



GROUP AGAINST SMOG & POLLUTION

**1133 South Braddock Avenue, Suite 1A
Pittsburgh, PA 15218
412-924-0604
gasp-pgh.org**

December 12, 2016

VIA e-mail (PublicHealthComment@AlleghenyCounty.us)

Article XI Comment
Allegheny County Health Department
542 Fourth Ave.
Pittsburgh, PA 15219
Attn: Max Slater

Re: Comments Regarding Proposed Revisions to Article XI of the Rules and Regulations of the Allegheny County Health Department

Dear Mr. Slater:

The Group Against Smog and Pollution (“GASP”) offers the following comments regarding proposed revisions to Article XI of the Rules and Regulations of the Allegheny County Health Department (the “Department”). According to the notice provided on the Department’s website, the Department is accepting comments regarding the proposed revisions to Article XI through 5 p.m. on December 12, 2016

GASP is a nonprofit organization that works to promote a healthy, sustainable environment with a particular focus on improving air quality in Pittsburgh and surrounding regions.

1. Article XI Should Explain the Basis for the Department’s Jurisdiction Over Appeals from the Department’s Own Final Orders

Article XI should include a preamble that sets forth the basis for the Department’s assertion of jurisdiction over appeals from the Department’s own final orders.

Because the Department is a “local agency,”¹ it would seem that jurisdiction over appeals from the Department’s final orders lies with the Allegheny County Court of Common Pleas.² It does not appear that any provision of the Local Health

¹ See 2 Pa. C.S. § 101 (defining “local agency” to mean “[a] government agency other than a Commonwealth agency”).

² See 2 Pa. C.S. § 752 (providing that a person aggrieved by a local agency’s adjudication has the right to appeal to the court vested with jurisdiction by Title 42 of the Pennsylvania Consolidated Statutes); 42 Pa. C.S. § 933(a)(2) (vesting the courts of common pleas with jurisdiction over local agencies’ final orders).

Administration Law,³ the Second Class County Code,⁴ or the General Local Government Law⁵ displaces the Court of Common Pleas' jurisdiction over "appeals from government agencies, except Commonwealth agencies."⁶ A preamble explaining the basis for the Department's jurisdiction over appeals from the Department's final orders would help reduce confusion.

2. GASP Supports Revising Article XI to Provide Thirty Days to Appeal the Department's Final Orders

GASP supports revising Section 1104.A of Article XI so that a Notice of Appeal of an action by the Department must be filed within thirty days of written notice of the action. Currently, Section 1104.A provides that a Notice of Appeal must be filed within ten days of such notice. In many instances, ten days is likely to be insufficient for an interested person who might be adversely affected by a final decision of the Department to file an appeal, especially if the appellant must obtain copies of the Department's action and supporting documents from the Department to support its appeal. Thirty days is, however, likely to be sufficient for an interested person to obtain necessary materials and prepare a Notice of Appeal. Further, a thirty-day window to file a Notice of Appeal is consistent with the appeal periods provided by the Pennsylvania Rules of Appellate Procedure⁷ and some state agencies in Pennsylvania, including the Pennsylvania Environmental Hearing Board.⁸

3. GASP Supports Revising Article XI Should to Permit an Amendment as of Right Within Twenty Days of Filing

GASP supports the addition of Section 1104.E, which provides that an appeal may be amended as a matter of right within twenty days after filing, and by leave of the Director or Hearing Officer thereafter. Currently, Article XI does not provide such a right to amend an appeal. In some cases, an appeal may require documents that must be obtained from the Department pursuant to the Right to Know Law.⁹ Because the Department may take up to thirty days to produce such documents, a party may not have access to them when it files its Notice of Appeal. Allowing an amendment as of right within twenty days will help parties narrow their appeals by eliminating issues as

3 16 P.S. §§ 12001 – 12028.

4 16 P.S. §§ 3101 – 6302.

5 53 Pa. C.S. §§ 101 – 9113.

6 42 Pa. C.S. § 933(a)(2).

7 *See* Pa. R.A.P. 1512(a)(1) (concerning petitions for review of agencies' quasijudicial orders).

8 *See* 25 Pa. Code § 1021.52(a).

9 65 P.S. §§ 67.101 – 67.3104.

necessary based on such documents, and thus help streamline the appeals process by eliminating unnecessary issues. Further, Section 1104.E is consistent with the rules of practice of the Pennsylvania Environmental Hearing Board.¹⁰

4. GASP Supports Revising Article XI to Expressly Grant a Right of Intervention in Appeals of the Department's Final Orders

Further, GASP supports the addition of Section 1104.1, which allows for parties to intervene in appeals. Currently, Article XI does not provide interested parties with an express right to intervene in appeals. Allowing interventions recognizes that non-parties may be significantly impacted by the Department's decisions, and creates a procedural mechanism for such parties to ensure that their concerns are heard by the Director or Hearing Officer.

5. Article XI Should be Revised to Require the Department to Publish Notice of Appeals

The Department does not publish notice of Article XI appeals. GASP is not aware of any publicly-accessible data regarding pending Article XI appeals. Accordingly, interested persons might unwittingly forfeit their rights to intervene in pending Article XI appeals because they have no way to determine if and when appeals have been taken and when appeals are pending. Article XI should be revised to require the Department to publish notice of appeals as they are filed, so that interested persons are put on notice and can take appropriate action to determine whether to intervene.

6. Article XI's Proposed New Rules Regarding Consolidation and Substitution and Motions to Dismiss Will Help Simplify and Streamline the Appeals Process

Rule 1104.2 makes common sense changes to Article XI to permit the consolidation of related appeals and to clarify when and how parties to appeals may be substituted. Currently, Article XI does not delineate the circumstances in which appeals may be consolidated or in which parties may be substituted. Allowing the consolidation of related appeals will help conserve the Department's resources and should not adversely impact any party's rights. Clarifying when and how the substitution of a party may occur will help avoid confusion and unnecessary appeals, also without adversely impacting any party's rights.

10 See 25 Pa. Code § 1021.53.

7. Article XI Should Prohibit the Director or Hearing Officer from Presiding Over an Appeal from a Final Order Personally Made by the Director or Hearing Officer

A rule should be added to Article XI to clarify that the Director or Hearing Officer not preside over an appeal from an action of the Department in which the Director or Hearing Officer was personally, and directly, involved in his or her capacity as an employee of the Department. Such a rule will help show that appeals are decided impartially, and will promote public confidence in the results of the appeals process.

GASP appreciates the work the Department has put into updating and revising Article XI. Thank you for your consideration of these comments.

Very truly yours,

/s

John K. Baillie
Staff Attorney