

Jessica Sharrow Thompson
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June 28, 2018

Via Hand Delivery and Electronic Mail

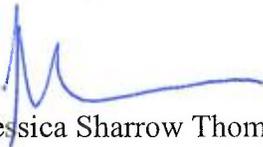
Allegheny County Health Department
Office of the Director
542 Fourth Avenue
Pittsburgh, PA 15219
Attn: Administrative Hearing Officer, Max Slater, Esq.
max.slater@alleghenycounty.us

**Re: Harsco Metals, a Division of Harsco Corporation
Notice of Appeal of Administrative Order for Compliance Issued to Harsco Metals
and ATI Flat Rolled Products Holdings, LLC, dated May 29, 2018**

Dear Mr. Slater:

Pursuant to Article XI of the Rules and Regulations of the Allegheny County Health Department, Harsco Metals, a division of Harsco Corporation submits for filing the enclosed Notice of Appeal regarding the above-referenced order.

Regards,



Jessica Sharrow Thompson

Enclosures

cc: Jeffrey Bailey, Esq., ACHD (*jeff.bailey@alleghenycounty.us*)
Dean DeLuca, ACHD (*dean.deluca@alleghenycounty.us*)
Jayme Graham, ACHD (*jayme.graham@alleghenycounty.us*)
Michael Winek, Esq., ATI (*mwinek@babstcalland.com*)
Jim Hauck, Esq., Harsco (*james.hauck@h2lawyers.com*)



Notice of Appeal

This form is used to file an appeal of an order, notice, decision, determination, or ruling by the Allegheny County Health Department. Please complete this form (use additional pages as necessary). If more than one person or entity is filing this appeal, please attach a separate form for each additional appellant. **A copy of the order, notice, decision, determination, or ruling must be attached to the Notice of Appeal.**

Name Harsco Metals, a division of Harsco Corporation

Mailing Address 300 Seven Fields Boulevard, Suite 300

City Seven Fields State PA Zip 16046 Email n/a

Phone n/a Fax (optional) _____

If you are represented by an attorney, please provide contact information for your attorney:

Name Richard S. Wiedman; Jessica Sharrow Thompson

Mailing Address Eckert Seamans, 600 Grant St., 44th Floor

City Pittsburgh State PA Zip 15219 Email rwiedman@eckertseamans.com;
jsharrow@eckertseamans.com

Phone 412-566-5967;412-566-5941 Fax (optional) _____

Describe your objections to the Department's actions and a statement describing the relief you want the Hearing Officer to grant. (*The objections may be factual or legal and must be specific. If you fail to state an objection here, you may be barred from raising it later in your appeal. Use additional pages if necessary.*)

See attached (revoke/modify Order consistent with Article XXI and stay pending resolution).

By filing this Notice of Appeal with the Allegheny County Health Department, I hereby certify that the information submitted is true and correct to the best of my information and belief.

Signature [Signature] Date 6/28/18

Appeals should be submitted in person or by mail to:
Allegheny County Health Department
Attention: Hearing Officer
542 4th Avenue
Pittsburgh, PA 15219

BEFORE THE ALLEGHENY COUNTY HEALTH DEPARTMENT

**542 FOURTH AVENUE
PITTSBURGH, PENNSYLVANIA 15219**

HARSCO METALS, A DIVISION OF)	
HARSCO CORPORATION)	In re: Appeal of Administrative Order
)	for Compliance Issued to Harsco Metals and
)	ATI Flat Rolled Products Holdings, LLC
v.)	
)	
ALLEGHENY COUNTY)	
HEALTH DEPARTMENT)	

NOTICE OF APPEAL

Pursuant to Allegheny County Health Department Rules and Regulations, Article XI, Hearings and Appeals, §1103, Harsco Corporation (“Harsco”), acting by and through its Harsco Metals division, hereby files this Notice of Appeal (“Appeal”) of the issuance of an Administrative Order for Compliance alleging allegations of Article XXI, §2105.49, Fugitive Emissions and Article XXI, §§ 2101.11.a.3, b.1, and c Prohibition of Air Pollution (“Order,” attached hereto), as issued by the Allegheny County Health Department Air Quality Program (“ACHD”), received by Harsco via certified United States mail on or about June 1, 2018. Harsco also requests, pursuant to ACHD Article XI § 1111, that the conditions of Order be stayed pending resolution of this Appeal.

Background of this Appeal

1. The entity filing this Petition is Harsco Corporation acting by and through its Harsco Metals division, located at 300 Seven Fields Blvd., Suite 300 Seven Fields, PA 16046, to whom the Order was directed. Harsco represents no other entity.

2. On or about May 29, 2018, ACHD issued the Order to Harsco and ATI Flat Rolled Product Holdings, LLC, alleging certain findings of violation and requiring, within an unreasonably short time frame, submittal and implementation of a compliance plan and submittal of a report, subject to significant potential civil penalties for failure to comply.

3. Harsco is one of the persons to whom the Order was directed and is directly affected by the Order. Therefore, Harsco is aggrieved by the issuance of the Order and entitled to review of the Order under Article XI, Hearings and Appeals, §1103.

4. Harsco seeks review of a decision by ACHD, 301 39th St. – Bldg. #7, Pittsburgh, PA 15201-1811, which issued the Order. Harsco timely files this petition pursuant to Article XI, Hearings and Appeals, §1104.

Specific Objections to ACHD's Order

5. Harsco objects to ACHD's issuance of the Order because it is arbitrary, capricious, unreasonable, constitutes an abuse of ACHD's discretion, is contrary to fact, not supported by substantial evidence, not in accordance with applicable law, and is otherwise contrary to ACHD's authority under ACHD Article XXI, the Pennsylvania Air Pollution Control Act, 25 Pa. Cons. Stat. Ann. §§ 4001 et (the "APCA"), and the rules and regulations promulgated thereunder, and contrary to the provisions of the ACHD Article XXI, APCA, federal Clean Air Act (the "CAA") and/or their implementing regulations.

6. By way of example and without limiting the foregoing, Harsco challenges the Order's assertions that the Harsco operations were the source of alleged depositions of dust in the Opal Court neighborhood in Harrison Township on the various dates cited in the Order without specific information sufficient to indicate the nature of the material allegedly deposited or identify Harsco as the source of that material. Harsco also challenges the Order's assertions that violations

of Article XXI, §2105.49, Fugitive Emissions, and Article XXI, §§ 2101.11.a.3, b.1, and c, Prohibition of Air Pollution, occurred and were caused by Harsco without specific information to indicate in what manner the alleged depositions, even if caused by the Harsco operations, represent violations of those regulations by Harsco.

7. Harsco further challenges the Order's requirement to "submit, by June 30, 2018, a revised compliance plan to the ACHD which will eliminate all fallout particulate which has impacted neighboring residential communities[.]" [Order, p. 2, emphasis in original] because compliance with this requirement of the Order is essentially impossible and would go beyond what the cited regulations require. Sources of dust in any neighborhood are numerous and may be assumed to originate from natural and man-made sources and to vary from season to season. Further, even were one to assume that, as ACHD asserts, the Harsco operations were one source of such fallout particulate, Harsco would not be able to control other sources of depositions.

8. Finally, even if the Order were interpreted to apply only to all fallout particulate originating from the Harsco operations, the absolute requirement to eliminate all such depositions goes beyond what the cited regulations require. For example, Article XXI § 2105.49 requires that sources take all *reasonable* actions to prevent fugitive air contaminants from becoming airborne. Article XXI § 2105.49.a (emphasis added). The rule's limited requirement for reasonable actions implies the requirement will not support an Order prohibiting all dust from a source, unless it was determined to be reasonable to do so. Indeed, the examples of such reasonable actions provided in the rule include actions that do not themselves prevent all dust from becoming airborne, and in one case (adoption of work or other practices), requires only that emissions be minimized, not eliminated. *See* Article XXI § 2105.49.a.1-7. Further, the source-specific requirements of Article

XXI § 2105.49 includes several standards that explicitly allow up to 25% of regulated particulate emissions to be uncontrolled. *See* Article XXI § 2105.49.b.3.A and B.

9. Harsco also objects to the deadlines in the Order for submission of a revised compliance plan within 30 days and implementation thereof within 20 days of approval as unreasonable, arbitrary, and capricious. These short time frames are wholly unreasonable and potentially infeasible. Harsco has already implemented additional measures at the facility designed to further mitigate potential fugitive dust from its operations, of which it informed ACHD by electronic mail from Glenn Hundertmark, Harsco Corporation, dated May 29, 2018. Harsco remains committed to mitigating potential fugitive dust from its operations consistent with the requirements of Article XXI and expects to submit a plan by the Order deadline in a good-faith effort to comply. However, to the extent that the submitted plan is later determined to be insufficient, Harsco notes that it believes it needs, at a minimum, 90 days to properly evaluate additional reasonable options and best available practices, if any, that may be appropriate for further mitigating potential fugitive dust. Further, in the event the implementation of such measures is warranted, it very likely will require more than 20 days to fully implement those measures, and the required timeframe will not be known until those measures have been identified and proposed to ACHD. Harsco also objects to the requirement to submit a report detailing the effectiveness of the compliance plan as vague, unreasonable, and arbitrary.

10. Lastly, Harsco objects to the last paragraph of the Order, which indicates that ACHD will treat violations that occur during the compliance period as “repeat” violations for purposes of any potential penalty calculations, as vague, unreasonable, arbitrary, and capricious.

Request for Stay

11. Harsco requests that the Order be stayed in its entirety until the resolution of this Appeal for the reasons stated above.

Requested Relief

12. Harsco respectfully requests that the Director sustain this Appeal, revoke and/or modify the conditions in the Order consistent with Article XXI, and provide a resolution to the allegations in the Order that comports with applicable law and grant such other and further relief as the Director may deem just and proper.

Reservation

13. Harsco reserves the right to supplement or amend this Appeal based upon additional information, which may be developed through discovery or further investigation, and/or as otherwise provided for by Article XI.

Verification

14. The information submitted is true and correct to the best of my information and belief.

Respectfully submitted,

HARSCO CORPORATION



Richard S. Wiedman (Pa. I.D. No. 33358)
Jessica Sharrow Thompson (Pa. I.D. No. 203122)
ECKERT SEAMANS CHERIN & MELLOTT, LLC
600 Grant Street, 44th Floor
Pittsburgh, PA 15219
(412) 566-6000
rwiedman@eckertseamans.com
jsharrow@eckertseamans.com

Attorneys for Harsco Corporation

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of June, 2018, that a true and correct copy of the foregoing Notice of Appeal was served this day via hand-delivery addressed as follows:

Max Slater, Esq.
Administrative Hearing Officer
Allegheny County Health Department
542 Fourth Avenue
Pittsburgh, PA 15219

Jeffrey Bailey, Esq.
Assistant Solicitor
Allegheny County Health Department,
542 Fourth Avenue
Pittsburgh, PA 15219

Dean DeLuca
Enforcement Section Chief
Allegheny County Health Department
301 39th St. – Bldg. #7
Pittsburgh, PA 15201

Jayme Graham
Air Quality Manager
Allegheny County Health Department
301 39th St. – Bldg. #7
Pittsburgh, PA 15201

Michael Winek, Esq.
Babst Calland
Two Gateway Center
603 Stanwix Street
6th Floor
Pittsburgh, PA 15222
Counsel for ATI Flat Rolled Products Holding, Inc.



Jessica Sharrow Thompson
Attorney for Harsco Corporation

COUNTY OF



ALLEGHENY

RICH FITZGERALD
COUNTY EXECUTIVE

May 29, 2018

**VIA EMAIL: GHundertmark@harsco.com and
CERTIFIED MAIL: 9489 0090 0027 6037 9173 17**

Mr. Glenn D. Hundertmark
Environmental Manager / North America
Harsco Metals
300 Seven Fields Blvd., Suite 300
Seven Fields, PA 16046

**VIA EMAIL: Deborah.Calderazzo@ATImetals.com and
CERTIFIED MAIL: 9489 0090 0027 6037 9173 24**

Deborah L. Calderazzo
Director, Environmental Affairs
ATI Flat Rolled Products Holdings, LLC
100 River Road
Brackenridge, PA 15014

RE: Harsco Natrona Facility, Federal St. Gate #10, Natrona, PA, 15065, – Article XXI,
§2105.49 Fugitive Emissions and §2101.11 Prohibition of Air Pollution.

Dear Mr. Hundertmark and Ms. Calderazzo:

Please find attached an Administrative Order for Compliance that has been issued by the Allegheny County Health Department. As you will see, the Order relates to continued deposition complaints in the Opal Court neighborhood. The Order requires that ATI and Harsco submit by June 30, 2018, a revised compliance plan acceptable to the Department which will eliminate all fallout particulate which has impacted neighboring residential communities.



KAREN HACKER, MD, MPH, DIRECTOR
ALLEGHENY COUNTY HEALTH DEPARTMENT
AIR QUALITY PROGRAM

301 39TH STREET • CLACK HEALTH CENTER • BUILDING 7

PITTSBURGH, PA 15201-1811

PHONE (412) 578-8103 • FAX (412) 578-8144
24-HR (412) 687-ACHD (2243) • WWW.ACHD.NET

Thank you for your anticipated cooperation in this matter. If you have any questions, please call Dean DeLuca at 412-578-8188 or e-mail at dean.deluca@alleghenycounty.us.

Sincerely,



Jayme Graham, Manager
Air Quality Program

cc: Dean DeLuca, Enforcement Section Chief (via email)
Jeffrey Bailey, Esq, ACHD Assistant Solicitor (via email)
James Hauck, Esq. (via email: james.hauck@h2lawyers.com)
Lauren McAndrews, Esq. (via email: Lauren.McAndrews@ATImetals.com)

**ALLEGHENY COUNTY HEALTH DEPARTMENT
AIR QUALITY PROGRAM**

In the Matter of:

Harsco Metals
300 Seven Fields Blvd., Suite 300
Seven Fields, PA 16046

ATI Flat Rolled Products Holdings, LLC
100 River Road
Brackenridge, PA 15014

Proceedings Pursuant to Article
XXI (“Air Pollution Control”) at
facility:

Harsco Natrona Facility
Federal St. Gate #10
Natrona, PA 15065

ADMINISTRATIVE ORDER FOR COMPLIANCE

NOW, this 29th day of May, 2018, the Allegheny County Health Department (hereinafter “ACHD”) issues this Administrative Order after it has found and determined the following:

On March 24, 2017, the ACHD issued Notices of Violations (NOVs) against Harsco Metals (hereinafter “Harsco”) and ATI Flat Rolled Products Holdings, LLC (hereinafter “ATI”). The NOVs were issued following an investigation by ACHD inspectors of deposition complaints received from residents of the Opal Court¹ neighborhood in Harrison Township. During its investigation, ACHD inspectors observed on February 21st, 24th and 28th, 2017, dust on children’s toys and play equipment and residents’ vehicles. Based on its investigation, the ACHD concluded that the Harsco/ATI operations were the source of the deposition in the Opal Court neighborhood. Subsequent investigations by the ACHD have confirmed this finding. In the March 24, 2017 NOVs, the ACHD determined that Harsco and ATI were in violation of Article XXI, § 2105.49 (“Fugitive Emissions”), and Article XXI, §§ 2101.11.a.3, b.1, and c (“Prohibition of Air Pollution”).

The March 24, 2017 NOVs further required that Harsco and ATI submit a compliance plan to eliminate the fallout particulate which has impacted the neighboring residential communities. On June 5, 2017, Harsco submitted a compliance plan which included operation changes and training enhancements that were intended to reduce the generation of fugitive dust during Harsco’s operations. Following the implementation of Harsco’s compliance plan, the ACHD continued to receive deposition complaints from residents of the Opal Court neighborhood. The ACHD inspectors investigated these complaints and observed deposition in the Opal Court neighborhood on May 15 and 19, 2017, June 1 and 15, 2017, August 2 and 8, 2017, September 28, 2017, October 5 and 20, 2017, December 2, 2017, February 28, 2018, April 30, 2018, and May 22, 2018.

¹ The Opal Court neighborhood is located north of the Harsco/ATI operations in Natrona Heights.

The ACHD has determined that Harsco and ATI are in violation of Article XXI, §§ 2105.49 and 2101.11.a.3, b.1, and c, relating to the deposition episodes noted above. Further, the ACHD is denying the compliance plan submitted by Harsco on June 5, 2017, on the basis that it is inadequate to assure compliance with the ACHD regulations.

ORDER

NOW THEREFORE, pursuant to the authority granted to the ACHD by Article XXI, §§ 2109.01.a, 2109.03.a.1, and the Local Health Administration Law, 19 P.S. § 12010, it is hereby **ORDERED** as follows:

1. The ACHD hereby denies the compliance plan submitted by Harsco on June 5, 2017, due to recurrent violations in the months following the implementation of the plan.
2. Harsco and ATI shall submit by **June 30, 2018**, a revised compliance plan to the ACHD which will eliminate all fallout particulate which has impacted neighboring residential communities.
3. Harsco shall implement the compliance plan within twenty (20) days of approval of the compliance plan by the ACHD.
4. Within 120 days after the implementation of the compliance plan, Harsco shall submit a report detailing the effectiveness of the compliance plan.

Following receipt of the report detailing the compliance plan's effectiveness, the ACHD shall determine whether the compliance plan is effective in eliminating all particulate deposition in impacted neighboring residential communities. **Please be advised that if the ACHD determines that the compliance plan is ineffective in eliminating deposition, Harsco and ATI may be subject to the remedies available to the ACHD under Article XXI, § 2109.03.a, which may include requiring Harsco to cease operations at the Natrona Facility until it can assure compliance with the ACHD regulations.**

The 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.

Pursuant to Article XI ("Hearings and Appeals") of the Allegheny County Health Department Rules and Regulations, 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. In the absence of a timely appeal, the terms of this Order shall become final. 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.

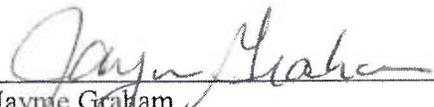
This Administrative Order is not the final administrative order or ACHD enforcement action for this matter. The ACHD may issue a separate enforcement action or administrative order which may result in a civil penalty. **Please be advised that the ACHD will consider all**

violations that occur during the compliance period as repeat violations which will result in increased penalties based on ATI and Harsco's compliance history.

DONE and ENTERED this 29th day of May, 2018, in Allegheny County, Pennsylvania.

For:

ALLEGHENY COUNTY HEALTH DEPARTMENT



Jayne Graham
Air Quality Manager
Allegheny County Health Department

5/29/2018
Date