

**BEFORE THE HEARING OFFICER FOR THE
ALLEGHENY COUNTY HEALTH DEPARTMENT
542 4TH AVENUE
PITTSBURGH, PENNSYLVANIA 15219**

UNITED STATES STEEL)	
CORPORATION, a Delaware corporation,)	
)	
Appellant,)	
)	
v.)	Appeal of Administrative Order
)	#181002 Revised
ALLEGHENY COUNTY HEALTH)	
DEPARTMENT, Air Quality Program,)	
)	
Appellee.)	

NOTICE OF APPEAL

NOW COMES, Appellant, UNITED STATES STEEL CORPORATION (hereinafter “U.S. Steel”), pursuant to Sections 1103 and 1104 of Article XI of the Allegheny County Health Department’s Rules and Regulations, before the Director of the Allegheny County Health Department, filing this appeal from Administrative Order #181002 Revised (hereinafter “Order”), as issued by the Allegheny County Health Department, Air Quality Program (hereinafter “Department”) on October 31, 2018, to U. S. Steel Clairton Works, and received by U. S. Steel on or about November 14, 2018 (attached hereto as Exhibit A).¹ Consistent with Sections 1103 and 1104 of Article XI of the Department’s Rules and Regulations, this submission constitutes timely filing of a Notice of Appeal of a Department action, and properly specifies the manner in which

¹ The Department issued Administrative Order #181002 on October 17, 2018, and shortly thereafter informed U.S. Steel that it would be issuing a revised version to correct mistakes in the order. The Department issued Administrative Order #181002 Revised on October 31, 2018. Counsel for the Department has since confirmed that the October 17th version is null and was superseded by the October 31st version.

U.S. Steel is aggrieved by the Department's action, the nature of U.S. Steel's direct interest in the action and the grounds for appeal.

A. Manner in which U. S. Steel is Aggrieved and Grounds for Appeal

1. U. S. Steel owns and operates Clairton Works, a by-products coke plant which includes 10 coke batteries located at 400 State Street, Clairton, PA 15025, with telephone number (412) 233-1002 (hereinafter "Facility").

2. The Department issued the Order dated October 31, 2018, and it was received by U. S. Steel on or about November 14, 2018.

3. U. S. Steel objects to the Order. For the following reasons, the Department has abused its discretion and acted unreasonably, arbitrarily, capriciously, contrary to fact and law and in a manner not supported by evidence:

- a. Based upon information and belief, the Order assesses a penalty for visible emission observations and calculations that are not violations of applicable permit conditions, rules and regulations;
- b. Inspectors have failed to conduct proper, fair and unbiased evaluations of the Facility, as reflected in the Order;
- c. Based upon information and belief, the Order relies on inappropriate and/or inaccurate data to support the alleged violations;
- d. The Department's use of inappropriate and/or inaccurate data misrepresents the Facility's compliance status and results in an unjustifiable penalty assessment;
- e. Because the Department has not adequately supported and will not be able to support its assertions listed in the Order, and the basis of the assertions is the

inappropriate and unlawful reliance on skewed inspection data, the assertions and allegations made in the Order are without merit;

- f. The Department has inappropriately assigned individuals to work on both this enforcement matter and a recently proposed Department rulemaking that would impose significantly more stringent requirements on coke plants. As a practical matter, the only coke facility which would even be subject to the rulemaking is the Facility owned and operated by U. S. Steel. This constitutes an inappropriate and impermissible commingling of adjudicative and prosecutorial functions by the agency;
- g. The Order includes excessive and unreasonable sanctions for noncompliance;
- h. The Order requires U. S. Steel to pay a total civil penalty of \$613,716.00 within 30 days of receiving the Order. See Exhibit A, p. 2. Additional penalty figures appear elsewhere in the Order. See Exhibit A, pp. 1-2. The civil penalties assessed by the Order are excessive, inappropriate, unwarranted and not commensurate with the claims in the Order;
- i. The penalty assessed by the Order is unnecessarily punitive, as U. S. Steel is already implementing a plan to reduce emissions at the Facility in response to Enforcement Order #180601 issued by the Department on June 28, 2018, which alleged similar violations of coke oven visible emission standards;
- j. The Department inappropriately assessed penalties more than once for the same underlying alleged violation, thereby impermissibly inflating the total penalty assessment;

- k. The Department has failed to adequately explain the basis for the penalty assessment in the Order;
- l. In issuing the Order, the Department exceeded its enforcement authority as provided in Article XXI of the Department's Rules and Regulations;
- m. The Order mischaracterizes U. S. Steel's compliance with applicable air emission laws and regulations; and
- n. The Order is vague and insufficiently specific.

B. U. S. Steel's Direct Interest in the Action

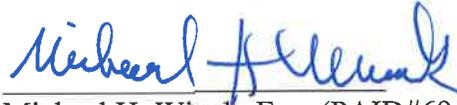
4. U. S. Steel is a named entity to which the Order was issued, and whose activities are restricted by the Order. As a result, U. S. Steel is negatively impacted by the Order and has a direct interest in the Order and this Appeal.

C. Conclusion

5. Through this Notice of Appeal, U. S. Steel has identified its objections to the 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.

6. For the foregoing reasons, U. S. Steel respectfully requests that the Director vacate the Order, or alternatively, vacate and remand the Order to the Department for consideration consistent with the Director's opinion.

Respectfully submitted, .



Michael H. Winek, Esq. (PAID#69464)
Mark K. Dausch, Esq. (PAID#205621)
Meredith Odatto Graham, Esq. (PAID#311664)
Varun Shekhar, Esq. (PAID#317151)
Babst, Calland, Clements and Zomnir, P.C.
Two Gateway Center, 6th Floor
Pittsburgh, Pennsylvania 15222
Telephone: (412) 394-5400
Email: mwinek@babstcalland.com
mdausch@babstcalland.com
mgraham@babstcalland.com
vshekhar@babstcalland.com

David W. Hacker, Esq. (PAID#91236)
United States Steel Corporation
600 Grant Street, Suite 1500
Pittsburgh, Pennsylvania 15219
Telephone: (412) 433-2919
Email: dwhacker@uss.com

Counsel for Appellant

Dated: December 12, 2018

EXHIBIT A

Administrative Order #181002 Revised
October 31, 2018

COUNTY OF



ALLEGHENY

RICH FITZGERALD
COUNTY EXECUTIVE

October 31, 2018

CERTIFIED MAIL – 9489 0090 0027 6037 6666 04

Mr. Michael S. Rhoads, Plant Manager
United States Steel Corporation
Clairton Works
400 State Street
Clairton, PA 15025-1855

RE: Administrative Order #181002 Revised – United States Steel Corporation, Clairton Works, 400 State Street, Clairton, PA 15025, various provisions of Article XXI and Installation Permit #0052-I011b, during the second quarter, April 1, 2018, through June 30, 2018.

Dear Mr. Rhoads,

Please see the attached Administrative Order.

Sincerely,

Dean DeLuca
Enforcement Chief, Air Quality Program

CC: Bill Clark, ACHD Enforcement Engineer
File



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



**ALLEGHENY COUNTY HEALTH DEPARTMENT
AIR QUALITY PROGRAM**

In the Matter of:

United States Steel Corporation
Clairton Works
400 State Street
Clairton, PA 15025

Violation No. 181002 Revised

Violations of Article XXI ("Air
Pollution Control") at property:

United States Steel
Corporation – Clairton Plant

ADMINISTRATIVE ORDER

NOW, this 31st day of October, 2018, the Allegheny County Health Department (hereinafter "ACHD") issues this Administrative Order after having found and determined the following:

FINDINGS

This Administrative Order addresses the violations, observed by the Department's Coke Oven Process Technicians and Method 303 contractor, of various provisions of Article XXI, Rules and Regulations of the Allegheny County Health Department, Air Pollution Control ("Article XXI") and Installation Permit #0052-I011, at your company's Clairton Works, during the second quarter of 2018, April 1, 2018, through June 30, 2018.

The ACHD has determined that United States Steel is in violation of Article XXI, § 2102.03.c and various provisions of § 2105.21, of the ACHD's Rules and Regulations by failing to meet the applicable requirements stated in Article XXI, § 2105.21 and ACHD Installation Permit #0052-I011.

By this Order the Department is not taking any action specifically regarding any alleged failures to meet any requirements regarding pushing or combustion stacks (as determined by a continuous opacity monitoring system), or soaking on Batteries 1, 2, and 3. Such actions are taken separately through provisions of the March 24, 2016 Consent Judgment.

Summaries of the violations are enclosed with this Order as Exhibit "A".

The violations observed by the Department's Coke Oven Process Technicians and Method 303 contractor at your US Steel Clairton Works involve the following:

- Excessive visible emissions from the charging of coke ovens at Batteries 2, 13, 14, 15, 19, and B and in violation of §2105.21.a of Article XXI, and Battery C in violation of V.A.1.b of Installation Permit #0052-I011b. As a consequence of these violations, the Department has assessed a civil penalty in the amount of \$152,196.00;

- Excessive visible emissions from the door areas at Batteries 1, 2, 3, and B in violation of §2105.21.b of Article XXI, and Battery C in violation of V.A.1.c of Installation Permit #0052-I011b. As a consequence of these violations, the Department has assessed a civil penalty in the amount of \$41,228.00;
- Excessive visible emissions from the door areas at Batteries 1, 2, 3, 13, 14, 15, 19, 20, B in violation of §2105.21.b.4 (40% opacity std.) of Article XXI, and Battery C in violation of V.A.1.d (30% opacity std.) of Installation Permit #0052-I011b. As a consequence of these violations, the Department has assessed a civil penalty in the amount of \$204,120.00;
- Excessive visible emissions from the charging ports at Batteries 1, 3, and B in violation of §2105.21.c of Article XXI; and Battery C in violation of V.A.1.e of Installation Permit #0052-I011b. As a consequence of these violations, the Department has assessed a civil penalty in the amount of \$28,908.00;
- Excessive visible emissions from the offtake piping at Batteries 3, 13, 14, 15, 19, 20, and B in violation of §2105.21.d of Article XXI. As a consequence of these violations, the Department has assessed a civil penalty in the amount of \$77,528.00; and
- Excessive visible emissions from soaking at Batteries 13, 14, 15, 19, 20, and B in violation of §2105.21.i of Article XXI, and Battery C in violation of V.A.1.g of Installation Permit #0052-I011b. As a consequence of these violations, the Department has assessed a civil penalty in the amount of \$109,736.00.

§ 2102.03 Permits Generally

c. Conditions

It shall be a violation of this Article giving rise to the remedies provided by Part I of this Article for any person to fail to comply with any terms or conditions set forth in any permit issued pursuant to this Part.

NOW THEREFORE, pursuant to the authority granted to the ACHD by Article XXI §§ 2109.03.a.1 and 2105.62.e and the Local Health Administration Law, 19 P.S. § 12010, it is hereby **ORDERED** that:

- (1) Within thirty (30) days of receipt of this Order, United States Steel shall pay an assessed civil penalty of **\$613,716.00** for the violation of Article XXI § 2102.03. Payment shall be made by corporate check, or the like, made payable to the “Allegheny County Clean Air Fund”, and sent to Air Quality

Program Manager, Allegheny County Health Department, 301 39th Street,
Bldg. #7, Pittsburgh, PA 15201

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.

In the event that a civil penalty has been imposed, the ACHD has determined the above penalty 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 U.S. Steel to minimize such violations and to prevent future violations; and U.S. Steel compliance history.

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. 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 the ACHD has imposed a civil penalty, 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. 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 <http://www.achd.net/regs.html>.

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 representatives, William Clark, at 412-578-8136 or e-mail bill.clark@alleghenycounty.us.

DONE and ENTERED this 31st day of October, 2018, in Allegheny County,
Pennsylvania.



Jayme Graham
Air Quality Program Manager

10/31/18

Date

CHARGING

Date	Battery	Seconds	Inspector	H, M, or L
5-Apr	2	233	ACHD	H
10-Apr	2	115.5	Keramida	
13-Apr	B	74.5	Keramida	
19-Apr	19	102	ACHD	M
20-Apr	B	66	Keramida	
25-Apr	C	103	ACHD	M
27-Apr	2	111	ACHD	H
27-Apr	2	99	Keramida	
3-May	14	57	Keramida	
4-May	14	97	ACHD	M
14-May	15	131	ACHD	H
16-May	14	145	Keramida	
16-May	14	90	ACHD	H
16-May	C	74	ACHD	L
19-May	13	132.5	Keramida	
23-May	15	117	Keramida	
24-May	13	151.5	Keramida	
30-May	B	65	ACHD	L
31-May	B	122.5	Keramida	
1-Jun	15	87	ACHD	M
4-Jun	14	104	ACHD	M
8-Jun	B	139	Keramida	
11-Jun	15	98	ACHD	L
13-Jun	14	123.5	Keramida	
14-Jun	B	188	Keramida	
18-Jun	13	176	Keramida	
21-Jun	B	73	ACHD	M
28-Jun	C	93	ACHD	M

Count: 28

* If applicable, no penalty because at least 1 charge from the same oven was observed on both inspections.

DOORS

Date	Battery	Percent	Inspector	H, M, or L
5-Apr	2	10.53%	ACHD	
13-Apr	2	8.70%	ACHD	
13-Apr	3	17.65%	ACHD	
20-Apr	3	10.78%	Keramida	
20-Apr	B	5.19%	Keramida	
30-May	B	5.08%	ACHD	L
2-Jun	B	5.15%	Keramida	
7-Jun	3	9.00%	Keramida	
15-Jun	1	13.91%	ACHD	H
15-Jun	C	4.22%	Keramida	

Count: 9

DOORS >40% (30% for Battery C)

Date	Battery	Oven #	Time Observed	Opacity (%)	Inspector	H, M, or L
5-Apr	1	B5	1118	90	ACHD	H
5-Apr	2	A9	804	65	ACHD	M
5-Apr	1	B3	1119	100	ACHD	H
5-Apr	2	A5	753	50	ACHD	M
5-Apr	2	A5	803	50	ACHD	H
5-Apr	2	A3	754	80	ACHD	H
5-Apr	1	B1	1119	100	ACHD	H
5-Apr	2	A3	802	60	ACHD	H
5-Apr	2	A1	754	90	ACHD	H
5-Apr	2	A1	802	100	ACHD	H
5-Apr	2	C2	806	100	ACHD	H
5-Apr	2	C1	806	90	ACHD	H
13-Apr	3	A9	759	60	ACHD	H
13-Apr	3	A7	754	60	ACHD	H
13-Apr	3	A7	759	70	ACHD	H
13-Apr	3	A5	759	70	ACHD	H
13-Apr	3	A3	759	90	ACHD	H
13-Apr	2	B27	806	80	ACHD	H
13-Apr	3	A1	758	100	ACHD	H
13-Apr	2	B23	805	45	ACHD	H
13-Apr	2	B21	805	80	ACHD	H
13-Apr	2	B12	804	50	ACHD	H
13-Apr	2	B17	804	60	ACHD	H
13-Apr	3	B26	801	75	ACHD	H
13-Apr	2	B11	804	70	ACHD	H
13-Apr	3	B22	800	70	ACHD	H
13-Apr	2	B5	804	45	ACHD	H
13-Apr	3	A29	753	80	ACHD	H
13-Apr	3	A29	759	45	ACHD	H
13-Apr	3	B23	800	50	ACHD	H
13-Apr	3	B25	801	50	ACHD	H
13-Apr	3	B29	802	60	ACHD	H
17-Apr	1	A28	1202	45	ACHD	L
19-Apr	3	B31	1124	45	ACHD	L
20-Apr	13	A3	1004	70	ACHD	M
20-Apr	13	A1	1004	75	ACHD	M
23-Apr	19	C14	901	75	ACHD	M
25-Apr	C	C6	1101	65	ACHD	H
26-Apr	1	A4	802	45	ACHD	H
26-Apr	1	B22	801	80	ACHD	H
7-May	1	B7	1057	70	ACHD	H
11-May	B	A10	1149	65	ACHD	H
11-May	15	B5	1014	45	ACHD	L
18-May	13	B11	946	60	ACHD	L
21-May	2	A1	801	45	ACHD	L
21-May	2	A3	802	50	ACHD	L
21-May	2	A5	802	65	ACHD	H
21-May	2	C1	805	50	ACHD	M
21-May	2	C2	806	75	ACHD	H
21-May	15	A25	1033	75	ACHD	H
21-May	15	A27	1033	85	ACHD	H
30-May	B	A1	755	75	ACHD	M
30-May	B	A16	756	45	ACHD	H
31-May	C	C45	928	55	ACHD	M
4-Jun	3	A4	751	60	ACHD	H
4-Jun	3	A8	752	80	ACHD	H
4-Jun	3	C2	755	90	ACHD	H
4-Jun	2	B28	758	45	ACHD	L
4-Jun	1	A30	803	50	ACHD	H
4-Jun	1	B11	805	45	ACHD	M
4-Jun	1	B21	806	50	ACHD	M
8-Jun	20	C24	1013	100	ACHD	L
11-Jun	C	C53	1059	60	ACHD	M
11-Jun	C	C53	1119	50	ACHD	M
12-Jun	14	A30	931	70	ACHD	M
14-Jun	C	C62	1055	50	ACHD	M

15-Jun	1	A21	728	80	ACHD	H
15-Jun	1	B10	733	60	ACHD	H
15-Jun	1	B14	734	100	ACHD	H
15-Jun	1	B16	734	75	ACHD	H
15-Jun	1	B18	734	75	ACHD	H
15-Jun	1	B20	734	100	ACHD	H
15-Jun	2	B3	744	45	ACHD	L
15-Jun	2	A26	725	80	ACHD	H
15-Jun	2	A28	725	80	ACHD	H
15-Jun	2	A30	727	50	ACHD	H
15-Jun	2	B1	727	45	ACHD	L
15-Jun	3	B31	723	50	ACHD	H
15-Jun	3	B28	723	60	ACHD	H

Count: 79

OFFTAKES

Date	Battery	Percent Leaking	Inspector	H, M, or L
10-Apr	3	7.14%	Keramida	
12-Apr	13	4.39%	Keramida	
17-Apr	14	6.14%	Keramida	
18-Apr	13	4.24%	Keramida	
20-Apr	14	6.90%	ACHD	L
26-Apr	13	5.93%	Keramida	
27-Apr	19	8.43%	Keramida	
1-May	15	4.31%	Keramida	
3-May	15	5.17%	Keramida	
4-May	19	7.93%	Keramida	
6-May	19	5.56%	Keramida	
8-May	20	4.17%	Keramida	
14-May	3	5.88%	Keramida	
16-May	15	5.17%	ACHD	L
21-May	13	4.39%	Keramida	
23-May	3	6.73%	Keramida	
7-Jun	20	4.82%	Keramida	
14-Jun	13	5.00%	Keramida	
14-Jun	15	5.17%	Keramida	
15-Jun	20	5.36%	Keramida	
15-Jun	B	4.35%	Keramida	
29-Jun	14	5.17%	ACHD	L

Count: 22

LIDS

Date	Battery	Percent	Inspector	H, M, or L
5-Apr	1	2.42%	ACHD	M
22-Apr	1	2.97%	Keramida	
25-Apr	B	1.52%	Keramida	
26-Apr	1	2.05%	ACHD	
24-May	C	1.95%	Keramida	
29-May	3	2.88%	Keramida	
11-Jun	1	2.82%	Keramida	

Count: 7

SOAKING

Date	Battery	Oven #	Time Observed	Pusher/Coke (side)	Max. Non-flame Opacity (%)	Inspector	H, M, or L
2-Apr	C	C10	803	P	70	ACHD	H
5-Apr	14	B17	857	C	30	ACHD	L
9-Apr	19	B19	849	C	100	ACHD	
9-Apr	C	C4	1051	P	25	ACHD	L
17-Apr	15	A20	757	P	40	ACHD	M
17-Apr	15	A20	756	C	60	ACHD	M
18-Apr	20	A16	759	P	65	ACHD	M
20-Apr	14	A27	757	P	80	ACHD	M
23-Apr	13	B6	831	P	60	ACHD	H
23-Apr	13	B6	831	C	70	ACHD	H
2-May	20	C10	755	C	40	ACHD	L
2-May	20	C12	813	C	50	ACHD	L

16-May	14	A26	804	C	45	ACHD	L
16-May	14	A28	820	P	30	ACHD	L
16-May	C	C7	841	P	50	ACHD	M
25-May	19	A25	755	P	40	ACHD	L
25-May	19	A27	756	C	70	ACHD	L
27-May	13	A12	851	P	100	ACHD	H
27-May	13	A12	851	C	100	ACHD	H
13-Jun	13	A20	737	C	100	ACHD	
18-Jun	13	A14	857	P	60	ACHD	M
22-Jun	B	A18	741	C	40	ACHD	H
22-Jun	B	A22	904	P	40	ACHD	M
22-Jun	B	A22	904	C	100	ACHD	H

Count: 24

Note: By this letter the Department is not taking any action specifically regarding any alleged failures to meet any requirements regarding soaking on Batteries 1, 2, & 3. Such actions are taken separately through provisions of the March 24, 2016 Consent Judgement.

Note: Any blanks in the heavy/moderate/light cell are recorded as light for calculation purposes.

**BEFORE THE HEARING OFFICER FOR THE
ALLEGHENY COUNTY HEALTH DEPARTMENT
542 4TH AVENUE
PITTSBURGH, PENNSYLVANIA 15219**

UNITED STATES STEEL)
CORPORATION, a Delaware corporation,)
)
Appellant,)
)
v.)
)
ALLEGHENY COUNTY HEALTH)
DEPARTMENT, Air Quality Program,)
)
Appellee.)

Appeal of Administrative Order
#181002 Revised

CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of December, 2018, a true and correct copy of the foregoing Notice of Appeal was served via hand delivery and addressed as follows:

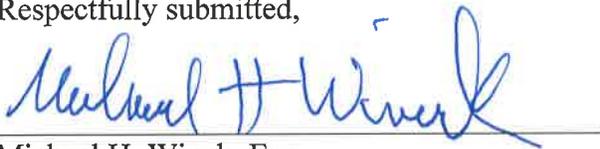
Karen Hacker
Office of the Director
Allegheny County Health Department
542 Fourth Avenue
Pittsburgh, PA 15219

The following individuals were served by electronic mail:

Max Slater, Esq.
Administrative Hearing Officer
Allegheny County Health Department
542 Fourth Avenue
Pittsburgh, PA 15219
max.slater@alleghenycounty.us

Jason K. Willis, Esq.
Assistant Solicitor
Allegheny County Health Department
301 39th Street, Bldg. No. 7
Pittsburgh, PA 15201
jason.willis@alleghenycounty.us

Respectfully submitted,



Michael H. Winek, Esq.
Counsel for United States Steel Corporation