period (or longer, but not to exceed 60 days, if ACHD grants an extension request) starting the date the new draft permit is released for public comment as referenced in paragraph 12(a); and
- c. ACHD will have 30 days after the date the public comment period referenced in paragraph 12(b) ends to review and respond to any comments submitted; and
- d. On or before 30 days after the date the public comment period referenced in paragraph 12(b) ends, ACHD shall forward a final proposed permit, along with all required supporting documentation required by Article XXI or the U.S. EPA, to the U.S. EPA for a 45-day review period.

- e. Absent any objections from the U.S. EPA pursuant to Article XXI § 2103.22(b) and/or 40 C.F.R. § 70.8(c), ACHD shall issue an operating permit within five business days from the end of the U.S. EPA’s 45-day review period.
- f. If the U.S. EPA raises objection(s) pursuant to Article XXI § 2103.22(b) and/or 40 C.F.R. § 70.8(c) following the steps taken in paragraph 12(d), the provisions of this paragraph 12 will be repeated in order.

Synthomer Plant Title V Permit

13. By March 29, 2024, ACHD shall issue a draft of the Synthomer Plant Title V Permit for public review and comment;

14. ACHD will then commence a 30-day public comment period (or longer, but not to exceed 60 days, if ACHD grants an extension request) starting the date the draft Synthomer Plant Title V permit is released for public comment;

15. ACHD shall then have 30 days to review and respond to any official comments submitted;

16. On or before 30 days after the date the public comment period ends, ACHD shall forward a final proposed permit, along with all required supporting documentation required by Article XXI or the U.S. EPA, to the U.S. EPA for a 45-day review period;

17. Absent any objections from the U.S. EPA pursuant to Article XXI § 2103.22(b) and/or 40 C.F.R. § 70.8(c), ACHD shall issue an operating permit within five business days from the end of the U.S. EPA’s 45-day review period;

18. If, during its 45-day review period referenced in Paragraph 16, the U.S. EPA raises objection(s) pursuant to Article XXI § 2103.22(b) and/or 40 C.F.R. § 70.8(c):

- a. ACHD agrees to issue a new draft permit within: 1) 90 days from the date of the correspondence from U.S. EPA that raised the objections referenced in this

paragraph, or 2) the deadline provided by U.S. EPA in its correspondence that raised the objections, whichever date is later; and

- b. ACHD will then commence a 30-day public comment period (or longer, but not to exceed 60 days, if ACHD grants an extension request) starting the date the new draft permit is released for public comment as referenced in paragraph 18(a); and
- c. ACHD will have 30 days after the date the public comment period referenced in paragraph 18(b) ends to review and respond to any comments submitted; and
- d. On or before 30 days after the date the public comment period referenced in paragraph 18(b) ends, ACHD shall forward a final proposed permit, along with all required supporting documentation required by Article XXI or the U.S. EPA, to the U.S. EPA for a 45-day review period.
- e. Absent any objections from the U.S. EPA pursuant to Article XXI § 2103.22(b) and/or 40 C.F.R. § 70.8(c), ACHD shall issue an operating permit within five business days from the end of the U.S. EPA's 45-day review period.
- f. If the U.S. EPA raises objection(s) pursuant to Article XXI § 2103.22(b) and/or 40 C.F.R. § 70.8(c) following the steps taken in paragraph 18(d), the provisions of this paragraph 18 will be repeated in order.

IV. FORCE MAJEURE

19. For the purpose of this Consent Decree, "Force Majeure" as applied to ACHD or to any person or entity controlled by ACHD is defined as any event arising from circumstances or causes beyond the control of ACHD, or any person or entity controlled by ACHD, including, but not limited to, its officers, directors, employees, agents, representatives, contractors, subcontractors, or consultants, that may delay or prevent performance of an obligation under this Consent Decree, despite ACHD's diligent efforts to fulfill the obligation. Such Force Majeure

events include, but are not limited to events such as floods, fires, tornadoes, other natural disasters, labor disputes, and additional obligations arising as a function of public and/or U.S. EPA review. The requirement to exercise “diligent efforts to fulfill the obligation” includes using diligent efforts to mitigate any delay caused by a Force Majeure event, as that event is occurring, and/or following such an event, so that the delay or non-performance is minimized to the greatest extent reasonably possible.

20. If ACHD is prevented from complying with any requirement of this Consent Decree due to a potential Force Majeure event, ACHD may claim that such event constitutes Force Majeure and may petition FWW for relief by notifying FWW in the following manner:

- By telephone within one hundred-twenty (120) hours, and by U.S. Mail, or the equivalent, within ten (10) Working Days of the date that ACHD becomes aware, or with reasonable care should have become aware, of the potential Force Majeure event impeding performance;
- Written notice of a potential Force Majeure event shall include the following:
 - A description of the event and a rationale for attributing the event to Force Majeure;
 - A description of the efforts that have been made to prevent, and efforts being made to mitigate, the effects of the event and to minimize the length of delay or non-performance;
 - An estimate of the duration of the delay or non-performance;
 - A description of a proposed timetable for implementing measures to bring ACHD back into compliance with this Consent Decree, if any; and
 - Available documentation, which, to the best knowledge and belief of ACHD, supports ACHD’s claim that the delay or non-performance was attributable to a Force Majeure event.

V. REOPENING

21. In the event that any condition contained in this Consent Decree is modified or declared void by the presiding court so as to create a substantial burden on ACHD to comply with

the timeframes set forth in this Consent Decree, such timeframes may be extended for a time as agreed to by the Parties.

VI. EFFECTIVE DATE AND TERMINATION

22. The “Effective Date” of this Consent Decree shall be the date on which this Consent Decree is executed by a judge of the Court of Common Pleas of Allegheny County and docketed in the above caption action.

23. This Consent Decree shall remain in effect until terminated through joint motion of the Parties (a) upon mutual agreement of the Parties, or (b) upon final issuance of the two Title V permits.

VII. SIGNATORIES

24. The Parties hereto have caused this Consent Decree to be executed by their duly authorized representatives. The undersigned representative(s) of the Parties certify under penalty of law, as provided by 18 Pa.C.S. § 4909, that they are authorized to execute this Consent Decree; that the Parties consent to the entry of this Consent Decree as a final Order of the Court of Common Pleas of Allegheny County; and that, except as otherwise provided herein, the Parties hereby knowingly waive their rights to challenge this Consent Decree and to challenge its content or validity under any applicable provision of law. Signature by the Parties’ attorneys certify only that this Consent Decree has been signed after consulting with counsel.

VIII. RETENTION OF JURISDICTION

25. The Court retains jurisdiction to enforce the provisions of this Consent Decree.

IX. FINAL JUDGMENT

26. Upon approval and entry of this Consent Decree by the Court, this Consent Decree will constitute a final judgment of the claims settled herein.

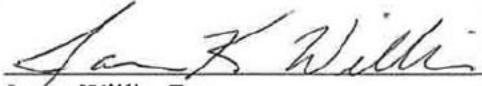
Dated this 7th day of March, 2024

FOR ALLEGHENY COUNTY HEALTH DEPARTMENT



JoAnn Truchan
Air Quality Program Manager,
Engineering & Permitting

03/06/24
Date



Jason Willis, Esq.
ACHD Solicitor

3/4/24
Date



Brendan Turley, Esq.
ACHD Assistant Solicitor

March 6, 2024
Date

FOR FOOD & WATER WATCH



Erin Doran, Esq.
Food & Water Watch

March 5, 2024

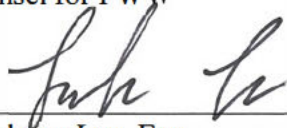
Date



Lisa Hallowell, Esq.
Counsel for FWW

March 5, 2024

Date



Sanghyun Lee, Esq.
Counsel for FWW

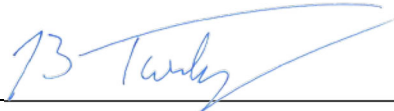
March 5, 2024

Date

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing JOINT MOTION FOR ENTRY OF CONSENT DECREE was served by electronic mail this 7th day of March, 2024, as follows:

Lisa W. Hallowell, Esq.
Sanghyun Lee, Esq.
Environmental Integrity Project
1000 Vermont Ave. NW, Suite 110
Washington, DC 2005
Phone: (202) 294-3282
Email: lhallowell@environmental integrity.org
Counsel for Food & Water Watch



Brendan Turley, Esq.

PROPOSED ORDER

THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

FOOD & WATER WATCH,	)	CIVIL DIVISION
)	
Plaintiff,	)	GD-23-013164
)	
v.	)	ORDER
)	
ALLEGHENY COUNTY HEALTH)	
DEPARTMENT,)	
)	
Defendant.)	

ORDER

AND NOW, this ____ day of _____ 2024, it is ORDERED, ADJUDGED, and DECREED that the above-captioned matter, which raises only claims for relief heretofore asserted in equity, is hereby resolved through execution of the attached Consent Decree is entered.

J.