

**BEFORE THE DIRECTOR
ALLEGHENY COUNTY HEALTH DEPARTMENT
542 4TH AVENUE
PITTSBURGH, PENNSYLVANIA 15219**

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|--------------------------------------|---|-------------|
| UNITED STATES STEEL |) | |
| CORPORATION, a Delaware corporation, |) | |
| |) | |
| Appellant, |) | |
| |) | |
| v. |) | Enforcement |
| |) | Order |
| ALLEGHENY COUNTY HEALTH |) | #180601 |
| DEPARTMENT, Air Quality Program |) | |
| |) | |
| Appellee. |) | |

**ALLEGHENY COUNTY HEALTH DEPARTMENT’S REPLY TO
UNITED STATES STEEL CORPORATION’S POST-HEARING BRIEF**

I. Introduction.

Appellee Allegheny County Health Department hereby submits its reply to United States Steel Corporation’s Post-Hearing Brief and in support posits the following¹. It should come as no surprise that Appellant would after decades of having received notice of, and paid for, violations attributable to its operations at the Clairton Coke Works would choose this Order to appeal. The Order on appeal is the first in which Appellant has been compelled to take some action pointedly directed by the Department. Further, the Department had instituted a new civil penalty policy which resulted in a greater penalty for the same violations that Appellant paid for in years past. Appellant makes the point on several occasions that it operates its coke facility in the most strictly

¹ Despite no order to do so, in their post-hearing brief Appellant proposed Findings of Fact for the hearing officer’s consideration. The ACHD did not propose Findings of Fact in its initial post-hearing brief and does not believe that it is appropriate to make such a proposal in this reply. That being said, the ACHD does not object to the following Findings of Fact proposed by US Steel: Paragraphs 1-3; 5-9; 11-13; 16-21; 24; 26-27; 30; 32-34; 37; 43; 55; 64-65; 67-69; 72-77; 80; and 83. The ACHD objects to the remaining proposed Findings of Fact.

regulated area in the country. This is, in all likelihood, true. It is also operating the largest coke facility in North America, perhaps the Western hemisphere, and it does so in a densely populated area and in a region that struggles to come into attainment of the EPA required standards for SO₂ and PM_{2.5}. It operates this facility 24 hours a day, seven days a week, and 365 days a year. During the timeframe considered by the Department in the Enforcement Order, Appellant racked up over 300 violations of Article XXI, relating to fugitive emissions. It does not account for violations which could occur during the times in which inspectors are not there to conduct their observations. Meanwhile, Appellant offers no claim that emissions are safe for the public to inhale. Irrespective of the outcome of this adjudication or the inevitable appeals sure to follow, it must not be forgotten that the Department will employ the tools at its disposal to come into attainment and to ensure the public safety with respect to clean air. Notwithstanding the legal arguments between the parties, the ultimate question going forward will be whether Appellant shares any of these goals and is willing to take the steps necessary to improve its compliance with the law.

II. Method 9.

Appellant first complains that the Department failed to employ Method 9 with respect to the opacity observations, despite testimony indicating that such had taken place. To simplify an overwrought argument, Method 9 does set forth the manner in which inspectors should make observations. However, as is the case with many methods and standards set forth by the EPA, allowances for deviation from said methods and standards are contemplated. Indeed, the EPA's Quality Assurance Handbook for Air Pollution Measurement Systems: Volume III Stationary Source Specific Methods,² provides guidance about the strictures imposed on observations and

² <https://www3.epa.gov/ttn/emc/methods/m9QAHandbook.pdf>

notes the impracticality of certain of those strictures. Specifically, Section 4.1.11 (Intermittent Sources) recognizes:

Some sources release visible emissions intermittently rather than continuously; *e.g.*, *coke ovens*, batch operations,[....] Intermittent emissions may have a high opacity for a short time and low or negligible opacity at other times. This high-low cycle may be repeated at fairly regular intervals. If a source is in violation (or in continuous compliance) of the applicable standard over the 6 minute averaging time required by Method 9, it does not pose a problem to the visible emissions observer. If the pollutant-emitting operational cycle of a source is less than 6 minutes in duration, however, that source may be out of compliance only for a portion of each 6 minute averaging period, which will make it difficult or impossible to document a violation if the data is to be reduced to a 6 minute average. (*Emphasis added*).

See id. at 18. The EPA guidance document goes further to note that states may adopt modified techniques for visible emission observations. Unfortunately, in this case, the County's Source Testing Manual is the County's technical guidance document which specifies that modified technique, stating that "Rather than applying the "averaging" provisions of Method 9, each momentary observation that is recorded shall be deemed to represent the opacity of emissions for a 15-second period." Exhibit USS-22 (Chapter 11). The Department's inspectors, based on their testimony were employing the source testing manual for making their observations. To the extent that the observations were characterized as Method 9 observations, they were. Thus, based on the consistency of their inspections, the fact that they were trained by their predecessors (or in the case of Gary Downard, trained by Angela Crowley) who presumably also adhered to the source testing manual, the observations under review comported with the guidance under the source testing

manual and the guidance with respect to Method 9. They merely adhered to the modifications found in the source testing manual. Insofar as Appellant received the daily inspection reports both before and after it received its Title V permit, it seems peculiar that such a consistent inspection regime is now challenged. Were this tribunal to make the source testing manual a nullity as suggested, clearly all of Appellant's Title V permits would have to be modified, along with Article XXI, to reflect the guidance in that manual and to ameliorate the "difficult or impossible" task of documenting a violation. To the extent Appellant claims that the goal of using Method 9 is to ensure consistency, the fact that inspections have been consistent over the span of a decade or more lends credence to their accuracy.

III. Hot Idling

Appellant also complains about the prospect of having to idle two of its ten coke oven batteries. It makes the unsupported claim that it is tantamount to a shutdown. It is not. First, one must not forget that the Department did not directly order a shutdown, even though Article XXI permits a facility wide shutdown in the event of violations. It is a process often taken by coke manufacturers during economic downturns or supply shortages. The Department contends that it would be difficult to find a coke oven battery (even other coke facilities operated by Appellant) that have not experienced a hot-idle and been placed back into production. The evidence of record makes clear that Appellant can place batteries into and retrieve them from hot idle. The coke battery in Monessen, Pennsylvania was placed on hot idle for a total of five years. The Order on appeal does not contemplate a hot idle remotely reaching five years.

The Order on appeal directed Appellant to come up with a plan to reduce its emissions (which would in turn reduce the number of violations and positively affect the surrounding community), afforded Appellant six months to show continued improvement, and directed US

Steel to reduce the number of leaks at Battery B to, a statistically favorable, ten leaks per month. Only, in the event where Appellant could not meet the goals of its own plan or control Battery B, as it had in the past, then it would have to idle two batteries. Appellant argues that the hot idling would result in hundreds of millions of dollars in costs based on the replacement cost of batteries that *may* be irreparable following idle and lost jobs. As to the potential for lost jobs, Appellant has already acknowledged that its efforts to comply with the Order has resulted in the hiring of more people, not fewer. Second, the idea that it would result in hundreds of millions of dollars in costs presumes 1) that hot idle will result in destruction of batteries and 2) that Appellant would rebuild the battery in the unlikely event that hot-idling results in the destruction of that battery. In 2009, Appellant took six batteries to hot idle, simply to save money. Now, Appellant complains about the same prospect of hot-idling where the Department is seeking to protect the public health. Clearly, when Appellant complains that such corrective action is excessive, the Department's concern regarding public health is absent from Appellant's calculus. Appellant's estimated loss of hundreds of millions is based on the value of installing a replacement battery, as it did with Battery C. There is no testimony suggesting Appellant would incur that expense. Indeed, notwithstanding assurances that it would replace older batteries with a newer battery D, Appellant reneged on that assurance and continues to this day with the operation of older batteries meant to be replaced years ago. Appellant also claims that the civil penalty is excessive. Given that the EPA has imposed penalties in the tens of millions just a generation ago, coupled with the fact that Appellant's steelmaking operations are experiencing a financial boom (\$200 million in profit in one fiscal quarter), a one million dollar penalty is hardly excessive but is hoped to be a deterrent against future violations to its permit conditions as well as Article XXI.

IV. Applicability of Article XXI Section 2109.04

Appellant makes the argument that simply because Section 2104.04 was not expressly mentioned in the Order, that somehow it was not contemplated. It should be understood that Article XXI provides the basis for the Department to take enforcement action against a party in violation of its provisions. There are over a dozen provisions contained within Article XXI in which Appellant may be in violation. The fact that the Department does not note them all does not negate the fact that Appellant is subject to them or that the Department did not contemplate those provisions. Consequently, Appellant's vapid speculation as to what the Department considered must be disregarded.

Appellant then goes on to attempt to divorce Battery B from the rest of the Clairton Works facility suggesting that because there was no penalty attributable to battery B, that there is no reason to include it as part of the corrective action imposed. To be clear, the "source" of air pollution in this case is the Clairton Coke Works, which includes both the coke oven batteries (all ten of the batteries) and the by-product processes operating at that facility. The testimony and evidence at the hearing indicated worsening performance across the batteries in terms of decreasing compliance. The evidence as to battery B showed not only an increase of door leaks along the coke side of battery B over time, but it demonstrate a unique problem in compliance with its coke side as compared to the coke sides of the other nine batteries. Specifically, Battery B had significantly more door leaks on the coke side than any other battery.³ There was also evidence that battery B's compliance rate was also deteriorating. Consequently, in order to address the deterioration in compliance across all the batteries, the Department included an additional condition to address a very specific problem at battery B. The analysis justifying the corrective

³ It must not be forgotten that those leaks are technical violations but for which no penalty was imposed. The failure to impose the violations was attributable to the Department acquiescence to Appellant to apply the terms of the Source Testing Manual over the requirements of Article XXI.

action is quite simple despite Appellant's effort to suggest a more complicated scheme. The testimony demonstrated: 1) that the emissions from door leaks contained coke oven gas; 2) that coke oven gas contains various sulfur compound (specifically SO₂) as well as benzene, toluene, ethyl-benzene, and xylene; 3) all of the aforementioned compounds present risks to the public health insofar as they are carcinogens; and 4) that one could correlate an increase to the risks to public health risk with increase of those compounds entering the air. The logic is clear and requires little more than simple reasoning.

V. More restrictive standards for Hazardous Air Pollutants.

Appellant then makes a claim that the Department may not impose on it an additional or more restrictive limitation based on some presumed restriction imposed by the Pennsylvania Department of Environmental Protection with respect to Hazardous Air Pollutants, such as the coke oven gas and BTEX emanating from the Clairton facility. However, that provision, 35 P.S. Section 4006.6, specifically applies to the state's agency under state law, a plain reading of that provision does not include any political subdivision in such limitation. In fact, the Act specifically defines the "department" as the Department of Environmental Protection. 35 P.S. Section 4003. Setting aside the statutory construction of the Air Pollution Control Act, the Department's Brief in Support sets forth the regulatory framework in which to understand the scope of the Department's authority. Specifically, the Department's regulations may be more stringent than that found in the Clean Air Act particularly when the Department is striving to come into and maintain attainment with the federal standard—a standard directly impacted by Appellant's non-compliance with Article XXI. This is acknowledged by the statement further in the Air Pollution Control Act. Section 4012 provides, in relevant part, as follows:

(a) Nothing in [the APCA] shall prevent counties, cities, towns, townships or boroughs from enacting ordinances with respect to air pollution which will not be

less stringent than the provisions of this act, the Clean Air Act or the rules and regulations promulgated under either this act or the Clean Air Act. This act shall not be construed to repeal existing ordinances, resolutions or regulations of the aforementioned political subdivisions existing at the time of the effective date of this act, except as they may be less stringent than the provisions of this act, the Clean Air Act or the rules or regulations adopted under either this act or the Clean Air Act.

(b) The administrative procedures for the abatement, reduction, prevention and control of air pollution set forth in this act shall not apply to any county of the first or second class of the Commonwealth which has and implements an air pollution control program that, at a minimum, meets the requirements of this act, the Clean Air Act and the rules and regulations promulgated under both this act and the Clean Air Act and has been approved by the department.

35 P.S. § 4012. To the extent that Allegheny County has promulgated Section 2109.04 allowing for a more restrictive standard, and such standard is imposed to address a health based risk of harm to the public, Appellant's reliance on the Commonwealth's limitation is misplaced.

VI. COMs Readings as a Compliance Metric.

Next, Appellant continues its confusion between what constitutes a metric for compliance established in the Order on appeal and Appellant's required compliance with the 2016 Consent Judgment. The lesson learned from the 2016 Consent Judgment is that Appellant can improve performance in one area of its facility and simultaneously disregard and allow for deteriorating performance in other areas of its facility. It demonstrated that while the COMs can determine the condition of a battery, that does not correlate to how the battery is being operated. The Order on appeal is designed to address the manner in which the batteries are operated. Because of the "whack-a-mole" approach Appellant has taken with respect to its compliance (with one condition in compliance to the derogation of other environmental requirements; namely visible emission inspections), the Department attempted to ensure a baseline against which it could measure future performance. The baseline is as simple as the term would suggest. It is a demonstrable measure of compliance against which six months' of future compliance will be measured. Whether the

baseline was calculated prior or subsequent to the imposition of the Order is immaterial. The baseline represents a period following the imposition of the order but during a period in which compliance was in decline. With the goal being increased compliance, the use of the first quarter better serves Appellant to the extent it would attempt compliance. Here, again, all the Department is seeking is two consecutive calendar quarters of performance improvements, indeed, performance that had been previously achieved by Appellant in years past. The overwhelming majority of the improvements from the Department's standpoint could have been achieved by improved workplace practices. Somehow, Appellant is arguing that because the 2016 Consent Judgment aspired for a lower compliance percentage than the Order on appeal, that the Department cannot legally expect Appellant to maintain the better (and in fact, achieved) performance going forward. Moreover, because the baseline includes visible emission inspections as part of compliance, Appellant would suggest that expecting it to have greater compliance, quarter over quarter, could lead to an "absurd result." What is absurd is for Appellant to complain about an expectation that it devise a plan (which it did) to reduce its fugitive emission of harmful pollutants in such manner that it had done in years past and maintain that for a paltry six months out of the year. Appellant also has difficulty with logic in that it presumes that the Department would direct it to go to hot idle if it obtained 100% compliance in the first quarter of the compliance period. That is absurd. If, and we say if because as of the date of this brief such is not the case, Appellant had 100% compliance with Article XXI standards in the first quarter of 2019 and maintained that compliance in the second quarter of 2019, there would be, as a factual matter, no basis for hot idle. Certainly, if it were the case that that unicorn event transpired, the Department would apply its enforcement discretion and not require hot idle insofar as such would be counter-productive. The hypothetical that Appellant poses requires one to disengage from reality where the Department

would require injunctive relief for complete compliance with the regulations. Such propositions as Appellant poses are worth noting merely to point out the logically absurd lengths to which Appellant is willing to reach simply to avoid improving its regulatory compliance. However, the Department chooses not to engage in fantastical hypotheticals; rather, it will base its decisions on past performance, prior penalties imposed and allowed, the achievability of the injunctive relief imposed and on any information within its possession.

VII. Worst Performing Batteries.

Appellant also complains that because the Department did not ascertain which of its ten batteries would be susceptible to the hot idling provision prior to the issuance somehow invalidates the requirement. Appellant misunderstands that it simply does not matter which two of its ten batteries would be subject to hot idle, only that the two worst performing batteries would be subject to idling. Taking the two worst performing batteries to hot idle will address facility-wide concerns of Appellant's demonstrable difficulty with compliance and will reduce the risk of coke oven gas, sulfur compounds, and BTEX affecting the public health. Taking the two worst performing batteries has a correlative effect on the emissions profile of the Clairton facility, at least until such time as Appellant can devise a way to increase environmental performance. Such injunctive action is specifically targeted to address a specific problem and affords Appellant the opportunity to self-correct. Such provision is neither excessive nor arbitrary.

VIII. Concurrent Remedies.

Appellant next fabricates a scenario where it may not be able to maintain compliance with the COMs in a manner that it has demonstrated in the past and will thus suffer a double penalty, one penalty emanating from a violation of the 2016 Consent Judgment and the other from decreasing compliance as compared against the first quarter of 2018. First, this tribunal must be

aware that the required compliance certification with respect to the 2016 Consent Judgment will be submitted by the time briefing in this matter is complete. No violations are anticipated from Appellant's compliance with the terms of the 2016 Consent Judgment. Second, and more importantly, Article XXI, Section 2109.02.c states:

- c. **Remedies Concurrent.** *It is expressly declared* that the remedies authorized by this Article shall be concurrent and *that the existence of pendency of any remedy shall not in any manner prevent the Department from seeking or exercising any other remedy*, whether authorized by this Article or otherwise existing at law or in equity.

Article XXI, Section 2109.02.c (emphasis supplied). Under the express terms of Article XXI, the presence of some other enforcement instrument or remedy does not preclude the Department from further enforcement or from availing itself of an enforcement order to address the fugitive emissions from Appellant's facility. Third, Appellant's claim of a conflict with the 2016 Consent Judgment is disingenuous, at best. Appellant agreed as part of the 2016 Consent Judgment that "the dispute resolution procedures of [Section XI – Dispute Resolution] shall be the exclusive procedure for resolution of disputes arising between the Parties regarding matters included in this Consent Judgment." Those procedures expressly contemplate that, in the event there is a disagreement concerning any of the provisions of the Consent Judgment, that party must submit a written Notice of Dispute. Appellant failed to submit any such Notice. It thereby failed to establish any legitimate claim concerning the implementation of the Consent Judgment as Appellant believed it would be impacted by the Order on appeal. Last, and yet equally important, the Order on appeal does not impose a penalty for violations at the COMs. It uses the aggregate rate of compliance from those COMs as *a part* of an overall compliance demonstration. The 2016 Consent Judgment required Appellant to make repairs to the oven *walls* to reduce emissions moving through those walls and up through a stack. Because the measures taken resulted in

increased compliance as of the first quarter of 2018, improvement is not necessary. However, the Department has noted that during the time subsequent to the repairs to those walls, violations increased elsewhere. In order to ensure facility-wide emission reduction, holding Appellant to comply with an emission standard it had already set *while simultaneously* requiring improvements with respect to visible emissions, has the effect of ensuring there will be no backsliding in performance with the COMs for at least six months.

IX. Testing Methods.

With regard to the use of Method 9, the Department must make clear that it is the opacity reading, itself, that is the salient measure of its adherence. Appellant makes reference to sun angles and wind directions insofar as they are or are not represented on the inspection reports—even though they are. However, those features of Method 9 do not establish as a factual matter the correctness of the opacity reading itself. Put differently, visible observations and the determination that smoke emitted from any particular oven door is 60% opaque is not incorrect simply because the report fails to indicate wind direction or sun angle. The purpose of the report is to reflect plume opacity in order to determine if there is a violation while aspects of sun angle and wind direction play a role in the opacity determination, the recording of that information does not.

Appellant similarly complains that Method 9 requires that the accuracy of the method be taken into account when determining possible violations. As noted before, portions of Article XXI, and in particular 2109.06.b, are part of the state implementation plan and, as such, are federally enforceable provisions. Section 2109.06.b sets forth the factors that the Department must consider in the imposition of a civil penalty. Accuracy of Method 9 is not a factor in the formulation of the civil penalty. Appellant also suggests that the imposition of a civil penalty based on the observations would blindside it. This argument reveals either a willful ignorance that

the Order would hope to remedy or a completely disingenuous argument for argument sake. The testimony made clear that the Department provides a copy of its inspection reports every day for at least a decade. In years past, Appellant even made use of that information to make positive changes with respect to environmental performance. Keramida, similarly, provides Appellant a copy of its inspections within 24 hours. The Department takes several months, as suggested in the timeline in this case, to review Keramida's data as well as its own just to translate the visible emission readings into an enforcement order. There is nothing suggested in the evidence that Appellant could not act on the inspection reports that were the subject of this appeal before the Order was ultimately issued. Indeed, to the ACHD's knowledge, there has **never** been an appeal before this Order challenging the inspections. There is also the fact that the Department had issued several enforcement orders earlier in the year employing the new civil penalty policy. The testimony, at the time of the hearing, squarely made certain that in those prior orders, the Department articulated that it would be employing the new civil penalty policy and discounted the first order in which the new policy was applied.

Appellant also complains that the Department did not properly employ the Source Testing Manual, specifically Method 109, and insists that it should follow that method notwithstanding the fact that there is no Method 109 in the Source Testing Manual. To the extent that Appellant would want the Department to adhere to an empty vessel of a provision is surprising only to the degree of its cynicism. Appellant, has for years benefitted financially or operationally from the Department's deference to the Source Testing Manual to the diminution of the regulations. Take away the source testing manual and Appellant must begin adhering to the regulations solely. To the extent that such adherence would, at least in terms of its deteriorated performance, result in an increase in the number of violations and penalties, Appellant is in the precarious situation of

demanding compliance with the Source Testing Manual while ignoring the Method 9 deviation established by the manual.

X. Door Violations are attributable to each leak not each battery

Appellant believes that the Department “overstated” the number of violations by counting the violations from the ovens within the batteries because the “limits apply to each battery, rather than individual coke ovens.” Appellee’s Brief at Argument (B)(citing Article XXI, Section 2105.21.b). This argument highlights the absurdity that underlies much of Appellant’s *faux* consternation with the penalty as imposed. Taking its argument to its most illogical conclusion, the Department would be limited to issue a penalty for one door leak per battery despite the likelihood of an innumerable number of leaking doors. So, in the case where Appellant would allow 12 doors to leak, thereby emitting dangerous coke oven gas into the atmosphere, the Department could only issue one violation for what may constitute a considerable threat to public health. This is a complete misconception of the law. The correct logical interpretation is that any leak from an oven constitutes a violation with respect to the operation of any battery. The leak is the violation not merely the battery operation. The ACHD contends that the plain language of the regulation clearly supports this interpretation. However, to the extent that this tribunal finds ambiguity in the language of Section 2105.21.b, then the ACHD’s interpretation of its own regulation should be given deference. See *Chevron U.S.A., Inc. V. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984).

Setting aside Appellant’s misinterpretation of the regulatory language, it must be recalled that Article XXI, Section 2109.06.a.1 limits the Department to an imposition of \$25,000.00 for each “violation.” Consequently, each time Appellant allows its batteries to operate in such manner as to exceed an emission limit, each leak from that battery shall constitute a violation--as to that

battery. Anything less than that would permit Appellant to pour visible emissions into the air without possible enforcement. This argument is one of Appellant's more shocking propositions. First, it is stunning insofar as there no evidence that its or any other permits have been enforced in such a fashion and second, it is beyond the pale to suggest it should be permitted to pollute the air **more** than contemplated by either party.

XI. The May 2018 Consent Order Does Not Preclude the ACHD from Enforcing Violations Discovered After Issuance.

Next, Appellant claims that a May 7, 2018 Consent Order precludes the Department from issuing an Order for violations not then contemplated. First, the May 7 Order expressly notes that “[n]othing in the agreement is intended to limit the authority of the ACHD with respect to violations that may have occurred prior to the date of this Consent Order...” Exhibit USS-52 at ¶9. The Consent Order is expressly limited to the violations that were the subject of the March 6, 2018 Enforcement Order. *Id.* at ¶5. The third quarter 2017 penalties that are part of the Order on appeal were not in the March 6 Order and thus not contemplated for inclusion in that order. The third quarter penalties found in the Order on appeal *were*, however, prior to the date of the Consent Order and were therefore ripe for enforcement once it became known that they were not properly included in the third quarter penalty. Appellant arguments to the contrary are without merit.

XII. Civil Penalty Was Not Excessive.

Appellant next claims that the civil penalty was excessive and extreme. The testimony during the evidentiary hearing demonstrated an elaborate and well-considered policy for the imposition of a civil penalty. It demonstrated that prior to the use of the policy in this matter, the Department had vetted and tested the policy mechanisms among the various individuals in the enforcement section for the purpose of ensuring consistent results. The maximum penalty that Appellant could have received was well over nine times what it actually received. There was

evidence that, historically speaking, Appellant had received a penalty of tens of millions of dollars by the EPA over a generation ago. Certainly, given the increased value of the dollar from the 1980s to today, the million dollar penalty at issue today is substantially less than the one it was under 30 plus years ago. It also cannot be forgotten that the civil penalty is for the sum of no less than 300 violations over three quarters. This sum comes after an appreciable amount of review and not an arbitrary guesswork. Indeed, the penalty for the individual violations are no more than a few thousand dollars, despite the fact that Article XXI allows for a maximum penalty of \$25,000 per day per violation. See Article XXI Section 2109.06.a.1. The sheer size of the penalty is primarily attributable to the number of times Appellant has violated Article XXI and consequently, is a function of its own malfeasance rather than an excessive penalty calculation.

XIII. Keramida Reports

Appellant similarly complains that the Department did not consider Keramida reports in finding a deterioration of compliance. Actually, this is not true. Though the findings in the Order do not reference the Keramida reports specifically. The evidence of record reflect a similar degradation of environmental performance. This merely goes to the “whack-a-mole” nature of Appellant’s compliance problems. There was a distinct and demonstrated problem with declining compliance. That decline needed to be addressed without upset to increasing compliance with the COMs. Appellant may not like the data the Department employed yet it has acknowledged that it had data available which showed a deterioration. That is all that is required under the law and that is what was proven.

XIV. Hazardous Air Pollutant Standards

Appellant also claims that Section 6.6 of the APCA, 35 P.S. § 4006.6 prohibits the Department from establishing a more stringent standard than that found in the NESHAP.

Specifically, Appellant relies on the language stating: “In the case of coke oven batteries, *the department* may not impose health risk-based emission standards more stringent than Federal requirements until eight (8) years after promulgation of maximum achievable control technology (MACT) standards and not until the year 2020 for coke oven batteries which satisfy the requirements of section 112(i)(8)(A) of the Clean Air Act.” 35 P.S. § 4006.6.d.2. However, that provision specifically applies to the Commonwealth’s Department of Environmental Protection. The definitions of “department” is expressly “the Department of Environmental Resources of the Commonwealth” or as it now known, the Department of Environmental Protection. *See* 35 P.S. § 4003. Had the legislature intended to include political subdivisions like Allegheny County and Philadelphia, it would have done so expressly in its definition, but it did not. Therefore, any such limitation is not imparted on ACHD. Similarly, to the extent that Appellant relies on the Clean Air Act, 42 USC Section 7412, those provisions, as cited, refer to the EPA Administrator’s ability to promulgate emission limits with respect to coke oven batteries. It does not preclude ACHD from instituting a temporary metric of compliance. What *is* notable about the federal regulations is that significant portions of Article XXI, Section 2109 are part of the Commonwealth’s State Implementation Plan and incorporated into the federal registry as federally enforceable provisions. In particular, Section 2109.02 (Remedies—allowing for the imposition of a civil penalty and issuance of an enforcement order), Section 2109.03.a (Enforcement Orders—allowing for the imposition of an enforcement order that could impose as injunctive relief a shutdown requirement), Section 2109.04 (Orders Establishing an Additional or More Restrictive Standard—allowing the Department to require compliance with a more restrictive standard where there is *any* information that emissions in violation of Article XXI may otherwise reasonably be anticipated to endanger the public health, safety or welfare), Section 2109.05 (Emergency Orders—which again allow the

Department to take whatever the Department deems necessary to address a threat to public health), Sections 2109.06.a.1 and b (Civil Proceedings— which limits the Department’s civil penalty to \$25,000.00 per violation, per day *and* prescribes the factors the Department is to consider in calculating its civil penalty), are all part of the state implementation plan. *See* 67 FR 68935.⁴ It must be recalled that the purpose of having a plan is to demonstrate the means by which the Commonwealth, and more precisely Allegheny County, intends to come into compliance with the NAAQS. Establishing new and more restrictive standards is an accepted manner by which the Department can both ensure compliance with the NAAQS and protect public health. Appellant’s arguments to the contrary are wholly without merit.

CONCLUSION

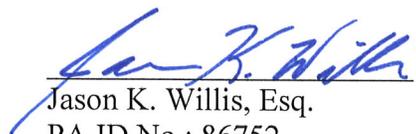
There are a number of things that must not be forgotten with respect to the Order on appeal and which the Department is compelled to point out. Appellant may not like the data relied on by the Department but the information does reveal a deterioration in compliance with the regulations at a time when the Department is determined to maintain compliance with the NAAQS and ensure that the air quality for its residents is safe to breathe. Appellant may not like it but the Department uses as its predicate for action the fact that Appellant’s emissions contribute to the region’s difficulty with attaining a national standard and that decreased compliance makes attainment more difficult. Appellant may not like it but it has taken environmental compliance more seriously than in years past and has had reason to take pride in its contribution to a solution rather than a problem. Appellant may not like it but the Department is requiring improved compliance and although all regulations are imposed with the expectation of complete compliance, the Department is cognizant

⁴ The Allegheny County portion of the Commonwealth’s State Implementation Plan may be readily found online at: <https://www.epa.gov/sips-pa/pennsylvania-sip-allegheny-county-health-department-article-xxi-part-i-regulations-210901>

that improvements may be accomplished. Appellant may not like it but the Department will favor measures to ensure public health over Appellant's profit margins. Appellant may not like it but the fact of the matter is that it has and can take two batteries to hot idle where its economic interests were involved but refuses to even consider it when public health is involved. Appellant refuses to acknowledge but it is nonetheless true that the prospect of hot idling is within its control. It controls every aspect of the operations at Clairton Coke Works and has maintained that control for the better part of a century. Appellant would never acknowledge it but this appeal is not about the civil penalty but about the audacity of the Department to enforce the provision of Article XXI as envisioned but never done before. Appellant may not believe it and certainly does not acknowledge that if it were merely to improve its compliance to where it was in 2014, the corrective action deemed necessary now would have not been imposed. Appellant certainly does not accept nor will it acknowledge that the imposition of Enforcement Order #180601 is solely a reflection of increasing violations, the health risks concomitant with decreased compliance, the risk of not coming into attainment with a national standard and the intent to return Appellant to absolute compliance. For the foregoing reasons, the Department maintains that this tribunal must affirm Enforcement Order #180601 and the corrective actions said order imposes on Appellant.

Dated: March 25, 2019

Respectfully submitted,



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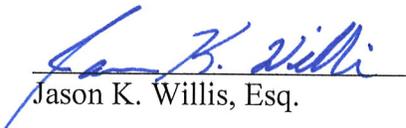
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct revised copy of the foregoing ALLEGHENY COUNTY HEALTH DEPARTMENT'S REPLY TO UNITED STATES STEEL CORPORATION'S POST-HEARING BRIEF has been filed and served upon the following via electronic and certified mail this 25nd day of March, 2019:

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