

July 27, 2018

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Via Hand Delivery

Attn: Karen Hacker
Office of the Director
542 Fourth Avenue
Pittsburgh, PA 15219

**RE: United States Steel Corporation
Notice of Appeal and Petition for Stay of Enforcement Order No. 180601**

Dear Director Hacker:

Pursuant to Article XI of the Rules and Regulations of the Allegheny County Health Department, United States Steel Corporation submits for filing the enclosed Notice of Appeal and Petition for Stay regarding the above-referenced order dated June 28, 2018. Included with the enclosures is a check in the amount of \$1,091,950.00, equal to the total civil penalty assessed by the above-referenced order, to be held in escrow. If you have any questions or wish to discuss this matter further, please contact me at mwinek@babstcalland.com or (412) 394-6538.

Sincerely,



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

Enclosures

Cc: Max Slater, Esq. (via e-mail: max.slater@alleghenycounty.us)
Jason Willis, Esq. (via e-mail: jason.willis@alleghenycounty.us)



United States Steel Corporation
Pittsburgh, PA 15219

BNY Mellon, N.A.
Pittsburgh, PA

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DO NOT CASH UNLESS WARNING BAND AND CHECK BACKGROUND ARE BLUE WATERMARK ON BACK, HOLD AT ANGLE TO VIEW.

ONE MILLION NINETY-ONE THOUSAND NINE HUNDRED FIFTY AND
NO/100 DOLLARS*****

07/17/2018

VOID AFTER 90 DAYS

PAY ONLY → **1091950.00**
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TO
THE
ORDER
OF

ALLEGHENY COUNTY OF
ALLEGHENY CNTY CLEAN AIR FUND
HEALTH DEPT-AIR QUALITY PG MGR
301-39TH ST BLDG 7
PITTSBURGH, PA 15201-1891

0001

AUTHORIZED SIGNATURE REQUIRED

⑈0620245279⑈ ⑆043301601⑆ 902⑈0761⑈

United States Steel Corporation

07/17/2018

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For ERS Invoice Types: Contact Plant

For Inquiries Please Visit: SteelTrack.uss.com

OMLP

DIV. 74 ALLEGHENY COUNTY OF

VENDOR CODE: 105586 -

PAGE 1 OF 1

PO No.	Rel No.	Invoice Type	Invoice Date	Invoice No.	Discount	Net Remittance	Fac	Remit Comments
			STANDARD 07/05/2018	ENFORCEMENTORDERN		1,091,950.00	134	IMMEDIATE CHECK

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

UNITED STATES STEEL)	
CORPORATION, a Delaware corporation,)	
)	
Appellant,)	
)	
v.	)	Appeal of Enforcement Order
	)	#180601
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, appealing from Enforcement Order #180601 (hereinafter “Order”), as issued by the Allegheny County Health Department, Air Quality Program (hereinafter “Department”), to U. S. Steel Clairton Works, and received by U. S. Steel on or about June 28, 2018 (attached hereto as Exhibit A). 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 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 June 28, 2018, and it was received by U.S. Steel on or about the same date.

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. Several paragraphs in the Order allege a specific rate or rates of compliance of less than 100% for sources located at the Facility. See, e.g., Exhibit A, ¶¶ 8, 9, 10 and 11 on p. 3. Some paragraphs allege that a source failed to achieve a compliance rate above a certain threshold. See, e.g., Exhibit A, ¶ 12 on p. 3. Other paragraphs allege a specific “facility-wide” rate of compliance. See, e.g., Exhibit A, ¶ 13 on p. 3. The Order provides insufficient information regarding the basis for such compliance rates. The compliance rates were determined incorrectly and are inconsistently applied for the source. The compliance rates in the Order are not based on all available credible evidence. The rates expressed in the Order therefore do not accurately reflect the Facility’s actual compliance status;
- b. Several paragraphs in the Order allege a specific number of violations occurring during various years. See, e.g., Exhibit A, ¶¶ 17, 18, 19, 20 and 21 on p. 4. The Order provides insufficient information regarding the basis for these violation

figures. The figures expressed in the Order do not accurately reflect the Facility's actual compliance status;

- c. 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;
- d. The Order identifies various dates to support the alleged violations. These dates are arbitrary and result in a misrepresentation of the Facility's compliance status;
- e. Issues raised in the Order were previously addressed in a Consent Judgment executed by U.S. Steel and the Department and approved by the Court of Common Pleas of Allegheny County on March 24, 2016 (hereinafter "Consent Judgment"), attached hereto as Exhibit B. The Department acted inappropriately to the extent the Order contradicts, is inconsistent with and/or attempts to supersede the Consent Judgment;
- f. U.S. Steel and the Department previously agreed in the Consent Judgment that "the most effective surrogate for environmental performance across the entire Facility is plume opacity from the battery combustion stacks." Exhibit B, ¶ 26 on p. 4. However, the Order specifically contradicts the Consent Judgment in so far as the Order focuses on and gives greater consideration to intermittent fugitive emission sources—instead of the battery combustion stacks—for measuring compliance;
- g. The Department's inclusion of the combustion stacks as a metric to be used to determine compliance with the Order is unlawful in so far as the Order imposes

obligations upon U. S. Steel that are contrary to the obligations and compliance schedule set forth in the Consent Judgment;

- h. The Order does not reflect the fact that certain work undertaken at the Facility to implement long-term compliance solutions, including those required by the Consent Judgment, may result in intermittent, short-term deviations attributable to the non-steady state condition of the battery during the implementation of the battery improvements. U.S. Steel previously advised the Department of this reality. However, the Department proceeded to issue the Order asserting violations relating to work performed to comply with the Consent Judgment and intended to improve overall long-term battery performance;
- i. Department inspectors have failed to conduct proper, fair and unbiased evaluations of the Facility and U.S. Steel performance data, as reflected in the Order;
- j. 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;
- k. 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 facilities. 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;

1. The Order asserts that “U.S. Steel employees have taken actions which skews [sic] or disrupts [sic] inspector observations.” Exhibit A, ¶ 35 on p. 8. However, the Order mischaracterizes the good faith efforts and generally accepted practices of Facility personnel to achieve and maintain compliance in a manner consistent with good operating practices. The Department did not advise U.S. Steel of its concerns regarding these practices until these concerns were included in the Order. The Order also fails to account for the fact that practices observed by Department inspectors, such as sealing of leaks, are permissible standard operating procedures and/or necessary for the safe and efficient operation of the Facility. Contrary to the Department’s assertions, such practices are employed as environmentally protective measures;

- m. The Order requires U.S. Steel to “ensure consistent operation [...] at all times” and dictates that “[a]ny observed deviation from normal practices [...] will be considered a hindrance under 2101.11.b.2. and shall constitute a separate violation.” Exhibit A, ¶ 36 on p. 9 and ¶ 8 on p. 29. The Order mandates that U.S. Steel operate the Facility in the same manner at all times. However, normal operations vary and U.S. Steel routinely implements corrective measures as needed, regardless of whether visible emissions are being measured by the Department or any other party. The Order precludes U.S. Steel from taking environmentally responsible actions to minimize emissions. For example, if U.S. Steel or a third party such as a Department inspector observes a door leak, U.S.

Steel is permitted to promptly fix the leak. Instead, the Department has taken the position that efforts by U.S. Steel to minimize air pollution constitute a violation. In this regard the Order is vague, unduly burdensome and impractical;

- n. The Order requires U.S. Steel to conduct a stack test of the C Battery quench tower exhaust within 60 days of the date of the Order to demonstrate compliance with an SO₂ limit. See Exhibit A, ¶ 74 on p. 20 and ¶ 6 on p. 28. This deadline is impracticable;
- o. The Order requires U.S. Steel to present the Department with corrective action precluding further exceedances within 45 days of completing the SO₂ stack test. See Exhibit A, ¶ 75 on p. 20 and ¶ 7 on p. 28. The Order is premature in so far as the Department presumes that U.S. Steel will fail the stack test and that corrective action will be warranted. Furthermore, the 45-day deadline is impracticable;
- p. The Order requires U.S. Steel, within 60 days of receiving the Order, to “deliver to the Department an assessment of all emissions points existing at the Clairton facility, as of the date of this Order.” Exhibit A, ¶ 81.a on p. 23 and ¶ 2 on p. 26. U.S. Steel must include in the assessment “all measures U.S. Steel would propose to reduce its emissions of sulfur oxides, PM_{2.5} and visible emissions.” *Id.* These measures “must sufficiently demonstrate reduction” of such emissions and U.S. Steel must begin implementation within 30 days of Department approval. Exhibit A, ¶ 81.a on p. 23 and ¶ 2 on pp. 26-27. Paragraphs 81.a and 2 of the Order are vague, confusing, unduly burdensome, insufficiently specific and impractical. In particular, requiring such a comprehensive identification (let alone an emission

reduction evaluation) within the requested time frame is impracticable, if not impossible;

- q. The Order requires U.S. Steel to demonstrate compliance with the Order based on “two successive calendar quarters wherein U.S. Steel has shown a reduction in visible emissions, sulfur oxides and PM2.5 emissions across all operating coke batteries at the Clairton facility,” and discusses how the rate of compliance will be determined. Exhibit A, ¶ 81.b on pp. 23-24 and ¶ 3 on p. 27. In this regard the Order is vague, confusing, unduly burdensome, insufficiently specific, impractical and inconsistent with the compliance provisions of the Consent Judgment;
- r. The Order unlawfully imposes a retroactively applicable requirement by directing U.S. Steel to demonstrate a reduction of visible emissions, sulfur oxides and PM2.5 emissions for the “first consecutive quarter” compared to a baseline of first quarter 2018. See Exhibit A, ¶ 81.b on pp. 23-24 and ¶ 3 on p. 27. It is unclear how this comparison is to be made. In so far as the “first consecutive quarter” is to be understood as the second quarter of 2018, U.S. Steel must demonstrate a reduction for second quarter 2018. However, the Order was issued on June 28, 2018, with only two days remaining in the second quarter. This interpretation of the Order violates due process because it requires U.S. Steel to retroactively reduce emissions;
- s. The Order requires U.S. Steel to reduce door leaks from the coke side of B Battery to “no more than ten leaks per month.” Exhibit A, ¶ 81.c on p. 24 and ¶ 4 on p. 27. The basis for this 10 leaks per month standard is unclear. It is not an existing applicable requirement and is considerably more stringent than any

existing regulatory or permit requirement. The Department has not shown that this new standard is actually achievable for B Battery, nor has the Department shown that a heightened or more restrictive standard is necessary or appropriate. U.S. Steel has been in compliance with the existing applicable requirements of the relevant National Emission Standards for Hazardous Air Pollutants for B Battery coke side doors, which are covered by a shed. The Department has no basis for establishing the new limitation;

- t. The Order contemplates that if U.S. Steel fails to meet certain requirements of the Order, “U.S. Steel shall place its two worst performing batteries on hot idle until such time [as the Department] has determined that U.S. Steel has complied with the requirements of this Order.” Exhibit A, ¶ 81.d on p. 24 and ¶ 5 on p. 27. The term “hot idle” is defined in the Order as “the cessation of all charging, soaking and pushing of metallurgical coke.” Exhibit A, ¶ 81.d on p. 25 and ¶ 5 on p. 28. Ordering such hot idle of the batteries is tantamount to a temporary source shutdown due to the unique nature of coke oven operations. Furthermore, some batteries are unlikely to withstand a hot idle, such that hot idling is effectively tantamount to a permanent shutdown for such batteries. The hot idle mandate of the Order is unnecessary, premature, and untimely;
- u. Ordering U.S. Steel to hot idle two batteries is an extreme measure that under the circumstances represents an inappropriate exercise of discretion. The Department’s authority to issue enforcement orders is not boundless. Ordering hot idle is inappropriate, unwarranted and a violation of U.S. Steel’s due process rights;

- v. The Order describes how to determine the “worst performing batteries” to be placed on hot idle if U.S. Steel fails to meet certain requirements of the Order. See Exhibit A, ¶ 81.d on pp. 24-25 and ¶ 5 on pp. 27-28. The manner in which the worst performing batteries are to be identified and the consequences of such a determination are vague, confusing, unduly burdensome, insufficiently specific and impractical;
- w. The Order requires U.S. Steel to pay a total civil penalty of \$1,091,950.00 within 30 days of receiving the Order. See Exhibit A, ¶ 1 on p. 26. Additional penalty figures appear elsewhere in the Order. See, e.g., Exhibit A, ¶ 41 on p. 11. The civil penalties assessed by the Order are excessive, inappropriate, unwarranted and not commensurate with the claims in the Order;
- x. The Department inappropriately assessed penalties more than once for the same underlying alleged violation, thereby impermissibly inflating the total penalty assessment;
- y. The Department has failed to adequately explain the basis for the penalty assessment in the Order;
- z. The Department unlawfully applied a policy retroactively and violated U.S. Steel’s due process rights to the extent the Department relied upon its civil penalty policy known as “Policy and Procedure HPA #363,” which has an effective date of January 10, 2018, to calculate penalties associated with alleged violations which occurred before January 10, 2018;
- aa. The Order includes a paragraph that addresses resolution of conflicts between a requirement of the Order and other applicable requirements. See Exhibit A, ¶ 9

on p. 29. The Order does not reflect the fact that certain work undertaken at the Facility to implement long-term compliance solutions, including those required by the Consent Judgment, may result in intermittent, short-term deviations. To the extent that the Order regulates emissions from combustion stacks, it is inconsistent with the Consent Judgment;

bb. The Department has failed to adequately articulate or show how the alleged violations adversely impacted ambient air quality or public health, safety or welfare;

cc. In issuing the Order, the Department exceeded its enforcement authority as provided in Article XXI of the Department's Rules and Regulations;

dd. The deadlines established by the Order are impracticable; and

ee. 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,



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Mark K. Dausch, Esq. (PAID#205621)
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Counsel for Appellant

Dated: July 27, 2018

EXHIBIT A

Enforcement Order
June 28, 2018

COUNTY OF



ALLEGHENY

RICH FITZGERALD
COUNTY EXECUTIVE

June 28, 2018

via certified and first-class mail: 9489 0090 0027 6037 9173 55

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

Re: Enforcement Order No. 180601

Dear Mr. Rhoads:

Please find enclosed a copy of the Allegheny County Health Department's Enforcement Order #180601 for violations which have occurred at your facility, by the Department's Coke Oven Process Technicians and Method 303 contractor, and from US Steel reports, of various provisions of Article XXI, Rules and Regulations of the Allegheny County Health Department, Air Pollution Control ("Article XXI") and Installation Permit #0052-1011, at your company's Clairton Works.

Should you have any questions or concerns, please feel free to contact the Air Quality Program Manager, Jayme Graham, at 412-578-8129 or at jayme.graham@alleghenycounty.us.

Sincerely,

Jason K. Willis
Assistant Solicitor

cc: *David W. Hacker, Esq. (US Steel) via electronic mail: DWHacker@uss.com
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
24HR (412) 687-ACHD (2243) • WWW.ACHD.NET

**ALLEGHENY COUNTY HEALTH DEPARTMENT
AIR QUALITY PROGRAM**

In the Matter of: United States Steel
Corporation — Clairton Coke Works
400 State Street
Clairton, PA 15025

Order #180601

ENFORCEMENT ORDER

AND NOW, this 28th day of June, 2018 (hereinafter “Effective Date”), the Allegheny County Health Department (hereinafter “ACHD” or “Department”) has found as a factual matter and has legally concluded the following:

1. The Director of the ACHD has been delegated authority pursuant to the federal Clean Air Act, 42 U.S.C. Sections 7401 -7671q (hereinafter “CAA”), and the Pennsylvania Air Pollution Control Act, 35 P.S. Sections 4001-4014 (hereinafter “APCA”), and the ACHD is a local health agency organized under the Local Health Administration Law, 19 P.S. §§ 12001-12028, whose powers and duties include the enforcement of laws relating to public health within Allegheny County, including but not limited to, the ACHD’s Rules and Regulations, Article XXI, Air Pollution Control (Allegheny County Code of Ordinances Chapters 505, 507 and 535) (hereinafter “Article XXI”).

2. United States Steel Corporation (“U.S. Steel”) is a corporation organized under the law of the state of Delaware and operates coke ovens at its Clairton Works facility situated in the city of Clairton, Allegheny County, PA.

3. U.S. Steel Clairton Works is the largest by-products coke plant in North America. Clairton Works operates ten coke batteries and produces approximately 10,000 tons of coke per

day from the destructive distillation (carbonization) of more than 16,000 tons of coal. During the carbonization process, approximately 215 million cubic feet of coke oven gas are produced. The volatile products of coal contained in the coke oven gas are recovered in the by-products plant. In addition to the coke oven gas, daily production of these by-products include 145,000 gallons of crude coal tar, 55,000 gallons of light oil, 35 tons of elemental sulfur, and 50 tons of anhydrous ammonia.

4. Clairton Works is located approximately 20 miles south of Pittsburgh on 392 acres along 3.3 miles of the west bank of the Monongahela River. The plant was built by St Clair Steel Company in 1901 and bought by U.S. Steel in 1904. The first coke batteries were built in 1918. The coke produced is used in the blast furnace operations in the production of molten iron for steel making.

5. In March 2018, ACHD conducted a comprehensive review of U.S. Steel's compliance with the provisions of Article XXI, the March 24, 2016 consent decree (as issued by the Allegheny Court of Common Pleas and agreed upon by the parties) and its Title V Operating Permit as issued on March 27, 2012.

6. Although the 2016 Consent Decree was intended to provide an avenue for U.S. Steel to lower its emission profile, it continues to experience ever-increasing visible emissions and unexplained exceedance.

ONGOING AND DETERIORATING ISSUES

7. "Charging emissions" is defined under Article XXI, Section 2101.20 as follows:

"Charging emissions" means any emissions occurring during the introduction of coal into the coke oven from the time that the gate(s) on the larry car coal hopper is opened or mechanical feeders start the flow of coal into the oven until the last charging port seal is replaced. Charging emissions include any air contaminant emitted from one or more charging ports, spaces between the charging port rings

and the oven refractory, drop sleeves, larry car hoppers and any associated air pollution control equipment, but shall not include emissions occurring during the temporary removal of a charging port seal for the purpose of sweeping excess coal spillage into the oven just charged, after such seal has been firmly seated over the charging port following the removal of the larry car.

8. Battery B rate of compliance has worsened since 2013, where it achieved 100% observed compliance, to 2017, where its compliance rate dropped to 61% (with 16 violations). As of April 2018, it maintains a compliance rate of 78%.

9. Battery 13 performance has likewise deteriorated over the years. Specifically, compliance decreased from 100% to 70% in 2017 and as of April 2018, compliance is only 50%.

10. Battery 3 emission performance had declined from 100% compliance in 2015 to 81% in 2016 and 86% in 2017.

11. Battery 14 performance has declined from 100% compliance in 2014 to 81% in 2017 and as of April 2018 in compliance during 73% of the observations.

12. For the calendar years 2015 through 2017, Battery C has failed to achieve an observed compliance percentage greater than 83%.

13. From 2014 to 2017, the Clairton Coke Works facility-wide compliance percentage has gone from 94.4% to 84.0% and is 75% as of April 2018.

DOOR AREA EMISSIONS

14. Article XXI also regulates emissions from door areas surrounding each coke oven in a battery. "Door Areas" is defined under Article XXI, Section 2101.20 as follows:

"Door area" means the vertical face of a coke oven between the bench and the top of the battery and between two adjacent buckstays, including but not limited to, the door, chuck door, door seal, jamb, and refractory.

15. The door areas around Battery 1 has experienced increased emissions since 2014 when there was 100% compliance. In 2017, Battery 1 was in compliance across 88% of the observations.

16. Similarly, the door areas around Battery 3 has experienced an increase of emissions since 2014 when it was in 100% compliance. In 2017, Battery 3 was in compliance across 86% of the observations.

HIGH OPACITY DOOR AREA EMISSIONS

17. The annual number of high opacity door violations has increase since 2014. Specifically, violations increased from 33 to 295 in 2017.

18. Battery 1 had no high opacity door violations in 2014 but had 84 violations in 2017.

19. Battery 2 had two high opacity door violations in 2014 but had 59 violations in 2017.

20. Battery 3 had one high opacity door violation in 2014 but had 84 violations as of April 2017.

21. As of April 2018, there have been 92 violations facility wide in 2018.

CHARGING PORTS EMISSIONS

22. Article XXI regulates emissions coming from the charging port at the top of the battery. "Charging ports" is defined under Article XXI, Section 2101.20 as "any opening through which coal is, or may be, introduced into a coke oven, whether or not such opening is regularly used for such purpose."

23. In 2016, Battery B was in violation of Article XXI no fewer than nine times in 2016. Similarly, Battery 20 was in violation of Article XXI 6 times in 2016.

PUSHING EMISSIONS

24. Article XXI further regulates the pushing of coke from the coke oven to rail cars for cooling via water, a process known as quenching. Specifically, Article XXI, Section 2101.20 defines "pushing" as follows:

"Pushing" means the operation by which coke is removed from a coke oven and transported to a quench station, beginning, for the coke oven batteries designated 13, 14, 15, 20, and B at the USX Corporation Clairton Works, at the time the coke mass starts to move and ending at the time the coke transfer car enters the coke quenching system, and for all other coke oven batteries, beginning when the coke side door is first removed from a coke oven and continuing until the quenching operation is commenced.

25. From 2014 to 2017, U.S. Steel has experienced low compliance with respect to pushing emissions from the Clairton Coke Works. In particular, annual compliance over that period has gone between 91.7%, 91.9%, 87.2% and 92.9%, respectively.

26. Batteries 1, 2, and 3 have not achieved a compliance rate above 90%, on an annual basis, from 2015 to 2017.

27. With respect to observations of visible emissions during the travel between the transfer cars to the coke quenching system, Batteries 1 and 2 have been below 90% compliance in 2016 and 2017.

28. Travel compliance across the plant is generally low thus as of April 2018 with batteries 1, 2, 3, 13, and 15, all having a compliance rate at or below 90%.

SOAKING EMISSIONS

29. Article XXI further regulates the soaking of coke. Insofar as Article XXI incorporates federal regulations with respect to source categories, the Environmental Protection Agency defines soaking as “that period in the coking cycle that starts when an oven is dampered off the collecting main and vented to the atmosphere through an open standpipe prior to pushing and ends when the coke begins to be pushed from the oven.” *See* 40 C.F.R. § 63.7352

30. In 2014, U. S. Steel managed to achieve a facility-wide compliance rate of 99.1% with respect to emissions emanating from the soaking process.

31. Since 2014, compliance has deteriorated. In particular, Batteries 13, 14, and 15 had poor compliance in both 2016 and 2017 with no battery achieving compliance of greater than 87%.

32. Battery C has been the worst performing battery in 2014 through 2017 and as of April 2018, with a compliance rate of 67%.

ASSESSMENT OF PENALTIES FOR VIOLATION OF ARTICLE XXI
OF THE ALLEGHENY COUNTY HEALTH DEPARTMENT RULES AND
REGULATIONS
(§2101.11 PROHIBITION OF AIR POLLUTION)

33. Article XXI, Section 2105.11 prohibits broadly a source from operating a source of air contaminants in such a manner as to constitute a violation of Article XXI. Section 2101.11 sets forth, in its entirety, the following:

§2101.11 PROHIBITION OF AIR POLLUTION

a. It shall be a violation of this Article to fail to comply with, or to cause or assist in the violation of, any requirement of this Article, or any order or permit issued pursuant to authority granted by this Article. No person shall willfully, negligently, or through the failure to provide and operate necessary control equipment or to take necessary precautions, operate any source of air contaminants in such manner that emissions from such source:

1. Exceed the amounts permitted by this Article or by any order or permit issued pursuant to this Article;
2. Cause an exceedance of the ambient air quality standards established by §2101.10 of this Article; or
3. May reasonably be anticipated to endanger the public health, safety, or welfare.

b. It shall be a violation of this Article for any person to:

4. Operate, or allow to be operated, any source in such manner as to allow the release of air contaminants into the open air or to cause air pollution as defined in this Article, except as is explicitly permitted by this Article;
5. In any manner hinder, obstruct, delay, resist, prevent, or in any way interfere or attempt to interfere with the Department or its personnel in the performance of any duty hereunder, including the Department's inspection of any source;
6. Violate the provisions of 18 Pa.C.S. §4903 (relating to false swearing) or §4904 (relating to unsworn falsification to authorities) in regard to any submittals to the Department under this Article; or
7. Submit any application form, report, compliance certification, or any other submittal to the Department under this Article which is, in whole or in part, false, inaccurate, or incomplete.

c. It shall be a violation of this Article for any person to cause a public nuisance, or to cause air, soil, or water pollution resulting from any air pollution emission. No person who operates, or allows to be operated, any air contaminant source shall allow pollution of the air, water, or other natural resources of the Commonwealth and the County resulting from such source.

34. U.S. Steel has chronically failed to comply with the requirements of Article XXI and its Title V permit. Their failure to prevent the numerous emissions constitute violations of Article XXI and its Title V permit.

35. In addition to its decreased rate of compliance, U.S. Steel employees have taken actions which skews or disrupts inspector observations. Specifically, the following conduct has been experienced:

- a) U.S. Steel employees have engaged in a practice wherein an employee will walk a few paces in advance of inspectors and apply a mud-like mixture to emission points in such a manner as to obscure the emission. Subsequent walkthroughs revealed that the patches were merely temporary in nature and not reasonable corrective action to prevent future emissions;
- b) U.S. Steel employees have operated coke oven door removal machines in such a manner so as to obscure ACHD emission observations while not obscuring attempts by employees to apply a temporary patch to door leaks;
- c) U.S. Steel employees have failed to properly seat charging lids on top of charging ports. Lids are either not seated on the ports, seated too high above the sealing material or the ports are obscured by the placement of coal on top of the ports. All three actions or inactions compromise inspectors' ability to properly assess visible emissions emanating from the charging ports;
- d) ACHD inspectors routinely observe high opacity emissions from the coke side of the battery and readily surmise that based on their observations, emissions from ovens in Batteries One, Two and Three may be observed at any time of day;
- e) Inspectors have observed "short" or incomplete charging of coal into the coke oven;
- f) ACHD inspectors have observed partial pushing of coke from ovens to avoid the potential violations otherwise associated with a complete pushing of coke. Any

emissions that should have been observed as part of a complete push is circumvented by a partial push;

- g) Inspectors have noted an issue with respect to charges beyond the fifth charge otherwise observed for Method 303 compliance. Although Method 303 observation are complete following a fifth charge of a battery, it is often during subsequent charges (not otherwise part of the Method 303 observations) when battery emissions visibly increase. Moreover, ACHD inspectors have observed emission for a duration longer than otherwise anticipated;
- h) ACHD inspectors have observed the removal of flue caps thereby diverting emissions that would have otherwise traveled to the combustion stack. By removing the flue caps in this manner, U.S. Steel effectively avoided violations attributable to stack emissions; and,
- i) ACHD inspectors have observed offtake pipe caps being cracked open on a sealed oven. By doing so, emissions that would have been released by the door areas are diverted away from inspectors conducting a door inspection; thereby avoiding potential door inspection violations.

36. U.S. Steel shall ensure consistent operation in conformity with Article XXI and its Title V Operating Permit; such operations shall be consistent at all times irrespective of whether Method 303 or any other compliance observations are taking place. Any observed deviation from normal practices or any other methods employed by on-site personnel to hinder inspections will be considered a hindrance under 2101.11.b.2. and shall constitute a separate violation.

**ASSESSMENT OF PENALTIES FOR VIOLATION OF ARTICLE XXI
OF THE ALLEGHENY COUNTY HEALTH DEPARTMENT RULES AND
REGULATIONS AND TITLE V PERMIT CONDITIONS
3RD QUARTER 2017 VIOLATIONS FOR VISIBLE EMISSIONS**

37. During the third quarter of 2017, specifically July 1, 2017, through September 30, 2017, both the Department's Coke Oven Process Technicians and Method 303 contractor (retained to perform onsite inspections), observed numerous violations to provisions of Article XXI, Rules and Regulations of the Allegheny County Health Department, Air Pollution Control ("Article XXI") at the Clairton Works.

38. The Department has determined that United States Steel Corporation is in violation of Article XXI, Section 2102.03.c and various provisions of Section 2105.21, of the ACHD's Rules and Regulations by failing to meet the applicable requirements stated in Article XXI, Section 2105.21. Specifically, Section 2102.03 provides, in relevant part, as follows:

§ 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.

39. Article XXI, Section 2105.21 specifically regulates the operation of coke oven in Allegheny County and provides, in part, as follows:

§2105.21 COKE OVENS AND COKE OVEN GAS

{portions effective August 15, 1997, the remainder effective February 1, 1994; Paragraph e.6 added June 22, 1995, effective July 11, 1995 and amended May 14, 2010 effective May 24, 2010; §2105.21.b, e, and h amended effective August 15, 1997; Subsection f amended February 12, 2007 effective April 1, 2007. Subsection i added August 29, 2013, effective September 23, 2013. Paragraph e.6 amended November 13, 2014, effective January 1, 2015.}

a. Charging. No person shall operate, or allow to be operated:

1. Any battery of coke ovens installed, replaced, or reconstructed, or at which a major modification was made on or after January 1, 1978, in such manner that the aggregate of visible charging emissions exceeds a total of 55 seconds during any five (5) consecutive charges on such battery; or
- b. **Door Areas.** No person shall operate, or allow to be operated, any battery of coke ovens in such manner that:
 1. For any batteries installed, replaced, or reconstructed, or at which a major modification was made on or after January 1, 1978, at any time, there are visible emissions from more than five percent (5%) of the door areas of the operating coke ovens in such battery, excluding the two door areas of the last oven charged and any door areas obstructed from view;

* * *

- d. **Offtake Piping.** No person shall operate, or allow to be operated:
 1. Any battery of coke ovens installed, replaced, or reconstructed, or at which a major modification was made on or after January 1, 1978, in such manner that, at any time, there are visible emissions from more than four percent (4%) of the offtake piping on the operating coke ovens of such battery; or

40. 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 ("COMs")), or soaking on Batteries 1, 2, and 3. Such actions are taken separately through provisions of the March 24, 2016 Consent Judgment.

41. As a consequence of its violation of Article XXI, Section 2105.21.a, specifically, with regards to excessive visible emissions from the charging of coke ovens at Batteries 13, 14, 15, B, and C, the Department has assessed against U.S. Steel, a civil penalty in the amount of \$42,500.00.

42. As a consequence of its violation of Article XXI, Section 2105.21.b, specifically with respect to excessive visible emissions from the door areas at Battery 15, the Department has assessed a civil penalty in the amount of \$6,450.00.

43. As a consequence of its violation of Article XXI, Section 2105.21.d, specifically with regards to excessive visible emissions from the offtake piping at Batteries 15 and 19, the Department has assessed a civil penalty in the amount of \$3,750.00.

44. Accordingly, for the violations noted above to Article XXI observed during the third quarter of 2017, the Department has assessed a civil penalty in the amount of \$52,700.00.

**ASSESSMENT OF PENALTIES FOR VIOLATION OF ARTICLE XXI
OF THE ALLEGHENY COUNTY HEALTH DEPARTMENT RULES AND
REGULATIONS AND TITLE V PERMIT CONDITIONS
4TH QUARTER 2017 VIOLATIONS FOR VISIBLE EMISSIONS**

45. During the fourth quarter of 2017, specifically October 1, 2017, through December 31, 2017, both the Department's Coke Oven Process Technicians and Method 303 contractor (retained to perform onsite inspections), observed numerous violations to provisions of Article XXI, Rules and Regulations of the Allegheny County Health Department, Air Pollution Control ("Article XXI") and Installation Permit #0052-I011, at the Clairton Works.

46. The Department has determined that United States Steel Corporation is in violation of Article XXI, Section 2102.03.c and various provisions of Section 2105.21, of the ACHD's Rules and Regulations by failing to meet the applicable requirements stated in Article XXI, Section 2105.21 and ACHD Installation Permit #0025-I011. Specifically, Section 2102.03 provides, in relevant part, as follows:

§ 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.

47. Article XXI, Section 2105.21 specifically regulates the operation of coke oven in Allegheny County and provides, in part, as follows:

§2105.21 COKE OVENS AND COKE OVEN GAS

{portions effective August 15, 1997, the remainder effective February 1, 1994; Paragraph e.6 added June 22, 1995, effective July 11, 1995 and amended May 14, 2010 effective May 24, 2010; §2105.21.b, e, and h amended effective August 15, 1997; Subsection f amended February 12, 2007 effective April 1, 2007. Subsection i added August 29, 2013, effective September 23, 2013. Paragraph e.6 amended November 13, 2014, effective January 1, 2015.}

* * *

a. Charging. No person shall operate, or allow to be operated:

1. Any battery of coke ovens installed, replaced, or reconstructed, or at which a major modification was made on or after January 1, 1978, in such manner that the aggregate of visible charging emissions exceeds a total of 55 seconds during any five (5) consecutive charges on such battery; or
2. Any other battery of coke ovens in such manner that the aggregate of visible charging emissions exceeds a total of 75 seconds during any four (4) consecutive charges on such battery.

b. Door Areas. No person shall operate, or allow to be operated, any battery of coke ovens in such manner that:

1. For any batteries installed, replaced, or reconstructed, or at which a major modification was made on or after January 1, 1978, at any time, there are visible emissions from more than five percent (5%) of the door areas of the operating coke ovens in such battery, excluding the two door areas of the last oven charged and any door areas obstructed from view;
2. For any other batteries, other than those subject to Paragraph b.3 of this Section, at any time, there are visible emissions from more than ten percent (10%) of the door areas of the operating coke ovens in such

battery, excluding the two door areas of the last oven charged and any door areas obstructed from view;

3. For any of the following batteries, at any time, there are visible emissions from more than eight percent (8%) of the door areas of the operating coke ovens in such battery, excluding the two door areas of the last oven charged and any door areas obstructed from view:

SPECIFIC COKE OVEN BATTERIES

Source Name Location

- A. Coke Battery #1 USX Corp. Clairton, PA
- B. Coke Battery #2 USX Corp. Clairton, PA
- C. Coke Battery #3 USX Corp. Clairton, PA

- D. Coke Battery #7 USX Corp. Clairton, PA
- E. Coke Battery #8 USX Corp. Clairton, PA
- F. Coke Battery #9 USX Corp. Clairton, PA

- G. Coke Battery #19 USX Corp. Clairton, PA; or

4. Emissions from the door areas of any coke oven exceed an opacity of 40% at any time 15 or more minutes after such oven has been charged.
5. Unless for any of the following batteries at the USX Clairton Coke Works, Clairton, Pennsylvania, there is installed big plug doors on the coke side of each oven by January 1, 2000. Any replacement doors on these batteries, replaced after January 1, 2000, will also be big plug doors. A big plug door is a door that, when installed, contains a plug with minimum dimensions as listed below:

SPECIFIC COKE OVEN BATTERIES

<u>Source Name</u>	<u>Minimum Width</u>	<u>Minimum Depth</u>
A. Coke Battery #1	18 1/4"	14 1/2"
B. Coke Battery #2	18 1/4"	14 1/2"
C. Coke Battery #3	18 1/4"	14 1/2"
D. Coke Battery #7	17"	16 3/16"
E. Coke Battery #8	17"	16 3/16"
F. Coke Battery #9	17"	16 3/16"
G. Coke Battery #19	17"	16 1/4"
H. Coke Battery #20	17"	16 1/4"

- c. **Charging Ports.** No person shall operate, or allow to be operated:

1. Any battery of coke ovens installed, replaced, or reconstructed, or at which a major modification was made on or after January 1, 1978, in such manner that, at any time, there are visible emissions from more than one percent (1%) of the charging ports or charging port seals on the operating coke ovens of such battery; or
2. Any other battery of coke ovens in such manner that, at any time, there are visible emissions from more than two percent (2%) of the charging ports or charging port seals on the operating coke ovens of such battery.

d. Offtake Piping. No person shall operate, or allow to be operated:

1. Any battery of coke ovens installed, replaced, or reconstructed, or at which a major modification was made on or after January 1, 1978, in such manner that, at any time, there are visible emissions from more than four percent (4%) of the offtake piping on the operating coke ovens of such battery; or
2. Any other battery of coke ovens in such manner that, at any time, there are visible emissions from more than five percent (5%) of the offtake piping on the operating coke ovens of such battery.

* * *

- i. **Soaking.** At no time shall soaking emissions from a standpipe cap opening exceed twenty percent (20%) opacity. An exclusion from this opacity limit shall be allowed for two (2) minutes after a standpipe cap is opened. Compliance with this standard shall be determined through observing the standpipe from a position where the observer can note the time the oven is dampered off and, following the two minute exclusion, read the soaking emissions from the open standpipe in accordance with Method 9.

48. 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.

49. As a consequence of its violation of Article XXI, Section 2105.21.a, specifically, with regards to excessive visible emissions from the charging of coke ovens at Batteries 1, 2, 3,

13, 14, 15, B, and C, the Department has assessed against U.S. Steel, a civil penalty in the amount of \$168,350.00.

50. As a consequence of its violation of Article XXI, Section 2105.21.b, specifically with respect to excessive visible emissions from the door areas at Batteries 2, 13, 15, B, and C insofar as the emissions are in violation of Section V.A.1.c of Installation Permit #0052-I011, with a civil penalty in the amount of \$17,500.00.

51. As a consequence of its violation of Article XXI, Section 2105.21.b.4 (40% opacity std.), specifically with respect to excessive visible emissions from the door areas at Batteries 1, 2, 3, 13, 14, 15, B, and as a further consequence of its violation of Section V.A.1.d of Installation Permit #0052-I011 regarding emissions from Battery C the Department has assessed a penalty against U.S. Steel in the amount of \$124,950.00.

52. As a consequence of its violation of Article XXI, Section 2105.21.c, specifically with regards to excessive visible emissions from the charging ports at Batteries 2, 13, 15, 20, B, and, as a further consequence of its violation of Section V.A.1.e of Installation Permit #0052-I011 regarding emissions from Battery C the Department has assessed a civil penalty in the amount of \$33,975.00.

53. As a consequence of its violation of Article XXI, Section 2105.21.d, specifically with regards to excessive visible emissions from the offtake piping at Batteries 1, 3, 13, 14, 15, and 19, the Department has assessed a civil penalty in the amount of \$27,650.00.

54. As a consequence of its violation of Article XXI, Section 2105.21.i, specifically with regards to excessive visible emissions from soaking at Batteries 13, 14, 15, 19, 20, and C

insofar as the emissions are violation of V.A.I.g of Installation Permit #0052-I011, the Department has assessed a civil penalty in the amount of \$65,525.00.

55. Accordingly, and in summary, for the aforementioned violations to both Article XXI and U.S. Steel's Installation Permit observed during the fourth quarter of 2017, the Department has assessed a civil penalty (attributable to the fourth quarter of 2017) in the amount of \$437,950.00.

**ASSESSMENT OF PENALTIES FOR VIOLATION OF ARTICLE XXI
OF THE ALLEGHENY COUNTY HEALTH DEPARTMENT RULES AND
REGULATIONS AND TITLE V PERMIT CONDITIONS
1ST QUARTER 2018 VIOLATIONS FOR VISIBLE EMISSIONS**

56. During the first quarter of 2018, specifically January 1, 2018, through March 31, 2018, both the Department's Coke Oven Process Technicians and Method 303 contractor (retained to perform onsite inspections), observed numerous violations to provisions of Article XXI, Rules and Regulations of the Allegheny County Health Department, Air Pollution Control ("Article XXI") and Installation Permit #0052-I011, at the Clairton Works.

57. The Department has determined that United States Steel Corporation 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 #0025-I011. Specifically, Section 2102.03 provides, in relevant part, as follows:

58. Notably, the Department has observed that the number and severity of the violations continues to increase from those established above for the fourth quarter of 2017.

59. 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.

60. As a consequence of its violation of Article XXI, Section 2105.21.a, specifically, with regards to excessive visible emissions from the charging of coke ovens at Batteries 1, 2, 3, 13, 14, 15, 19, 20, B, and C, the Department has assessed against U.S. Steel, a civil penalty in the amount of \$267,250.00.

61. As a consequence of its violation of Article XXI, Section 2105.21.b, specifically with respect to excessive visible emissions from the door areas at Batteries 1, 14, 15, B, and C insofar as the emissions are in violation of Section V.A.1.c of Installation Permit #0052-I011, with a civil penalty in the amount of \$37,500.00.

62. As a consequence of its violation of Article XXI, Section 2105.21.b.4 (40% opacity std.), specifically with respect to excessive visible emissions from the door areas at Batteries 1, 2, 3, 13, 15, 19, 20, and as a further consequence of its violation of Section V.A.1.d of Installation Permit #0052-I011 regarding emissions from Battery C the Department has assessed a penalty against U.S. Steel in the amount of \$115,525.00.

63. As a consequence of its violation of Article XXI, Section 2105.21.c, specifically with regards to excessive visible emissions from the charging ports at Batteries 15 and B, the Department has assessed a civil penalty in the amount of \$33,375.00.

64. As a consequence of its violation of Article XXI, Section 2105.21.d, specifically with regards to excessive visible emissions from the offtake piping at Batteries 13, 14, 15, 19 and 20, the Department has assessed a civil penalty in the amount of \$46,375.00.

65. As a consequence of its violation of Article XXI, Section 2105.21.i, specifically with regards to excessive visible emissions from soaking at Batteries 2, 13, 14, 15, 19, 20, and C and Battery C insofar as the emissions are violation of V.A.1.g of Installation Permit #0052-I011, the Department has assessed a civil penalty in the amount of \$101,275.00.

66. Accordingly, and in summary, for the aforementioned violations to both Article XXI and U.S. Steel's Installation Permit observed during the first quarter of 2018, the Department has assessed a civil penalty (attributable to the first quarter of 2018) in the amount of \$601,300.00.

ASSESSMENT OF PENALTY FOR VIOLATION OF ADMINISTRATIVE ORDER No. 180202 (EXCEEDENCE OF THE SO₂ HOURLY LIMIT IN INSTALLATION PERMIT No. 0052-I017

67. On February 27, 2018, the Department issued its Administrative Order No. 180202 against U.S. Steel for exceeding the hourly limit for SO₂ emission found in its Installation Permit No. 0052-I017.

68. Specifically, Permit No. 0052-I017 maintains a hourly limit for the emission of SO₂ of 5.00 pounds per hour. *See* Installation Permit No. 0052-I017, Condition V.B.1.c.

69. The results of a stack test performed at the C Battery Quench Tower revealed emissions of 8.28 pounds per hour.

70. The Department afforded U.S. Steel 30 days in which to "submit to the ACHD what corrective actions have been, and will be, taken to bring the C Battery Quench Tower Exhaust into

compliance with the emission limits indicated in Installation Permit No. 0052-I017, Condition V.B.1.c.” *See* Administrative Order No. 180202.

71. U.S. Steel transmitted a “response” to the Department, on two separate occasions, failing to explain the cause of the exceedance and it failed to provide any corrective action that has, or will be taken to bring C Battery Quench Tower Exhaust into compliance.

72. Notwithstanding the requirement that U.S. Steel submit corrective actions to the Department, four months later, U.S. Steel still has failed to suggest any actions it would take to correct a violation of this permit limit.

73. To the extent that U.S. Steel has failed to comply with Administrative Order No. 180202, such constitutes a violation of Article XXI, Section 2109.03.e.

74. As a consequence of its violation of Article XXI, the Department hereby orders and directs U.S. Steel to conduct, within sixty (60) days of the date of this Order, a stack test of the C Battery Quench Tower exhaust in order to demonstrate compliance with the SO₂ limit set forth in Condition V.B.1.c. of its Installation Permit. No. 0052-I017.

75. Within, but no greater than, forty-five (45) days following the completion of the stack test, U.S. Steel shall present the Department with its proposed corrective action which would preclude further exceedances. In the event that U.S. Steel fails to present the Department with its proposed corrective actions within the time afforded, U.S. Steel will be subject to, and the Department shall impose, a civil penalty commensurate with the violation.

**ASSESSMENT OF PENALTIES FOR VIOLATION OF THE TITLE V PERMIT
ISSUED PURSUANT TO ARTICLE XXI**

76. As a permittee of a major source of air pollution under Title V of the Clean Air Act, U.S. Steel is obliged to comply with the terms of its operating permit, and to operate it facility in such a manner as to avoid exceedance of its permit limits and to avoid the emission of pollutants in the air in violation of Article XXI.

77. Specifically, Article XXI, Section 2103.12.f.1 requires as follows:

1. The permittee shall comply with all permit conditions and all other applicable requirements at all times. Any permit noncompliance constitutes a violation of the Clean Air Act, the Air Pollution Control Act, and Article XXI and is grounds for any and all enforcement action, including, but not limited to, permit termination, revocation and reissuance, or modification, and denial of a permit renewal application.

78. Subsection 2103.12.f.2 goes further to make clear:

1. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit;

79. Similarly, Section §2103.22.g, specifically concerning additional requirements for major sources of air pollution requires:

- g. **Standard General Requirements.** All permits issued under this Subpart shall include the following provision: The permittee shall comply with all permit conditions at all times. Any permit noncompliance constitutes a violation of the Clean Air Act, the Air Pollution Control Act, and this Article and is grounds for any and all enforcement action, including, but not limited to, permit termination, revocation and reissuance, or modification, and denial of a permit renewal application.

80. Article XXI contemplates further the Department's broad authority to take a wide array of actions as deemed necessary to aid in the enforcement of its provisions. Specifically, Article XXI, Section 2109.03 permits the following, in relevant part:

§2109.03 ENFORCEMENT ORDERS

{Paragraph b.5 amended September 6, 1995, effective October 20, 1995. Subsection d, and Paragraphs b.1 and d.1 amended August 29, 2013, effective September 23, 2013.}

- a. **General.** Whenever the Department finds, on the basis of any information available to it, that any source is being operated in violation of any provision of this Article, including any provision of any permit or license issued pursuant to this Article, it may order the person responsible for the source to comply with this Article or it may order the immediate shutdown of the source or any part thereof. The issuance of an order to address any violations, including of permit conditions, need not be preceded by the revocation of a permit.
 1. The Department may also issue any such other orders as are necessary to aid in the enforcement of the provisions of this Article. These orders shall include, but shall not be limited to, orders modifying, suspending, terminating or revoking any permits, orders requiring persons to cease unlawful activities or cease operation of a facility or air contaminant source which, in the course of its operation, is in violation of any provision of this Article, or any permit, orders to take corrective action or to abate a public nuisance or to allow access to a source by the Department or a third party to take such action, orders requiring the testing, sampling, or monitoring of any air contaminant source, and orders requiring production of information. Such an order may be issued if the Department finds that any condition existing in or on the facility or source involved is causing, contributing to, or creating danger of air pollution, or if it finds that the permittee or any person is in violation of any provision of this Article.
 2. The Department may, in its order, require compliance with such conditions as are necessary to prevent or abate air pollution or effect the purposes of this Article.

81. As a consequence of its violation of Article XXI and conditions contained in it Title V operating permit, the Department hereby order U.S. Steel to perform as follows:

- a. Within sixty (60) days of receipt of this Order, U.S. Steel shall deliver to the Department an assessment of all emissions points existing at the Clairton facility, as of the date of this Order. Multiple emissions points of the same type [e.g. all flue caps] may be grouped together. The assessment shall include all measures U.S. Steel would propose to reduce its emissions of sulfur oxides, PM_{2.5} and visible emissions. Said measures will be subject to ACHD approval and must sufficiently demonstrate reduction of sulfur oxides, PM_{2.5}, and visible emissions. Implementation of any proposed measures must begin within thirty (30) days of ACHD approval.

- b. U.S. Steel shall demonstrate compliance with the terms of this Enforcement Order upon the completion of two successive calendar quarters wherein U.S. Steel has shown a reduction in visible emissions, sulfur oxides and PM_{2.5} emissions across all operating coke batteries at the Clairton facility. Reduction of visible emissions shall be quantified by an increase in the rate of compliance with both inspections and continuous opacity monitors. The quarterly compliance metric for the first consecutive quarter shall be measured by comparison against the rate of compliance (as observed by ACHD and Method 303 inspectors) during the first quarter of 2018 using the number of plantwide hourly exceedances of the 20% opacity standard and the compliance rate as based on the coke batteries' total compliance rate for the first quarter of 2018. The second consecutive quarter compliance metric shall be compared against that of the first of the consecutive quarters as a measure of further

emission reductions. Standards for determining all rates of compliance shall be based on relevant regulations effective as of the date of this Order.

- c. Door leaks originating from the coke side of Battery B shall be reduced to be no more than ten leaks per month based on the yard-equivalent reading from the Department's Method 303 contractor's inspections;

- d. In the event, U.S. Steel fails to meet any of the requirements set forth above in the time and manner required, U.S. Steel shall place its two worst performing batteries on hot idle until such time ACHD has determined that U.S. Steel has complied with the requirements of this Order. "Worst Performing Batteries" shall be determined by calculating the inspection compliance rate from inspections conducted by ACHD and its Method 303 contractor [excluding high opacity door inspections] and the 20% opacity clock-hour exceedance compliance rate from the combustion stack COMs. These two rates will then be summed on a per battery basis for each of the two quarters used. The two batteries with the lowest two-quarter compliance rate sum constitute the worst performing batteries for purposes of this Order. In order to determine compliance with this provision of this Order, any subsequent quarterly compliance metric for future quarters shall be measured by comparison against the rate of compliance (as observed by ACHD and Method 303 inspectors) during the first quarter of 2018 using the number of hourly exceedance of the 20% opacity standard attributable solely to the remaining eight (8) batteries and the compliance rate based on the remaining coke batteries' total compliance rate for

the first quarter of 2018. Any successive quarter compliance metric shall be compared against that of the prior quarter as a measure of further emission reductions. For purposes of enforcing the terms of this Order, the term "hot idle" is to be understood as the cessation of all charging, soaking and pushing of metallurgical coke the worst performing batteries. Underfiring of coke ovens may continue until such time as the Department has made a final determination that U.S. Steel has reduced its emissions in a manner consistent with this Order.

EVALUATION OF FACTORS EMPLOYED IN PENALTY DETERMINATION

82. Based on the observations of both the Department's Coke Oven Process Technicians and Method 303 contractors, coke battery emissions had increased over time and across the facility.

83. Recognizing that the batteries at U.S. Steel are capable of reduced emissions, the Department recognizes that there is a need to deter U.S. Steel's failure to take corrective action in the future.

84. ACHD has estimated that there are more than 1000 people working at U.S. Steel's Clairton facility at the time of the violations.

85. The civil penalty, as imposed, reflects a balancing of the factors as set forth in Article XXI, Section 2109.06(b). The specific (and more significant) factors unique to U.S. Steel's Clairton facility and its violations are that they are chronic in nature and its various rates of compliance have gotten worse and that the emissions have the potential to negatively affect communities adjacent to the facility.

TOTAL PENALTY ASSESSMENT

Pursuant to Article XXI §2109.06, the ACHD is assessing a civil penalty of **\$1,091,950.00** against United States Steel Corporation for the violations described in the preceding paragraphs.

NOW THEREFORE, pursuant to the authority granted to the ACHD by Article XXI §2109.03.a.1 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, U.S. Steel shall pay the assessed civil penalty of **\$1,091,950.00**. Payment shall be made by corporate or certified 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. The Department 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’s compliance history.

2. Within sixty (60) days of receipt of this Order, U.S. Steel shall deliver to the Department an assessment of all emissions points existing at the Clairton facility, as of the date of this Order. Multiple emissions points of the same type [e.g. all flue caps] may be grouped together. The assessment shall include all measures U.S. Steel would propose to reduce its emissions of sulfur oxides, PM_{2.5} and visible emissions. Said measures will be subject to ACHD approval and

must sufficiently demonstrate reduction of sulfur oxides, PM_{2.5}, and visible emissions. Implementation of any proposed measures must begin within thirty (30) days of ACHD approval.

3. U.S. Steel shall demonstrate compliance with the terms of this Enforcement Order upon the completion of two successive calendar quarters wherein U.S. Steel has shown a reduction in visible emissions, sulfur oxides and PM_{2.5} emissions across all operating coke batteries at the Clairton facility. Reduction of visible emissions shall be quantified by an increase in the rate of compliance with both inspections and continuous opacity monitors. The quarterly compliance metric for the first consecutive quarter shall be measured by comparison against the rate of compliance (as observed by ACHD and Method 303 inspectors) during the first quarter of 2018 using the number of plantwide hourly exceedance of the 20% opacity standard and the compliance rate as based on the coke batteries' total compliance rate for the first quarter of 2018. The second consecutive quarter compliance metric shall be compared against that of the first of the consecutive quarters as a measure of further emission reductions. Standards for determining all rates of compliance shall be based on relevant regulations effective as of the date of this Order.

4. Door leaks originating from the coke side of Battery B shall be reduced to be no more than ten leaks per month based on the yard-equivalent reading from the Department's Method 303 contractor's inspections.

5. In the event, U.S. Steel fails to meet any of the requirements set forth above in the time and manner required, U.S. Steel shall place its two worst performing batteries on hot idle until such time ACHD has determined that U.S. Steel has complied with the requirements of this Order. "Worst Performing Batteries" shall be determined by calculating the inspection compliance rate from inspections conducted by ACHD and its Method 303 contractor [excluding high opacity door inspections] and the 20% opacity clock-hour exceedance compliance rate from the

combustion stack COMs. These two rates will then be summed on a per battery basis for each of the two quarters used. The two batteries with the lowest two-quarter compliance rate sum constitute the worst performing batteries for purposes of this Order. In order to determine compliance with this provision of this Order, any subsequent quarterly compliance metric for future quarters shall be measured by comparison against the rate of compliance (as observed by ACHD and Method 303 inspectors) during the first quarter of 2018 using the number of hourly exceedance of the 20% opacity standard attributable solely to the remaining eight (8) batteries and the compliance rate based on the remaining coke batteries' total compliance rate for the first quarter of 2018. Any successive quarter compliance metric shall be compared against that of the prior quarter as a measure of further emission reductions. For purposes of enforcing the terms of this Order, the term "hot idle" is to be understood as the cessation of all charging, soaking and pushing of metallurgical coke the worst performing batteries. Underfiring of coke ovens may continue until such time as the Department has made a final determination that U.S. Steel has reduced its emissions in a manner consistent with this Order.

6. U.S. Steel shall also conduct, within sixty (60) days of the date of this Order, a stack test of the Battery C Quench tower exhaust in order to demonstrate compliance with the SO₂ limit set forth in its Installation Permit.

7. Within, but no greater than, forty-five (45) days following the completion of the stack test, U.S. Steel is hereby ordered to present a corrective action precluding further exceedances. In the event that U.S. Steel fails to present the Department with its proposed corrective actions within the time afforded, it will be subject to and the Department shall impose a civil penalty commensurate with the violation.

8. U.S. Steel shall ensure consistent operation in conformity with Article XXI and its Title V Operating Permit; such operations shall be consistent at all times irrespective of whether Method 303 or any other compliance observations are taking place. Any observed deviation from normal practices or any other methods employed by on-site personnel to hinder inspections will be considered a hindrance under 2101.11.b.2. and shall constitute a separate violation.

9. The requirements of this Order are intended to supplement legal requirements to which U.S. Steel is already subject. If there is a conflict between any requirement of this Order and other statutory or regulatory requirements, the more stringent requirement shall control. If U.S. Steel believes that a conflict between the requirements of this Order and other legal obligations is irreconcilable, such that compliance with this Order will require U.S. Steel to be in non-compliance with other legal obligations, then U.S. Steel shall provide the ACHD with an explanation of such conflict in writing as soon as possible. The ACHD may notify U.S. Steel whether ACHD concurs with its position and whether such provision in this Order is modified, suspended, terminated, or continues in effect.

10. The imposition of the civil penalty or any other requirement of this Enforcement Order is not intended and in no way releases U.S. Steel from any obligations imposed by or to which it is subject under Article XXI or other final determination.

11. The civil penalty payment and any documentation required by this Order and correspondence with the ACHD shall be sent to the following:

Jayne Graham
Air Quality Program Manager
Allegheny County Health Department
301 39th Street, Bldg. No. 7
Pittsburgh, PA 15201-1811
Tel: 412-578-8103
Fax: 412-578-8144
E-Mail: jayne.graham@alleghenycounty.us

12. Pursuant to Article XI, Allegheny County Health Department Rules and Regulations, Hearings and Appeals, you are notified that if you are aggrieved by this Order you have (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 4th Avenue, Pittsburgh, PA 15219. In the absence of a timely appeal, the terms of this Order shall become final.

13. 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.

14. Failure to comply with this Order within the time specified herein is a violation of Article XXI giving rise to the remedies provided by Article XXI § 2109.02.

15. The provisions of this Order shall apply to, be binding upon, and inure to the benefit of the ACHD and U.S. Steel and upon their respective officers, directors, agents, contractors, employees, servants, successors, and assigns.

16. The duties and obligations under this Order shall not be modified, diminished, terminated, or otherwise altered by the transfer of any legal or equitable interest in the Facility or any part thereof.

17. The ACHD may, upon U.S. Steel's request, agree to modify or terminate U.S. Steel's duties and obligations under this Order upon transfer of the property. Pursuant to Article XI of the ACHD's Rules and Regulations for Hearings and Appeals, U.S. Steel may challenge any decision made by the ACHD in response to any of U.S. Steel's request for a modification of this Order due to a transfer of all or part of the property.

18. The imposition of this civil penalty shall not, in any manner, prohibit or preclude the Department from exercising its authority to enforce the regulations under Article XXI of the Allegheny County Health Department Rules and Regulations. Moreover, the imposition and any

resolution of this civil penalty shall not, in any manner, prohibit or preclude any other party or governmental agency or entity from pursuing legal action (civil or criminal) against U.S. Steel for conduct that is the subject of this enforcement order.

DONE and ENTERED this 28th day of June, 2018, in Allegheny County, Pennsylvania.

For:

ALLEGHENY COUNTY HEALTH DEPARTMENT

s/ Jim Kelly
Jim Kelly
Deputy Director, Environmental Health

6/28/18
Date

EXHIBIT B

Consent Judgment
March 24, 2016

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

COUNTY OF ALLEGHENY,
a political subdivision of the Commonwealth
of Pennsylvania,

Plaintiff,

vs.

UNITED STATES STEEL CORPORATION,

Defendant.

CIVIL DIVISION

Case No. GD-16-004611

CONSENT JUDGMENT

Filed on behalf of:
Plaintiff County of Allegheny and
Defendant United States Steel
Corporation

Counsel of Record for Plaintiff:

Michael A. Parker, Esq.
Pa. I.D. No. 90979
Jason K. Willis, Esq.
Pa. Id. No. 86752
ACHD Assistant Solicitors
Andrew F. Szefi, Esq.
Allegheny County Solicitor
Pa. Id. No.: 83747

Allegheny County Health Department
Air Quality Program
301 39th Street, Bldg. No. 7
Pittsburgh, PA 15201-1811
Phone: (412) 578-8102
Fax: (412) 578-8144

Counsel of Record for Defendant:

Paul K. Stockman, Esq.
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FILED

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DEPT OF COURT RECORDS
CIVIL DIVISION
ALLEGHENY COUNTY PA

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

COUNTY OF ALLEGHENY,

Plaintiff,

v.

UNITED STATES STEEL CORPORATION,

Defendant.

CIVIL DIVISION – EQUITY

Case No. _____

CONSENT JUDGMENT

WHEREAS, Plaintiff County of Allegheny, acting by and through the Allegheny County Health Department (“ACHD”), has filed a complaint concurrently with this Consent Judgment, alleging that Defendant United States Steel Corporation (“U. S. Steel”) violated certain provisions of the Pennsylvania Air Pollution Control Act, Act of January 8, 1960, P.L. (1959) 2119, 35 P.S. §§ 4001-4014 (“APCA”), and the ACHD’s Rules and Regulations, Article XXI, Air Pollution Control (Allegheny County Code of Ordinances Chapters 505 and 507) (hereinafter “Article XXI”).

RECITALS

WHEREAS, the ACHD has found and determined the following:

1. The Director of the ACHD has been delegated authority pursuant to the Clean Air Act, 42 U.S.C. §§ 74011-7671q (the “CAA”), and the APCA, and the ACHD is a local health agency organized under the Local Health Administration Law, 19 P.S. §§ 12001-12028, whose powers and duties include the enforcement of laws relating to public health within Allegheny County, including, but not limited to, Article XXI.
2. U. S. Steel is a Delaware corporation that does business within the Commonwealth of Pennsylvania at 600 Grant Street, Pittsburgh, PA 15219.
3. U. S. Steel is the owner and operator of the Clairton Coke Works (hereinafter the “Facility”) located in Allegheny County, Clairton, Pennsylvania, a coke manufacturing and by-

products recovery plant which performs destructive distillation of coal to produce metallurgical coke and by-products such as tar, light oil, sodium phenolate, and ammonium sulfate.

4. The Facility includes ten operational coke batteries, each made up of a series of ovens. These batteries are designated as Batteries 1, 2, 3, 13, 14, 15, 19, 20, B, and C (collectively, the "Batteries").

5. U. S. Steel began operation of a newly constructed Battery C in November, 2012. Battery C replaced older batteries and resulted in significant reductions of particulate matter and other pollutants.

6. In 2013, U. S. Steel replaced two traditional quench towers, Quench Towers Nos. 5 and 7, with two state-of-the-art Low Emission Quench Towers at an approximate expenditure of \$60 million. This resulted in significant reductions of particulate matter.

7. In addition to periodic monitoring, U. S. Steel continuously monitors many of its sources for environmental performance and compliance at the Facility. These monitors include continuous opacity monitors (hereinafter "COMs"), continuous emissions monitors and various continuous parametric monitoring systems throughout the Facility which results in having thousands of compliance monitoring data values every day.

8. The ACHD regulates and closely monitors the environmental compliance of the Facility. In addition to reviewing the Facility's reports and compliance records, ACHD maintains three coke oven battery inspectors at the Facility seven days per week. These certified inspectors, *inter alia*, conduct daily visible emission observations using U.S. Environmental Protection Agency Reference Test Methods 9 and 303.

9. U. S. Steel's operation of, and air emissions from, the Facility are governed by Major Source & Federally Enforceable State Operating Permit No. 0052 and IP11, issued by ACHD on March 27, 2012.

10. On June 1, 2007, the ACHD and U. S. Steel entered into a Consent Order and Agreement (hereinafter "2007 COA").

11. The 2007 COA addressed, *inter alia*, compliance requirements associated with the Facility's Battery B.

12. U. S. Steel completed the corrective actions and supplemental environmental project and paid the civil penalty required by the 2007 COA.

13. On March 17, 2008, the ACHD and U. S. Steel entered into a Consent Order and Agreement (hereinafter "2008 COA").

14. Pursuant to the 2008 COA, U. S. Steel permanently shut down Batteries 7, 8, and 9 on April 16, 2009.

15. The 2008 COA was amended on November 19, 2008, September 30, 2010, and on or about July 6, 2011 (hereinafter "2011 COA"). The 2011 COA superseded and replaced the 2007 COA, the 2008 COA, and the November 19, 2008 and September 30, 2010 amendments to the 2008 COA in their entirety.

16. The 2011 COA addressed, *inter alia*, compliance requirements associated with the Facility's Batteries 1, 2, 3, 13, 14, 15, 19, 20, and B, and *inter alia* these batteries' opacity and pushing emissions limitations.

17. On August 7, 2014, the ACHD and U. S. Steel entered into a Consent Order and Agreement (hereinafter "2014 COA"), addressing, *inter alia*, compliance requirements associated with the Facility's newly-constructed Battery C.

18. As of the date of the Consent Judgment, U. S. Steel has properly installed, maintained, and operated the pushing emission control systems for the Batteries with good air pollution control practices.

19. The ACHD alleges that, during the period of March 24, 2009 through March 24, 2016, U. S. Steel violated certain provisions of Article XXI, as more fully alleged in the Complaint filed in this action.

20. Since at least 2011, the ACHD has met with U. S. Steel on a regular basis to discuss, *inter alia*, the allegations set forth in the Complaint and this Consent Judgment.

21. Since 2011, U. S. Steel has expended over \$30 million in repair and rehabilitation associated with Batteries 1, 2, and 3, and those repair and rehabilitation efforts for Batteries 1, 2, and 3 included end flue repairs, ceramic welding and brick work, central door repair, underfire gas work, and patching.

22. Since 2011, U. S. Steel has expended over \$30 million in repair and rehabilitation associated with Battery 15, and those repair and rehabilitation efforts for Battery 15 included end flue repairs, regenerator clean outs, ceramic welding and brick work, central door repair, underfire gas work, and patching.

23. Since 2009, U. S. Steel has already satisfied \$3,948,000.00 in civil penalties pursuant to the 2008 COA, the 2011 COA, the 2014 COA, and various statements of violation issued by the ACHD.

24. This Consent Judgment supersedes the 2011 COA and 2014 COA and any amendments.

25. ACHD and U. S. Steel recognize that this Consent Judgment has been negotiated in good faith and that the actions undertaken by U. S. Steel in accordance with this Consent Judgment do not constitute an admission of fault or liability.

26. The Parties have agreed that the most effective surrogate for environmental performance across the entire Facility is plume opacity from the battery combustion stacks. Therefore, the Parties have determined that oven wall inspections, as referenced herein, need to be conducted to determine the extent of repairs necessary to ensure the Facility's compliance with applicable federal, state, and local air quality regulations.

WHEREAS, after a full and complete negotiation of all matters set forth in this Consent Judgment and upon mutual exchange of covenants contained herein, the Parties agree that this Consent Judgment is in the best interest of the Parties and the public.

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. APPLICABILITY

A. The provisions of this Consent Judgment shall apply to, be binding upon, and inure to the benefit of ACHD and U. S. Steel and upon their respective officers, directors, agents, contractors, employees, servants, successors, and assigns.

B. The duties and obligations under this Consent Judgment shall not be modified, diminished, terminated, or otherwise altered by the transfer of any legal or equitable interest in the Facility or any part thereof.

C. In the event that U. S. Steel proposes to sell or transfer the Facility or any part thereof, U. S. Steel shall provide written notice to ACHD of such purchaser or transferee at least thirty (30) days prior to the sale or transfer. U. S. Steel shall also provide a copy of this Consent Judgment to any person or entity U. S. Steel intends to make any such sale or transfer at least thirty (30) days prior thereto.

D. ACHD may, upon U. S. Steel's request, agree to modify or terminate U. S. Steel's duties and obligations under this Consent Judgment upon transfer of the Facility. U. S. Steel reserves the right to challenge any decision by ACHD in response to U. S. Steel's request under ACHD's Rules and Regulations for Hearings and Appeals, Article XI.

E. The undersigned representative of U. S. Steel certifies that he or she is fully authorized to execute this Consent Judgment on behalf of U. S. Steel, and to legally bind U. S. Steel to this Consent Judgment.

II. GENERAL TERMS

A. This Consent Judgment addresses and is intended to address the violations alleged by Allegheny County, through the ACHD, in the complaint filed in this Action.

B. Nothing contained herein is intended to limit the authority of the ACHD with respect to violations that may occur after the date of this Consent Judgment or to limit the authority of the ACHD to seek further enforcement of this Consent Judgment in the event that U. S. Steel fails to successfully comply with its terms and conditions.

C. The provisions of this Consent Judgment are severable. If any provision or part thereof is declared invalid or unenforceable, or is set aside for any other reason, the remainder of the Consent Judgment shall remain in full effect.

D. This Consent Judgment shall constitute the entire integrated agreement of the Parties. No prior or contemporaneous communications or prior drafts shall be relevant or admissible for purposes of determining the meaning or extent of any provisions herein in any litigation or any other proceeding.

E. No changes, additions, modifications or amendments to this Consent Judgment shall be effective unless they are set forth in writing and signed by the Parties hereto.

F. A title used at the beginning of any paragraph of this Consent Judgment shall not be considered to control but may be used to aid in the construction of the paragraph.

G. This Consent Judgment shall become effective upon entry in the Court of Common Pleas of Allegheny County.

H. In the event that U. S. Steel fails to comply with any provision of this Consent Judgment, and the ACHD believes that such failure has created an emergency which may lead to immediate and irreparable harm to the environment or community, the ACHD may, in addition to the remedies prescribed herein, pursue any remedy available for a violation of an order of the ACHD, including an action to enforce this Consent Judgment, or any other enforcement option available to it under the CAA, the APCA, the Local Health Administration Law, the Rules and Regulations of the ACHD, or other applicable statutes or regulations. U. S. Steel does not waive any defenses it may have to such action by the ACHD.

I. The ACHD reserves the right to attempt to require additional measures to achieve compliance with this Consent Judgment. U. S. Steel reserves the right to challenge any action that the ACHD may take to require such additional compliance measures.

J. All correspondence with the ACHD concerning this Consent Judgment shall be addressed to:

Enforcement Chief
Allegheny County Health Department
Air Quality Program
301 39th Street, Bldg. No. 7
Pittsburgh, PA 15201

K. All correspondence with U. S. Steel concerning this Consent Judgment shall be addressed to:

Environmental Director
Mon Valley Works
400 State Street
Clairton, PA 15025

With a copy to:

David W. Hacker
Counsel-Environmental
600 Grant Street, Room 1500
Pittsburgh, PA 15219

L. Service of any notice or legal process for any purpose under this Consent Judgment, 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.

III. DEFINITIONS

A. Unless otherwise explicitly defined herein, any term used in this Consent Judgment that is defined in the CAA, the regulations promulgated thereunder, or Article XXI shall have the meaning given it therein.

B. For purposes of this Consent Judgment, the following words and phrases shall have the meaning stated:

1. "ACHD" shall have the meaning set forth in the preamble.
2. "Breakdown" shall mean any sudden or unexpected event which has the effect of causing any air pollution control equipment, process equipment or any other potential source of air contaminants to fail, malfunction or otherwise abnormally operate in such manner that emissions into the open air are, or may be, increased.

3. "Consent Judgment" shall mean this Consent Judgment and all appendices hereto.

4. "Charging" or "Charging Emissions" shall have the meaning set forth in Article XXI § 2101.20.

5. "Day" shall mean a calendar day unless expressly stated to be a Working Day.

6. "Effective Date" shall be the date on which this Consent Judgment is executed by a judge of the Court of Common Pleas of Allegheny County and docketed in the above caption action.

7. "Facility" shall have the meaning set forth in the Recitals.

8. "Hearing Officer" shall mean the person designated by the Director of the ACHD to hear administrative appeals.

9. "Malfunction" shall mean any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner which causes, or has the potential to cause, the emission limitations in an applicable standard to be exceeded. Failures caused in part by poor maintenance or careless operation are not malfunctions.

10. "Notify" or "Submit" or other terms signifying an obligation to transmit or communicate documents or information shall mean, for the purpose of meeting any deadline for written communication set forth in this Consent Judgment, the date that the communication is postmarked and sent by certified mail, return receipt requested or by a reputable delivery service that maintains a delivery tracking system. In the event the communication is sent by facsimile or e-mail, as mutually agreed upon by the Parties, the effective date is the date of receipt. Oral communications, where required or permitted by mutual agreement of the Parties, must be confirmed in writing within seven (7) days of the oral communication.

11. "Push" or "Pushing" shall have the meaning set forth in the definition of "Pushing" as found in Article XXI § 2101.20.

12. "Shutdown" shall mean the operation that commences when pushing has occurred on the first oven with the intent of pushing the coke out of all of the ovens in a coke oven battery without adding coal, and ends when all of the ovens of a coke oven battery are empty of coal or coke.

13. "Soaking" shall have the meaning set forth in the definition of "soaking emission from a standpipe cap" as found in Article XXI § 2101.20.

14. "Start-up" shall mean the setting in operation of an affected source or portion of an affected source for any purpose.

15. "Working Day" shall mean a day other than a Saturday, a Sunday, or a holiday recognized by the Allegheny County Health Department. In computing any period of time under this Consent Judgment, where the last Day would fall on a Saturday, a Sunday, or a holiday recognized by the Allegheny County Health Department, the period shall run until the close of business of the next Working Day.

IV. COMPLIANCE REQUIREMENTS

A. Oven Wall Inspections

1. U. S. Steel shall conduct an inspection of the oven walls for Batteries 2, 3, 15, and any other batteries as may be required to meet the requirements for and make the certification required by paragraph IV.B.1 of this Consent Judgment ("Oven Wall Study").

2. U. S. Steel shall complete and submit to the ACHD a summary of each Oven Wall Study within sixty (60) days after completion of the respective Oven Wall Study.

3. If repairs or upgrades are necessary based upon the results of each Oven Wall Study, then U. S. Steel shall prepare a work plan for such repairs (the "Oven Wall Study Work Plan"). Each Oven Wall Study Work Plan shall list the planned repairs or upgrades and shall provide a schedule for implementation of the Oven Wall Study Work Plan. U. S. Steel shall submit a copy of the Oven Wall Study Work Plan to ACHD.

4. U. S. Steel shall implement each Oven Wall Study Work Plan as expeditiously as possible.

B. Certification of Compliance with Performance Standard

1. No later than three years from the Effective Date, unless that deadline is extended pursuant to paragraph IV.B.4 of this Consent Judgment, U. S. Steel shall certify, for each of the Batteries, that for two consecutive calendar quarters: (i) U. S. Steel's emissions from the battery, as measured by COMs, were at or below the maximum opacity limits set forth in Article XXI § 2105.21(f)(3) and (4) for at least 98.5% of the reported hourly measurements and (ii) there is not a systematic component failure causing exceedances of applicable opacity standards.

2. Commencing three (3) years after the Effective Date, if, for two consecutive calendar quarters, any of the Batteries fail to maintain compliance with the opacity standards as determined by the combustion stack COM, as set forth in Article XXI § 2105.21(f)(3) and (4) for at least 98.5% of the reported hourly measurements or if, for two consecutive calendar quarters, there is a systemic component failure causing exceedances of those opacity standards, then a new compliance certification will be required and stipulated civil penalties will be triggered pursuant to paragraph VIII.A of this Consent Judgment.

3. If U. S. Steel is unable to make or, commencing three (3) years after the Effective Date, maintain the certification provided for in paragraphs IV.B.1 or IV.B.2 of this Consent Judgment, U. S. Steel shall incur stipulated penalties as provided by paragraph VIII.A of this Consent Judgment.

4. If the Oven Wall Study Work Plan for any of the Batteries demonstrates that refractory replacement at a battery is necessary, and that a good faith engineering estimate of the cost of implementing such refractory replacement for that particular battery (including the costs of procurement of materials, labor, installation, and all other construction cost and excluding engineering, design, or other soft costs) is greater than or equal to fifteen million dollars (\$15,000,000.00), then U. S. Steel may submit to ACHD for approval, in the Oven Wall Study Work Plan for that battery prepared pursuant to paragraph IV.A.3 of this Consent Judgment, a new deadline to meet the requirements for and obtain the compliance certification required by paragraph IV.B.1 of this Consent Judgment. Any Oven Wall Study Work Plan that includes a

new certification date pursuant to this paragraph IV.B.4 is subject to Dispute Resolution in accordance with Section XI (Dispute Resolution). If any Oven Wall Study Work Plan described in this paragraph is subject to Dispute Resolution, then U. S. Steel shall incur stipulated penalties as provided by paragraph VIII.B of this Consent Judgment.

C. Continuing Obligations for Batteries 1, 2, and 3

1. At no time shall the soaking emissions from the standpipe cap opening exceed twenty percent (20%) opacity. An exclusion from this opacity limit shall be allowed for two (2) minutes after that standpipe is opened. Soaking emissions from the standpipe cap shall be defined as uncombusted emissions from an open standpipe which has been dampered off in preparation of pushing the coke mass out of the oven and shall end when pushing begins, i.e., when the coke side door is removed. Compliance with this standard shall be determined through observing the standpipe from a position where the observer can note the time the oven is dampered off and, following the two minute exclusion, read the uncombusted emissions from the open standpipe in accordance with Method 9.

2. For each of the three batteries, the coking time shall not be less than 21.75 hours. If the coking time for any oven on any of these three batteries is less than 21.75 hours, U. S. Steel shall record the oven, coking time and justification of the coking time. This information shall be provided to ACHD on a quarterly basis. Coking times of less than 21.75 hours shall be considered in compliance with this Consent Judgment if caused by or related to a Start-Up, Shutdown, Breakdown, or Malfunction or if caused by extraordinary circumstances as supported by appropriate justification.

3. If U. S. Steel determines that compliance can be maintained at a coking time of less than 21.75 hours for any of the three batteries, U. S. Steel can propose to ACHD a compliance demonstration for the shorter coking time. If the compliance demonstration is successful, ACHD shall authorize a shorter coking time as agreed to by the parties. In addition, if a shorter coking time is authorized, at any time subsequent to such authorization, if U. S. Steel shows a statistically significantly decrease in compliance, ACHD may require that U. S. Steel

begin another compliance demonstration within thirty (30) days' notice from the ACHD to determine if U. S. Steel can continue to demonstrate compliance under the shorter coking time. If U. S. Steel is unable to demonstrate compliance under such demonstration, the coking time shall revert to the previously approved coking time.

4. U. S. Steel shall maintain records of coking times for Batteries 1, 2 and 3 for five years from the date of each push. Such records shall be available for review and copying by ACHD upon request. Such information shall be treated as Confidential Business Information.

5. Each day, U. S. Steel shall perform four (4) soaking observations on Battery 1, four (4) soaking observations on Battery 2, and four (4) soaking observations on Battery 3, all in accordance with Method 9 as provided in 40 C.F.R. § 63, Subpart CCCCC, except that if it is an overcast day or if the plume is in a shadow, the reader need not position himself with his back to the sun. U. S. Steel shall notify ACHD in the event that four soaking observations could not be obtained in the event of an outage, Malfunction, Breakdown, unacceptable conditions to conduct observations or other extraordinary circumstances as supported by appropriate justification.

6. Each day, U. S. Steel shall observe at least eight (8) pushes per day at Battery 1, at least eight (8) pushes per day at Battery 2, and at least eight (8) pushes per day at Battery 3. At least four (4) pushes at each battery must be consecutive. The observations must be conducted in accordance with Method 9 as provided in 40 C.F.R. § 63, Subpart CCCCC. U. S. Steel shall notify ACHD in the event that the required number of observations could not be obtained in the event of an outage, Shutdown, Malfunction, Breakdown, unacceptable conditions to conduct observations, or other extraordinary circumstances as supported by appropriate justification.

7. Until U. S. Steel meets the requirements necessary for the compliance certification mandated by paragraph IV.B.1 of this Consent Judgment for each of Batteries 1, 2 and 3, U. S. Steel will implement for these batteries the following plans:

- a. Advanced Patching Plan outlined in Appendix A;
- b. Flue Nozzle Repair Plan outlined in Appendix B;

- c. Regenerator Repair Plan outlined in Appendix C; and
- d. Gas Gun Improvement Plan outlined in Appendix D.

8. If the ACHD or U. S. Steel determines that one or more of the plans referenced in paragraph IV.C.7. is inadequate to prevent fugitive emissions from Batteries 1, 2, and 3, the ACHD may require, or U. S. Steel may submit at its own initiative for ACHD approval, revisions to the above plans.

D. Continuing Obligations for Battery 15

Until U. S. Steel meets the requirements necessary for the compliance certification mandated by paragraph IV.B.1 of this Consent Judgment for Battery 15, U. S. Steel will implement the Advanced Patching Plan outlined in Appendix A.

E. Continuing Obligation for Battery C

1. U. S. Steel shall operate the baffle wash system or equivalent system (as approved by ACHD) of B Quench Tower during the quenching of coke, as long as the ambient temperature is above 32 degrees Fahrenheit.

2. By April 30, 2016, U. S. Steel shall certify compliance with charging standards provided in Condition V.A.1.b of IP 11, Article XXI § 2105.21.a.1 and 40 C.F.R. § 63.302 or provide an updated Compliance Schedule in the event that U. S. Steel is unable to certify compliance with Condition V.A.1.b of IP 11, Article XXI § 2105.21.a.1 and 40 C.F.R. § 63.302 after installation of the U-Tube System.

3. While this Consent Judgment is in effect and until U. S. Steel certifies compliance with the charging standards listed above in paragraph IV.E.2, compliance with paragraph IV.E.1, above, shall be deemed to satisfy the work practice standards required by Condition V.A.1.v of IP 11, 40 C.F.R. §§ 63.302(d)(5) and 63.306.

4. The requirements of paragraph IV.E.1, above, shall survive this Consent Judgment and be incorporated into the Clairton Facility's Title V Operating Permit during the next periodic renewal.

V. COMPLIANCE WITH APPLICABLE LAWS

A. Compliance with Applicable Laws

All activities undertaken by U. S. Steel pursuant to this Consent Judgment shall be performed in accordance with the requirements of all applicable federal, state, and local laws, permits, and regulations. Notwithstanding any other provision of this Consent Judgment, U. S. Steel shall comply with all applicable federal, state, and local regulations, statutes, and laws, including but not limited to the CAA, the APCA, and Article XXI, as now in effect or as hereafter approved by EPA as an applicable Allegheny County portion of the Pennsylvania SIP.

B. Permits

U. S. Steel shall be responsible for obtaining all federal, state, and local permits which are necessary of the performance of any compliance requirements required pursuant to Section IV of this Consent Judgment. This Consent Judgment shall not be construed as a determination of any issue related to any federal, state, or local permit. Where performance of any portion of any Compliance Requirement herein requires a federal, state, or local permit or approval, U. S. Steel shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. U. S. Steel's failure to obtain a requisite permit or approval from a regulatory agency or authority after U. S. Steel has made all reasonable efforts to do so, including the making of a timely, appropriate, and complete application for such permit or approval, shall be considered a circumstance for which U. S. Steel is entitled to relief under the provisions of Section IX (Force Majeure) of this Consent Judgment, where such failure to obtain a requisite permit or approval results in a delay in performance of a Compliance Requirement. Whether or not Force Majeure does apply is subject to Dispute Resolution in accordance with Section XI (Dispute Resolution).

VI. REPORTING

A. U. S. Steel shall submit written quarterly reports ("Quarterly Reports") within thirty (30) days after the close of each calendar quarter to ACHD. The first Quarterly Reports are due within thirty (30) days after the close of the first calendar quarter that begins following the entry date of this Consent Judgment. The Quarterly Reports shall contain, at a minimum, a list of every clock hour in the calendar quarter that compliance is not achieved for Article XXI opacity limits applicable to the Batteries' combustion stacks as measured by the combustion stacks' COM. U. S. Steel shall indicate the date, time, root cause, and ovens that are believed to have contributed to the exceedance.

B. U. S. Steel shall submit a Semi-annual Deviation Report for all deviations from Article XXI §2105.21(e)(4) and (e)(5) for all Batteries.

C. Reports and written notices required in this Section shall be mailed to the individuals in paragraphs II.J-K of this Consent Judgment.

VII. CIVIL PENALTY

A. U. S. Steel has consented and consents to the assessment of a civil penalty of \$3,973,000.00 in full settlement of all issues and alleged violations arising under or related to those described in this Consent Judgment or as alleged in the Complaint, as of the Effective Date of this Consent Judgment. To date, U. S. Steel has satisfied \$3,948,000.00 of this assessed civil penalty. U. S. Steel shall pay the remaining twenty five thousand dollars (\$25,000.00) of this assessed civil penalty within 60 Calendar Days of the Effective Date by corporate check, or the like, made payable to the "Allegheny County Clean Air Fund," and sent to the Program Manager, Air Quality Program, Allegheny County Health Department, 301 39th Street, Bldg. No. 7, Pittsburgh, Pennsylvania 15201.

B. The ACHD has determined the penalty amount stated above in accordance with Article XXI, § 2109.06.b, reflecting relevant factors including: 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's compliance history. The ACHD hereby releases and forever discharges U. S. Steel from liability for any and all issues and civil claims for the alleged violations arising under or related to those described in this Consent Judgment, all similar claims that ACHD could or should have raised in this action pursuant to Article XXI, U. S. Steel's Operating Permit(s), or state and federal law, all subsequent related claims for violations of Article XXI, U. S. Steel's Operating Permit(s), or state and federal law that are known or should have been known to ACHD through the date of this Consent Judgment, including, but not limited to, all currently outstanding or unresolved violation notices served by PennFuture on U. S. Steel through the date of this Consent Judgment.

VIII. STIPULATED CIVIL PENALTY

A. Should U. S. Steel fail to meet or maintain the compliance certification requirements of paragraphs IV.B.1 and IV.B.2 of this Consent Judgment in a timely fashion with respect to a battery, then U. S. Steel shall pay, as a stipulated civil penalty, the sum of twenty thousand dollars (\$20,000.00) per month for each battery for which the certification has not been timely made. Commencing with the thirteenth month after which U. S. Steel has failed to meet the compliance certification requirements of paragraphs IV.B.1 and IV.B.2 of this Consent Judgment in a timely fashion with respect to a battery, U. S. Steel shall pay, as a stipulated civil penalty, the sum of forty thousand dollars (\$40,000.00) per month for each battery for which the certification has not been timely made. These stipulated civil penalties shall be due and owing automatically within 30 days after the close of each quarter. All stipulated civil penalties described in this paragraph shall be assessed per battery, per month.

B. In addition to the penalties above, U. S. Steel consents to payment of a stipulated civil penalty of five hundred dollars (\$500.00) for each clock hour that compliance for the Batteries' combustion stacks are not achieved for opacity limits, as determined by the combustion stack COM, as described in Article XXI 2105.21(f)(3) and 2105.21(f)(4). The first thirty-three (33) clock hour opacity limit violations of each battery stack in any calendar quarter

shall not be subject to stipulated civil penalties. For ovens with completely replaced throughwalls, said stipulated civil penalties shall be assessed beginning the eighth coking cycle following the first charge after final heating wall replacement. These stipulated civil penalties shall be due and owing automatically within 30-days after the close of each quarter in which the COM violation(s) occurred. In the event that either U. S. Steel or ACHD has initiated Dispute Resolution for an Oven Wall Study Work Plan that is subject to paragraph IV.B.4 of this Consent Judgment, and said Dispute Resolution process remains pending as of a date more than three years after the Effective Date, then the stipulated civil penalties assessed pursuant to this paragraph VIII.B of the Consent Judgment shall be increased to one thousand dollars (\$1,000.00) for so long as the Dispute Resolution process remains pending. ACHD warrants that it will not unreasonably delay or prolong the Dispute Resolution process in order to increase the assessment of stipulated civil penalties.

C. In addition to the penalties above, U. S. Steel consents to the payment of a stipulated civil penalty of five-hundred (\$500.00) dollars for each push where compliance for the Batteries' pushing, and transport emissions are not achieved for opacity limits, as described in Article XXI 2105.21(e)(4) and 2105.21(e)(5) respectively, whether observed by U. S. Steel or the ACHD. These stipulated civil penalties shall be due and owing automatically within 30-days after the close of each quarter in which the pushing violation(s) occurred.

D. U. S. Steel shall submit a stipulated civil penalty of fifty-thousand dollars (\$50,000) for each calendar quarter that the COM availability is less than 90%. These stipulated civil penalties shall be due and owing automatically within 30-days after the close of each quarter in which the COM availability is less than 90%.

E. In addition to the penalties above, U. S. Steel consents to the payment of a stipulated civil penalty of eight hundred dollars (\$800.00) for each day where compliance with soaking emissions for Batteries 1, 2, and 3, as specified and provided by paragraph IV.C.1, is not achieved. The Civil Penalties shall be due and owing automatically within 30-days after the close of each quarter.

F. Stipulated penalties, as required by paragraphs VIII.A through E, above, may be offset, in whole or part, by approved supplemental projects. Such supplemental projects could include, but not necessarily be limited to, additional emissions evaluations and testing, and/or emission reduction projects. The approval of supplemental projects to offset the otherwise required stipulated penalties shall be at the discretion of ACHD.

IX. FORCE MAJEURE

A. For the purpose of this Consent Judgment, "Force Majeure" as applied to U. S. Steel or to any person or entity controlled by U. S. Steel, is defined as any event arising from circumstances or causes beyond the control of U. S. Steel, or any person or entity controlled by U. S. Steel, 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 Judgment, despite U. S. Steel'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 unavailability of necessary equipment beyond the reasonable control of U. S. Steel. 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.

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

1. 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 U. S. Steel becomes aware, or with reasonable care should have become aware, of the potential Force Majeure event impeding performance.

2. Written notice of a potential Force Majeure event shall include the following:

- a. A description of the event and a rationale for attributing the event to Force Majeure;
- b. 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;
- c. An estimate of the duration of the delay or non-performance;
- d. A description of a proposed timetable for implementing measures to bring U. S. Steel back into compliance with this Consent Judgment; and
- e. Available documentation, which, to the best knowledge and belief of U. S. Steel, supports U. S. Steel's claim that the delay or non-performance was attributable to a Force Majeure event.

X. REOPENING

In the event that any condition contained in this Consent Judgment is modified or declared void by the presiding court so as to create a substantial burden on U. S. Steel to comply with the timeframes set forth in this Consent Judgment, such timeframes may be extended for a time as agreed to by the Parties.

XI. DISPUTE RESOLUTION

A. Unless otherwise expressly provided for in this Consent Judgment, the dispute resolution procedures of this Section shall be the exclusive procedure for resolution of disputes arising between the Parties regarding matters included in this Consent Judgment.

B. If, in one Party's opinion, there is a dispute between the Parties with respect to implementation of this Consent Judgment or the implementation of any provision of this Consent Judgment, that Party may send a written Notice of Dispute to the other Party, outlining the nature of the dispute and requesting informal negotiations to resolve the dispute. The Parties shall make reasonable efforts to informally and in good faith resolve all disputes or differences of opinion

regarding the implementation of this Consent Judgment. Such period of informal negotiations shall not extend beyond thirty (30) days from the date when the Notice of Dispute was received unless the period is extended by written agreement of the Parties. The dispute shall be considered to have arisen when one Party receives the other Party's Notice of Dispute.

C. In the event that the Parties cannot resolve a dispute by informal negotiations under this Section, the position advanced by ACHD shall govern, control and be binding unless, within twenty (20) days after the conclusion of the informal negotiation period, U. S. Steel invokes the formal dispute resolution procedures of this Section by mailing to ACHD a written statement of position on the matter in dispute, including any available factual data, analysis, or opinion supporting that position, and including any supporting affidavits and/or documentation relied upon by U.S. Steel. Within twenty (20) days following receipt of U. S. Steel's statement of position submitted pursuant to this paragraph, ACHD shall issue a written statement of position ("ACHD's Position") on the matter in dispute, including available factual data, analysis, opinion and/or legal arguments supporting ACHD's position along with any supporting affidavits and/or documents relied upon by ACHD.

D. ACHD's Position shall be binding upon U. S. Steel unless U. S. Steel, within thirty (30) days of receipt of the ACHD's written statement of position, files with the Hearing Officer and serves upon ACHD a petition for dispute resolution ("Petition"). This Petition shall set forth the matter in dispute, the efforts made by the Parties to resolve it, the relief U. S. Steel requests, and any factual data analysis, opinion, affidavits, legal argument and documentation supporting U.S. Steel's position. The Petition and ACHD's Position shall constitute the initial record for purposes of resolving the dispute. Either Party may request of the Hearing Officer the opportunity to supplement the record with appropriate additional information, provided that such information could not reasonably have been obtained or discovered prior to filing the Petition. The Hearing Officer shall render his or her final decision on the basis of the full record, including any supplemental materials received. The final decision of the Hearing Officer shall be appealable by either Party to the Court of Common Pleas of Allegheny County.

E. Judicial and administrative review of any dispute governed by this Section shall be governed by applicable provisions of law.

F. Except as provided in Section IX, the invocation of informal or formal Dispute Resolution procedures under this Section shall not of itself extend, postpone, act as a stay, or affect in any way any obligation of U. S. Steel under this Consent Judgment.

G. Whenever service, process, or notice is required of any dispute pursuant to this Section, such service, notice or process shall be directed to the individual at the addresses specified in paragraphs II.J-K of this Consent Judgment, unless those individuals or their successors give notice in writing to the other Parties that another individual or address has been designated.

XII. EFFECTIVE DATE AND TERMINATION

This Consent Judgment shall remain in effect until terminated (i) by mutual agreement of the Parties, (ii) by U. S. Steel following certification of compliance pursuant to paragraph IV.B.1 at all Batteries, or (iii) after five (5) years from the date of entry of the Consent Judgment, at the election of either Party on no fewer than sixty (60) Working Days' notice. In addition, if U. S. Steel has failed to make the certification required by paragraph IV.B.1 of this Consent Judgment for more than two years after the deadline to do so, as established in paragraph IV.B.1 or as extended pursuant to paragraph IV.B.4, then ACHD may terminate this Consent Judgment on no fewer than thirty (30) Working Days' notice.

XIII. SIGNATORIES

The Parties hereto have caused this Consent Judgment to be executed by their duly authorized representatives. The undersigned representative(s) of U. S. Steel certify under penalty of law, as provided by 18 Pa.C.S. § 4909, that he is authorized to execute this Consent Judgment on behalf of U. S. Steel; that U. S. Steel consents to the entry of this Consent Judgment as a final Order of the Court of Common Pleas of Allegheny County; and that, except as otherwise provided herein, U. S. Steel hereby knowingly waives its rights to challenge this Consent Judgment and to challenge its content or validity under any applicable provision of law.

Signature by U. S. Steel's attorney certifies only that this Consent Judgment has been signed after consulting with counsel.

XIV. RETENTION OF JURISDICTION

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

Dated this 24th day of March, 2016.

Christine Wood
Judge:

Allegheny County Health Department



James Thompson
Deputy Director for Environmental Health

3/24/2016
Date



Michael A. Parker, Esq.
Assistant Solicitor

3/24/2016
Date

United States Steel Corporation

Amy B. Smith-Yoder
Amy Smith-Yoder
General Manager Mon Valley Works

3/24/16
Date

Paul K. Stockman
Paul K. Stockman
Counsel for U. S. Steel

March 24, 2016
Date

Appendix A

Advanced Patching Plan

1. Track stack exceedances and corrective actions electronically along with the date that repairs (wet slurry patching, dry gunning, or ceramic welding or the equivalent to these techniques) were completed.
2. Repairs will be completed based on the following schedule:
 - wet slurry patching completed within 10 days of exceedance root cause identification;
 - dry gunning repair completed within 21 days of exceedance root cause identification;
 - ceramic welding repair completed within 30 days of exceedance root cause identification.

Days where the oven is taken out of service will not be counted.
3. Charts of the magnitude and duration of opacities will be used along with oven wall inspections to prioritize oven repair
4. A procedure for Identifying Ovens for Repair will be maintained in the Environmental Management System.
5. Equivalent techniques will be approved by ACHD.

Appendix B

Flue Nozzle Repair and Replacement Plan

1. Track exceedances and corrective actions electronically along with the date that repairs were completed.
2. Repairs will be completed based on the following schedule:
 - Flue cleanout will be completed within 10 days of exceedance root cause identification;
 - Flue nozzle replacement will be completed within 21 days of exceedance root cause identification.Days where the oven is taken out of service will not be counted.
3. Flue inspections including cross wall inspections (or equivalent technique) will be performed monthly and the results maintained electronically.
4. A procedure for prioritizing repairs will be maintained in the Environmental Management System.
5. Equivalent techniques will be approved by ACHD.

Appendix C

Regenerator Repair Plan

1. When a combustion issue arises based on the review of COM data and cross wall data, the regenerators are inspected and the results are documented electronically.
2. Repairs are identified and prioritized based on a procedure to be maintained in the Environmental Management System.
3. Equivalent techniques will be approved by ACHD.

Appendix D
Gas Gun Improvement Plan

1. Cross wall data are used to identify potential gas gun issues.
2. Repairs will be completed based on the following schedule:
 - Gas gun cleanout will be completed within 10 days of exceedance root cause identification;
 - Gas gun weld will be completed within 21 days of exceedance root cause identification;
3. Repairs are documented electronically.
4. Follow-up cross wall temperatures are taken and documented electronically to track effectiveness.
5. Equivalent techniques will be approved by ACHD.

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

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

PETITION FOR STAY

Pursuant to Article XI of the Rules and Regulations of the Allegheny County Health Department (hereinafter “Department”), Appellant UNITED STATES STEEL CORPORATION (hereinafter “U.S. Steel”) has appealed and hereby requests a stay of the Department Enforcement Order dated June 28, 2018 (“Order”) in its entirety throughout the pendency of this appeal. U.S. Steel also requests an immediate temporary stay of the Order pending a determination by the Director or Hearing Officer on this Petition for Stay. A copy of the Order appears as Exhibit A to the Notice of Appeal. Consistent with Section 1111 of Article XI of the Department’s Rules and Regulations, this submission sets forth the reasons for which a stay is requested.

A. Background

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”). Exhibit C, ¶¶ 2 and 7.

2. U.S. Steel regularly meets with the Department and, prior to receiving the Order, believed that it had established a non-adversarial relationship and open line of communication with the Department. Exhibit C, ¶ 5. However, in the Order the Department raises, for the first time to U.S. Steel's knowledge, unsubstantiated claims, while threatening to shut down two batteries. See *id.* The Order was unexpected given the working relationship that exists between U.S. Steel and the Department. *Id.*

3. The Order asserts facts regarding U.S. Steel's compliance history, alleges violations, assesses a total civil penalty of \$1,091,950.00, and directs U.S. Steel to perform a number of actions, including but not limited to the following:

- a. The Order requires that U.S. Steel pay the assessed civil penalty of \$1,091,950.00 within 30 days of receiving the Order. See Exhibit A, ¶ 1 on p. 26;
- b. The Order requires U.S. Steel to "deliver to the Department an assessment of all emissions points existing at the Clairton facility, as of the date of this Order," within 60 days of receiving the Order. Exhibit A, ¶ 81.a on p. 23 and ¶ 2 on p. 26. The assessment must include all proposed measures to reduce emissions of sulfur oxides, PM2.5 and visible emissions. See *id.* These measures "must sufficiently demonstrate reduction" of such emissions and U.S. Steel must begin implementation within 30 days of Department approval. Exhibit A, ¶ 81.a on p. 23 and ¶ 2 on pp. 26-27;
- c. U.S. Steel shall "demonstrate compliance with the terms of [the Order] upon the completion of two successive calendar quarters wherein U.S. Steel has shown a reduction in visible emissions, sulfur oxides and PM2.5 emissions across all operating coke batteries at the Clairton facility." Exhibit A, ¶ 81.b on pp. 23-24

and ¶ 3 on p. 27. The Order discusses, rather incomprehensibly, how the rate of compliance is to be determined. See *id.*; and

- d. The Order prescribes that “[d]oor leaks originating from the coke side of Battery B shall be reduced to be no more than ten leaks per month based on the yard-equivalent reading from the Department’s Method 303 contractor’s inspections.”

Exhibit A, ¶ 81.c on p. 24 and ¶ 4 on p. 27.

4. Critical for purposes of this Petition for Stay is the Order’s mandate that if U.S. Steel fails to meet *any* of the requirements set forth in Paragraph 3.a through d above, then U.S. Steel must “place its two worst performing batteries on hot idle until such time [as the Department] has determined that U.S. Steel has complied with the requirements of this Order.” Exhibit A, ¶ 81.d on p. 24 and ¶ 5 on p. 27. The Order discusses, albeit incomprehensibly, how the worst performing batteries are to be determined. See *id.*

5. If the Facility were to place a battery on hot idle status, this would be tantamount to a temporary, if not permanent, source shutdown due to the unique nature of coke oven operations. The battery would remain heated at a lower than normal temperature but no coke would be produced. See Exhibit C, ¶ 8. Coke battery assets would be severely compromised if a battery was placed on hot idle status. *Id.* Transitioning to hot idle involves a process that would require at least several weeks to implement, and which has significant ramifications for the broader Facility. See *id.* at ¶¶ 8 and 9. Some batteries are unlikely to withstand a hot idle, such that hot idling results in a permanent shutdown. *Id.* at ¶ 10. Significant refractory brick and battery infrastructure damage may be experienced due to the resulting thermal shock that occurs when the battery is taken from normal operation to idle hot. *Id.* Such damage will very likely result in significant and permanent asset deterioration. See *id.* In the past, U.S. Steel has elected

to extend coking times across the Facility rather than place a unit on hot idle and risk losing the asset. *Id.* at ¶ 11. U.S. Steel estimates that the overall cost to U.S. Steel of placing two batteries on hot idle would exceed \$400,000,000 if the idled batteries could not be returned to coke-making operations and would need to be replaced. *Id.* at ¶ 12. If the idled batteries could be returned to coke-making operations and were not replaced with new batteries, the estimated costs to U. S. Steel would be over \$250,000 to implement the hot idle and an additional estimated cost in excess of \$45,000,000 per year. *Id.* U.S. Steel would also expend an inestimable sum of money to return an idled battery to normal operation and make any necessary repairs. *Id.*

6. In addition to the actions set forth in Paragraph 3.a through d above, the Order requires U.S. Steel to conduct “a stack test of the Battery C Quench tower exhaust in order to demonstrate compliance with the SO₂ limit set forth in [U.S. Steel’s air permit]” within 60 days of the date of the Order. See Exhibit A, ¶ 74 on p. 20 and ¶ 6 on p. 28. Within 45 days of completing the stack test, U.S. Steel must present to the Department “a corrective action precluding further exceedances.” See Exhibit A, ¶ 75 on p. 20 and ¶ 7 on p. 28. If U.S. Steel fails to timely present corrective action to the Department, the Order specifies that U.S. Steel will be subject to a civil penalty. *Id.*

7. The Order also dictates that U.S. Steel must “ensure consistent operation [...] at all times” and requires that “[a]ny observed deviation from normal practices [...] will be considered a hindrance under 2101.11.b.2. and shall constitute a separate violation.” Exhibit A, ¶ 36 on p. 9 and ¶ 8 on p. 29. The Department has alleged, among other things, that Department inspectors have observed U.S. Steel engaging in practices to apply temporary seals to leaking emission points. See Exhibit A, ¶ 35 on p. 8.

B. Standard of Review

8. Section 1111 of Article XI of the Department Rules and Regulations provides that the Director or Hearing Officer may grant a stay of proceedings based on consideration of certain “factors including, but not limited to, the following:

- a. Irreparable harm to the petitioner;
- b. The likelihood of the petitioner prevailing on the merits; and
- c. The likelihood of injury to the public or other parties, such as the permittee in third-party appeals.”

Article XI § 1111.C.

9. The three factors to be considered mirror the factors applied by Pennsylvania courts and the Pennsylvania Environmental Hearing Board when evaluating a request for stay/supersedeas. These other tribunals use a balancing test to apply the criteria, as opposed to a mechanical application of each criterion in isolation. See, e.g., *Pennsylvania Fish Comm. v. DER*, 1989 EHB 619; *Pennsylvania PUC v. Process Gas Consumers Grp.*, 467 A.2d 805, 809 (Pa. 1983) (noting that each individual criterion should be considered and weighed relative to the other criteria). Moreover, tribunals may grant a request for a stay even if all three criteria are not satisfied. See, e.g., *Island Car Wash, LP v. DEP*, 1998 Pa. Environ. LEXIS 50 at *5 (“if the challenged action of the Department is without authority, the petitioner may be entitled to a supersedeas irrespective of proof of irreparable harm or the absence of harm to the public or other parties”); *Wayne Drilling & Blasting, Inc. v. DER*, 1992 Pa. Environ. LEXIS 3 at *5 (“However, the petitioner need not demonstrate irreparable harm and likelihood of injury to the public if the petitioner shows that DER lacked authority to take the action at issue or if it is apparent that DER’s action was unlawful.”). See also *Marcellus Shale Coalition v. DEP & Env’tl. Quality Bd.*, 2016 Pa. Commw. Unpub. LEXIS 830 at *45 (rev’d in part on other grounds)

(noting that significant irreparable economic harm from having to comply with a regulation warranted granting of a preliminary injunction, even where the regulation would serve to provide “additional health and safety protection”).

10. Administrative orders of an agency to a permittee are subject to review under an “abuse of discretion standard.” That is, the administrative order shall be deemed as contrary to law and subject to revocation where it is found that the agency abused its discretion in issuing the order as written. *Commonwealth of Pa., Department of Env. Prot. v. Mill Service, Inc.*, 347 A.2d 503, 505 (Pa. Commw. Ct. 1975). Administrative orders that are arbitrary and capricious will also be overturned. *Pennsbury Village Condominium v. DER*, 1977 Pa. Environ. LEXIS 18 at *14.

C. Irreparable Harm to U.S. Steel

11. The Order dictates that, if U.S. Steel fails to satisfy the Department’s expectations with respect to any of the actions set forth in Paragraph 3.a through d above, then U.S. Steel must hot idle two batteries. See Exhibit A, ¶ 81.d on p. 24 and ¶ 5 on p. 27. Hot idling at a coke plant is synonymous with temporary and, in the case of certain coke batteries, permanent, battery shutdown. See Exhibit C, ¶¶ 8 and 10. For this reason, hot idling is an unusual and extraordinary measure—a “last resort” practice in the steel and coke industry. *Id.* at ¶ 11. Hot idling two batteries at the Facility would result in significant economic loss to U.S. Steel estimated in excess of \$400,000,000 (or over \$250,000 plus over \$45,000,000 per year plus inestimable costs to return to normal operations if the idled batteries can return to production). *Id.* at ¶ 12. The hot idling mandate of the Order presents irreparable harm to U.S. Steel. Legal authorities have recognized that significant economic harm may constitute irreparable harm. See, e.g., *McDonald Land & Mining, Inc. v. Comm. of Pennsylvania, Dept. of Environ. Res.*, 1991

Pa. Environ. LEXIS 14 at *7 (“Our more recent cases [...] all seem to hold that significant economic harm to a party may constitute irreparable harm, particularly where a party [...] has no remedy with which to recover its compliance costs. It appears that this is the better reasoning, since it is difficult to perceive of a harm which is more irreparable to a private enterprise than the unrecoverable loss of money, or business.”); *Al Hamilton Contracting Co. v. Comm. of Pennsylvania, Dept. of Environ. Res.*, 1993 Pa. Environ. LEXIS 58 at *9 (“With regard to irreparable harm to AHC, a showing of a modest amount of economic harm has been made [...] which by itself shows irreparable economic harm.”).

12. The Order imposes a number of deadlines which, absent a stay, will pass before U.S. Steel has an opportunity to adjudicate the merits of this appeal. Per a literal reading of the Order, U.S. Steel must pay an exorbitant penalty, submit for Department approval a comprehensive Facility wide emission point assessment (including proposed emission reduction measures) and perform stack testing, all within just 60 days of receiving the Order. See Exhibit A, ¶ 74 on p. 20, ¶ 81.a on p. 23, ¶¶ 1 and 2 on p. 26 and ¶ 6 on p. 28. The emission point assessment, in particular, is no small task considering the Facility is the largest coke plant of its kind in North America. See Exhibit C, ¶ 2. Additionally, although the Order does not specify a deadline by which U.S. Steel must complete the emission reduction demonstration across all operating coke batteries (see Exhibit A, ¶ 81.b on pp. 23-24 and ¶ 3 on p. 27), reduce B Battery door leaks (see Exhibit A, ¶ 81.c on p. 24 and ¶ 4 on p. 27), and ensure “consistent” operations “at all times” (see Exhibit A, ¶ 36 on p. 9 and ¶ 8 on p. 29), one possible interpretation is that these requirements applied as of the effective date of the Order, *i.e.*, June 28, 2018. This deadline clearly passed before U.S. Steel could present its objections to the Director and Hearing Officer for review. Under the circumstances, the deadlines in the Order present irreparable harm

to U.S. Steel and warrant granting of a stay. See *Scripps-Howard Radio, Inc. v. FCC*, 316 U.S. 4, 9 (1942) (noting that the general rationale for granting a stay is based on the need “to prevent irreparable injury to the parties or to the public.”)

13. In addition to paying the \$1,091,950.00 civil penalty assessed by the Order, the Order requires U.S. Steel to immediately expend substantial sums of money to evaluate *all* emission points at the Facility (including B Battery door emissions), develop emission reduction plans and perform stack testing. See Exhibit A, ¶ 74 on p. 20, ¶ 81.a on p. 23, ¶ 81.c on p. 24, ¶¶ 1 and 2 on p. 26, ¶ 4 on p. 27 and ¶ 6 on p. 28. Unfortunately, the Order does not provide clear direction for how U.S. Steel is supposed to perform the measures which require these expenditures. U.S. Steel is thus in the difficult position of being forced to seek executive board-level approval on an expedited basis to spend potentially millions of dollars to implement measures which are not fully understood. See Exhibit C, ¶ 13. Even if U.S. Steel were able to commit to spending such resources, it is not clear that U.S. Steel will be able to comply with all requirements of the Order, in which case U.S. Steel will have spent a substantial sum of money and still be forced to shut down two batteries. Absent a stay, U.S. Steel will suffer irreparable harm by committing significant unrecoverable resources to evaluating emission sources (including B Battery door emissions), creating and implementing an emission reduction plan and performing stack testing, all to satisfy an Order that is fatally flawed.

D. Likelihood of U.S. Steel Prevailing on the Merits

14. A stay is appropriate because U.S. Steel is likely to succeed on the merits in this action. U.S. Steel incorporates by reference herein the objections to the Order outlined in the Notice of Appeal. U.S. Steel believes it has a substantial likelihood of succeeding on the merits once it is given the opportunity to demonstrate that the Department abused its discretion and

acted unreasonably, arbitrarily, capriciously, contrary to fact and law and in a manner not supported by evidence. Without waiving or discounting any argument or allegation of error presented in the Notice of Appeal that supports the issuance of a stay, U.S. Steel highlights the following issues for purposes of this Petition for Stay. By issuing the Order, the Department has created a genuine and substantial risk of battery shutdown, conditioned upon U.S. Steel's performance of vague and unreasonable compliance measures. The Order applies certain standards retroactively in violation of U.S. Steel's due process rights. Additionally, the Order imposes unreasonable and infeasible deadlines and seeks to preclude U.S. Steel from taking environmentally responsible actions to minimize emissions.

15. The Department's decision to include in the Order a provision to hot idle two coke batteries, which is effectively a shutdown (temporary or permanent), is clearly excessive and an abuse of discretion. *Comm. of Pennsylvania, Dept. of Env'tl. Res. v. Mill Service, Inc.*, 347 A.2d 503 (Pa. Commw. Ct. 1975). In *Mill Service*, the court interpreted substantially similar provisions in the Pennsylvania Clean Streams Law. *Id.* *Mill Service* acknowledged that the agency had discretion to issue an order under language substantially similar to Article XXI § 2109.03.a.1 (Enforcement Orders) in the event that a facility was not in compliance with the applicable statute. *Id.* at 505. However, the court went on to reject both the Department's argument that determination of occurrence of a violation authorized DEP to issue the cessation order, and the order itself, instead finding that more was needed to be demonstrated by the Department to support the drastic measure of ordering cessation. *Id.* at 506-507. Similarly, in *Keystone Cement Co. v. DER*, 1992 EHB 590, the Board granted a petition for supersedeas, based on the Board's finding that an order suspending a facility's permits was excessive and incurred such irreparable harm that outweighed the other considerations. Ordering hot idle is an

extreme measure. The Department had various enforcement options from which it could choose, including an amendment to the existing Consent Judgment (see Exhibit B) to address the emission points that it has added to the Order. Unfortunately, the Department opted to include the extreme measure of hot idle. U.S. Steel believes that it will prevail on the merits in demonstrating that the Department abused its discretion by including such an extreme measure in the Order.

16. The Department has conditioned the applicability of the hot idle provision in the Order upon U.S. Steel's compliance with the conditions described above in Paragraph 3.a through d. See Exhibit A, ¶ 81.d on p. 24 and ¶ 5 on p. 27. These conditions are unduly burdensome and written in a manner that is vague, ambiguous and confusing, making it difficult for U.S. Steel to understand the Department's expectations and therefore avoid hot idle/shutdown. Courts have rejected administrative standards or rules in cases where the standard is unclear as to how compliance "is to be judged, nor does it state who must bear the burden of showing non[-compliance]." *South Terminal Corp. v. EPA*, 504 F.2d 646, 670 (1st Cir. 1974) (under the regulation in question, "[t]he prospective applicant for a permit is utterly without guidance as to what he must prove, and how. And the standard is so vague that it invites arbitrary and unequal application."). Here, the compliance requirements of the Order fail to specify exactly what U.S. Steel must do, and by when, to avoid triggering hot idle. Such a vague enforcement order cannot be used as a sword against U.S. Steel.

17. One pre-condition to triggering the hot idle provision is if U.S. Steel does not reduce coke side door leaks from B Battery to "no more than ten leaks per month based on the yard-equivalent reading from the Department's Method 303 contractor's inspections." Exhibit A, ¶ 81.c on p. 24 and ¶ 4 on p. 27. This standard is arbitrary. The basis for it is unclear as it is

not an existing applicable requirement. See Exhibit C, ¶ 14. It appears to be more stringent than any existing applicable regulatory or permit requirement. There was no opportunity for the public or U.S. Steel to comment on this standard before the Department imposed it via the Order, and the Department has not shown that the standard is technologically and economically achievable for B Battery. Nor has the Department made any demonstration of need for this newly created standard. Prior to receiving the Order, U.S. Steel commenced an aggressive and voluntary maintenance campaign in this area of the Facility. *Id.* U.S. Steel estimates that it could expend millions of dollars to implement measures aimed at improving the B Battery door leak rate without any assurance that the 10 leaks per month standard can even be met. *Id.* The Department has not shown that the 10-leak standard is “necessary to aid in the enforcement of [the Article XXI Rules and Regulations].” Article XXI § 2109.03.a.1. Nor has the Department shown that an additional or more restrictive standard than what is currently in place is necessary or appropriate as B Battery is meeting the Federal standard for coke side doors. At U.S. Steel’s request, legal counsel for the Department did provide a clarification of the Department’s intent regarding the deadline for complying with the new standard for B Battery coke side door emissions indicating that the Department intended this standard to apply after the Department approved the emissions control measures under Paragraph 2 of the Order (pp. 26-27). However, a plain reading of the Order supports an alternative interpretation that U. S. Steel must meet the new standard upon the issuance date of the Order. More than 10 leaks per month were observed from the coke side doors of B Battery in the calendar months of June and July 2018.¹ See Exhibit C, ¶ 14. Accordingly, if this provision is to be considered effective upon issuance of the

¹ This is despite the fact that U.S. Steel has been in compliance with the existing applicable requirements of the relevant National Emission Standards for Hazardous Air Pollutants for B Battery coke side doors. It is further noted that it is unclear how to determine compliance with the new standard developed by the Department such that U. S. Steel cannot determine with certainty whether it exceeded the new standard.

Order, *i.e.*, June 28, 2018, then U.S. Steel appears to have triggered the hot idle provision in the Order before U.S. Steel even filed its appeal. U.S. Steel thus did not have a sufficient opportunity to implement a strategy for complying with the 10-leak standard before incurring the extreme consequences of a failure to meet it. Accordingly, the Order impermissibly imposes a new requirement retroactively and without any prior opportunity for U.S. Steel to comment, thereby depriving U.S. Steel of due process. *Sackett v. U.S. EPA*, 566 U.S. 120, 132 (2012) (J. Alito, concurring) (discussing serious due process failures where the regulated party did not have a chance to obtain review prior to enforcement action taking effect); *Comm. of Pennsylvania, Dep't of Labor & Indus., Bureau of Employment Sec. v. Penn. Eng'g Corp.*, 421 A.2d 521, 523 (Pa. Commw. Ct. 1980) (characterizing a standard as retroactive where it is “used to impose new legal burdens on a past transaction or occurrence”); *Sanders v. Loomis Armored*, 614 A.2d 320 (Pa. Super. Ct. 1992) (noting that retroactive application of a law that impairs a vested right, including economic benefits, constitutes a violation of due process under the Pennsylvania and U.S. Constitutions.)

18. The hot idle provision is also triggered if U.S. Steel fails to pay \$1,091,950.00 within 30 days of receiving the Order. See Exhibit A, ¶ 1 on p. 26. The Order itself does not recognize the option afforded to U.S. Steel to contest the amount of the penalty or the fact of the violation by forwarding the proposed amount of the penalty to the Department for placement in escrow. See Article XXI § 2109.06. At U.S. Steel’s request, legal counsel for the Department discussed this issue with counsel for U.S. Steel to clarify the repercussions of contesting the penalty and indicated that the Department would not consider U.S. Steel to be in violation of the penalty payment provision in the Order if U.S. Steel satisfied the procedures for appealing the penalty. However, the plain language of the Order suggests an alternative reading that U.S. Steel

will violate the Order if it fails to *pay* the penalty within 30 days. Under this possible interpretation, U.S. Steel must pay an excessive sum of money to the Department without an opportunity to adjudicate the issues that gave rise to the penalty or trigger the hot idle of two coke batteries. This effectively requires U.S. Steel to accept the penalty and pay without due process. See, e.g., *Sackett v. U.S. EPA*, 566 U.S. 120, 132 (2012) (“The EPA may issue a compliance order demanding that the owners cease construction, engage in expensive remedial measures, and abandon any use of the property. If the owners do not do the EPA’s bidding, they may be fined [...] and if the owners want their day in court to show [non-culpability], that is just too bad. [...] In a nation that values due process, not to mention private property, such treatment is unthinkable.” (J. Alito, concurring)); *U.S. v. Range Prod. Co.*, 793 F.Supp.2d 814, 824 (N.D. Tex. 2011) (entering a stay of proceedings based on the court’s “struggling with the concept that the EPA can enforce [an administrative order] and obtain civil penalties from [company] without ever having to prove to this Court [...] that [company] actually caused the contamination [in violation of the Safe Drinking Water Act].”). U.S. Steel believes that it will prevail on the merits in demonstrating that the Department abused its discretion by including such an extreme measure in the Order.

19. The conditions in the Order described in the previous two paragraphs are two examples in which the Department’s explanation of the Order is not consistent with a literal, plain reading of the Order; but it creates great concern regarding other provisions in the Order (as explained below) that are not clear on their face and for which U.S. Steel is uncertain as to exactly what its obligations are and how compliance with the Order can be ascertained with clear certainty. It is necessary and appropriate that U.S. Steel’s obligations and compliance determination be clear and certain for the standards contained in the Order to be valid. See *South*

Terminal Corp. v. EPA, 504 F.2d 646, 670 (1st Cir. 1974) (under the regulation in question, “[t]he prospective applicant for a permit is utterly without guidance as to what he must prove, and how. And the standard is so vague that it invites arbitrary and unequal application.”) See also *Park Home v. City of Williamsport*, 545 Pa. 94, 101 (1996) (invalidating requirements that “do not set reasonably clear guidelines for law enforcement officials and courts, thus inviting arbitrary and discriminatory enforcement”). U.S. Steel believes that it will prevail on the merits in demonstrating that the Department acted unlawfully and abused its discretion by including these types of conditions in the Order.

20. Another pre-condition to triggering the hot idle provision of the Order is if U.S. Steel fails to deliver to the Department “an assessment of all emissions points existing at the Clairton facility” which includes “all measures that U.S. Steel would propose to reduce its emissions of sulfur oxides, PM2.5 and visible emissions” within 60 days of receiving the Order. See Exhibit A, ¶ 81.a on p. 23 and ¶ 2 on p. 26. The meaning of this provision is unclear as a practical matter. If the Department expects U.S. Steel to identify and evaluate literally every source of emissions at the Facility, which occupies approximately 392 acres and is approximately 3.3 miles long, as well as assess and develop a reduction plan for every source of emissions, then 60 days is not only unreasonable but likely impossible. See Exhibit C, ¶ 2. This particular standard is also inappropriate because it requires a proposed reduction plan that accounts for every emission point, despite the fact that not every emission point has been shown to be in violation. To require U.S. Steel to evaluate *all* emission points—including those for which no violation has even been asserted—is inconsistent with the purpose of the Department’s own regulations. Section 2101.02.a of Article XXI declares, in relevant part, that it is the policy of Allegheny County to protect air resources “to the degree necessary” to protect citizen “health,

safety and welfare” and the “[d]evelopment, attraction and expansion of industry, commerce and agriculture.” In other words, the Department is obligated to impose requirements which protect the public but only in so far as those requirements are reasonable for industry. On this basis, the Department has exceeded its authority by requiring reductions in the Order beyond those required by the Article XXI Rules and Regulations and Facility permits. U.S. Steel also believes that these requirements in the Order are not necessary to aid in the enforcement of Article XXI and, therefore, an abuse of discretion such that U.S. Steel will prevail on the merits. See, e.g., *Mill Service*, 347 A.2d 503 (Pa. Commw. Ct. 1975).

21. Also as a pre-condition to triggering the hot idle provision, the Order appears to unlawfully and impermissibly impose a retroactive obligation on U.S. Steel to reduce emissions in the second quarter of 2018. Per the Order, U.S. Steel must demonstrate a reduction of visible emissions, sulfur oxides and PM2.5 emissions for the “first consecutive quarter” compared to a baseline of first quarter 2018. See Exhibit A, ¶ 81.b on pp. 23-24 and ¶ 3 on p. 27. It is unclear how this comparison is to be made and no effective date is specified. If the “first consecutive quarter” is the first calendar quarter following the baseline quarter (i.e., second quarter 2018), then U.S. Steel must demonstrate a reduction for second quarter 2018. However, the Order was issued on June 28, 2018, with only two days remaining in the second quarter. This interpretation of the Order requires U.S. Steel to retroactively reduce emissions. Such retroactive application is fundamentally unfair and deprives U.S. Steel of due process. See, e.g., Statutory Construction Act, 1 Pa. C.S. § 1926 (prohibiting retroactive application of statutes unless otherwise clearly intended by the General Assembly); *Comm. of Pennsylvania, Dep't of Labor & Indus., Bureau of Employment Sec. v. Penn. Eng'g Corp.*, 421 A.2d 521, 523 (Pa. Commw. Ct. 1980) (characterizing a standard as retroactive where it is “used to impose new legal burdens on a past

transaction or occurrence”); *Acme Markets v. Compensation Appeal Bd.*, 725 A.2d 863 (Pa. Commw. Ct. 1998) (extending Statutory Construction Act principle to administrative actions and holding that workers’ compensation medical fee caps promulgated after a date of injury could not retroactively limit recovery associated with injuries occurring beforehand); *Sanders v. Loomis Armored*, 614 A.2d 320 (Pa. Super. Ct. 1992) (noting that retroactive application of a law that impairs a vested right, including economic benefits, constitutes a violation of due process under the Pennsylvania and U.S. Constitutions). If the interpretation above were to be implemented, the Order would retroactively regulate U.S. Steel’s second quarter 2018 conduct making it impossible for U.S. Steel to act in any way to comply with the Order’s requirements and could automatically trigger the hot idle provision of the Order. Thus, U.S. Steel believes that the Order is unlawful and an abuse of discretion such that U.S. Steel will prevail on the merits. See, e.g., *Mill Service*, 347 A.2d 503 (Pa. Commw. Ct. 1975); *Keystone Cement Co. v. DER*, 1992 EHB 590.

22. The Order imposes several deadlines which are unreasonable and impracticable. For example, the Order requires U.S. Steel to perform stack testing of the C Battery quench tower within 60 days of the date of the Order (i.e., by August 27, 2018), and to submit a corrective action plan to the Department 45 days thereafter. See Exhibit A, ¶¶ 74 and 75 on p. 20 and ¶¶ 6 and 7 on p. 28. This stack testing timeframe is unreasonable and impracticable under the circumstances. U.S. Steel cannot assure that the stack testing can be completed in the manner and timeframe required by the Order due to unique considerations that this testing requires. See Exhibit C, ¶ 15. In addition, the availability of a stack testing contractor is not guaranteed. Furthermore, U.S. Steel is obligated to comply with Department regulations which require submission of a written test protocol 45 days prior to conducting a stack test and notice

of testing 30 days in advance. See Article XXI § 2108.02.e. Accordingly, U.S. Steel believes that the Department abused its discretion such that U.S. Steel will prevail on the merits. See, e.g., *Mill Service; Keystone Cement Co. v. DER*, 1992 EHB 590.

23. The Order requires U.S. Steel to “ensure consistent operation [...] at all times” and dictates that “[a]ny observed deviation from normal practices or any other methods employed by on-site personnel to hinder inspections will be considered a hindrance under 2101.11.b.2. and shall constitute a separate violation.” Exhibit A, ¶ 36 on p. 9 and ¶ 8 on p. 29. This requirement appears to stem from Department inspectors who allegedly observed U.S. Steel engaging in various activities, such as sealing of leaks, which the Order insinuates are inappropriate. See Exhibit A, ¶ 35 on p. 8. U.S. Steel does not understand the meaning of some of the activities described in the Order in part because the Order uses terminology not generally recognized in the industry or by environmental professionals. See Exhibit C, ¶ 6. Where U.S. Steel can surmise what the Department inspector may have observed, U.S. Steel believes the activities in question are normal operating practices (in the presence or absence of an inspector) intended to improve environmental performance. *Id.* The Order suggests that the Department expects U.S. Steel to operate the Facility in the same manner at all times. However, normal operations vary depending on operating conditions and other factors including environmental performance. See *id.* at ¶ 7. U.S. Steel routinely implements corrective actions as part of normal operations to minimize emissions. See *id.* at ¶¶ 6 and 7. When a leak is found, for example, Facility personnel will use reasonable means to respond quickly to the leak, then later return to the area as needed to permanently repair the leak. See *id.* at ¶ 7. This practice is a perfectly acceptable response to a leak and should be done to minimize emissions. Unfortunately, however, the Order effectively restricts U.S. Steel’s ability to make operational changes to

minimize emissions and comply with applicable requirements. Accordingly, U.S. Steel believes that the Department abused its discretion such that U.S. Steel will prevail on the merits. See, e.g., *Mill Service*, 347 A.2d 503 (Pa. Commw. Ct. 1975).

E. Likelihood of Injury to the Public or Other Parties

24. The Department has not shown how the violations alleged in the Order have adversely impacted ambient air quality or public health, safety or welfare. In fact, staying the Order during the pendency of this appeal would promote rather than harm the public interest. It is simply inappropriate for the Department to issue an order that imposes vague compliance obligations which require U.S. Steel to expend millions of dollars before knowing whether such efforts will satisfy the Department's demands due to the ambiguity and uncertainty associated with implementation of the Order. Furthermore, a stay of the Order is appropriate because the Order's deadlines will pass before there is an opportunity to adjudicate the merits. The Department should not be able to issue such an order that imposes vague and unclear obligations, where compliance with these obligations is determined solely at the discretion of the Department who issued the order, and then preclude the recipient's right to appellate review. The primary purpose of appellate review is to serve as a check on the agency's authority. Granting this request for a stay would give U.S. Steel the opportunity to exercise its rights to adjudicate the merits of the Order before experiencing the punitive, extreme, and costly mandates of the Order.

25. Staying the Order will not result in serious or immediate danger to the public health and welfare. In contrast, as noted above, denying a stay would risk causing an immediate and irreparable harm to U.S. Steel. Furthermore, even if the Order is stayed, U.S. Steel will remain subject to existing applicable requirements imposed by environmental permits and

regulations aimed at protecting the public health and welfare which will adequately protect the public interest.

F. Conclusion

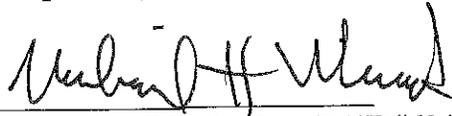
26. The Order imposes obligations in a manner and timeframe that presents immediate and irreparable harm to U.S. Steel. Absent a stay, U.S. Steel will expend millions of dollars attempting to implement an Order that is fatally flawed, inconsistent with the intended purpose of Article XXI and threatens irreversible economic loss. U.S. Steel anticipates a substantial likelihood of success on the merits if given a fair opportunity to adjudicate them. Staying the Order would not harm the public. For these reasons, U.S. Steel requests a stay of the Order in its entirety while this action is pending. A proposed order is enclosed.

27. If the Hearing Officer believes that all three factors for assessing a request for a stay have not been satisfied, the Hearing Officer may still grant the stay based on a balancing of all relevant factors. The extreme economic impact imposed on U.S. Steel by the Order coupled with the imposition of new, unsupported and ill-defined standards and requirements, issued with no opportunity for input by U.S. Steel, weighs heavily in favor of granting a stay pending further assessment of the issues under appeal.

28. As a procedural matter, U.S. Steel also requests an immediate temporary stay of the Order while the Director or Hearing Officer considers this Petition for Stay. This would provide adequate protection for U.S. Steel while the Director or Hearing Officer evaluates any response(s) hereto filed by the Department and additional discussion with the parties. A proposed order is enclosed.

29. U.S. Steel is willing to participate in an evidentiary hearing concerning this Petition for Stay if the Director or Hearing Officer believes that such hearing would be beneficial.

Respectfully submitted,



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Mark K. Dausch, Esq. (PAID#205621)
Meredith Odatto Graham, Esq. (PAID#311664)
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Counsel for Appellant

Dated: July 27, 2018

EXHIBIT C

Declaration of Michael Rhoads
July 26, 2018

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

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

DECLARATION OF MICHAEL S. RHOADS

1. My name is Michael S. Rhoads and I am over eighteen years of age. I am competent to make this declaration. The facts herein are of my personal knowledge and are true and correct. I make this Declaration pursuant to 18 Pa. Cons. Stat. § 4904 under penalty of perjury.

2. I am employed by United States Steel Corporation (hereinafter, "U.S. Steel") as the Plant Manager responsible for the by-products coke plant located at 400 State Street, Clairton, PA 15025, with telephone number (412) 233-1002 (hereinafter "Facility"). The Facility is the largest coke plant of its kind in North America, occupying approximately 392 acres and measuring approximately 3.3 miles long.

3. I have worked for U.S. Steel for 24 years and have worked at the Facility for 16 years. I have a Bachelor's degree in Chemical Engineering from the University of Pittsburgh and a Masters of Business Administration from Duquesne University. I have personal knowledge of the matters contained herein and authority to execute this declaration on behalf of U.S. Steel.

4. I have reviewed the Enforcement Order issued by the Allegheny County Health Department dated June 28, 2018 (hereinafter, "Order").

5. U.S. Steel regularly meets with the Department and, prior to receiving the Order, believed that it had established a non-adversarial relationship and open line of communication with the Department. The Order raises unsubstantiated claims for the first time and effectively threatens to shut down two coke batteries at the Facility. The Order was unexpected given the working relationship that exists between U.S. Steel and the Department.

6. U.S. Steel does not recognize some of the allegedly inappropriate activities observed by Department inspectors as described in the Order in part because the Order uses terminology not generally recognized in the industry or by environmental professionals. Where U.S. Steel can surmise what the Department inspector may have observed, U.S. Steel believes the activity in question is intended to improve environmental performance. U.S. Steel routinely implements corrective actions, including temporary measures until more permanent repairs can be made, as part of normal operations to minimize emissions.

7. The Facility includes 10 coke batteries. Operation of a coke battery is a dynamic process. Normal battery operation varies depending on operating conditions and other factors including environmental performance. U.S. Steel implements standard operating procedures which include best practices at the coke batteries that are implemented to respond to current observations on a case-by-case and ongoing basis. U.S. Steel employs ongoing best practices at the coke batteries to reduce emissions to the atmosphere. Examples of such best practices which U. S. Steel routinely employs include:

- a. Extending the coking time based on operating conditions and observations. If operators observe green coke, they are instructed to bank the oven, which extends

the coking time of that oven to prevent a “green push.” While this practice reduces production, it is implemented as an environmental measure that reduces the amount of fugitive emissions that would otherwise be emitted if that oven was pushed immediately;

- b. Sealing of leaks observed during the coking cycle. In the event that personnel observe leakage, sealing materials are to be applied to address the leak. Sealing may be temporary until additional measures can be taken to further address the leak. This practice is done specifically to minimize the fugitive emissions and is done routinely throughout the day on an ongoing and as-needed basis.
- c. Removal of flue caps. Flue caps are removed as necessary for several reasons, including the need to complete flue inspections, take temperature measurements, and investigate or identify leaks in oven walls. For example, if the opacity measured by a continuous opacity monitoring system spikes, U. S. Steel implements measures to reduce emissions. Initially, U.S. Steel must identify the location of the leak. Removing flue caps allows for visual observations of ovens to identify oven wall leaks that contribute to stack emissions.

8. Coke battery assets would be severely compromised if a battery was placed on “hot idle” status. During hot idling, the battery is underfired, *i.e.*, heated at a lower than normal temperature. All efforts are taken to minimize ambient heat loss from the battery but such heat loss is inevitable. Ambient heat loss results in thermal shock and damage to the refractory brick of the coke oven, contributing to significant deterioration of the environmental performance of the battery. Charging, soaking and pushing activities cease. Coke is not produced. Nor is coke oven

gas (a byproduct of coke production) generated. Thus, hot idling represents a temporary, if not permanent, shutdown of the battery.

9. To place a battery on hot idle status involves a process that would require at least several weeks to implement. For example, hot idling a battery would require U.S. Steel to build scaffolding, install purge piping and rehearse joints, and install blanks in piping that has not been manipulated in decades in many cases. U.S. Steel would also need to prepare dams for all oven offtakes and lids and insulated blankets for all door openings on each oven of the battery that is to be placed on idle hot status.

10. For some batteries, hot idling will effectively result in a permanent shutdown. Significant refractory brick and battery infrastructure damage may be experienced due to the resulting thermal shock that occurs when the battery is taken from normal operation to idle hot. This damage will very likely result in significant deterioration in the asset's environmental performance if a re-start of that asset is attempted, or re-start may not even be possible depending on the battery, due to battery deterioration.

11. Hot idling is an unusual and extraordinary measure. It is considered a "last resort" practice in the steel and coke industry. In the past, U.S. Steel has elected to extend coking times across the Facility to avoid placing a battery on hot idle status. U.S. Steel made this decision to avoid losing the asset due to the anticipated damage associated with hot idling.

12. The estimated overall cost to U. S. Steel of placing two batteries on hot idle would exceed \$400,000,000 if the idled batteries could not be returned to coke-making operations and would need to be replaced. If the idled batteries could be returned to coke-making operations and were not replaced with new batteries, the estimated costs to U. S. Steel would be over \$250,000 to implement the hot idle and an additional estimated cost in excess of \$45,000,000 per year. U.S.

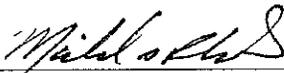
Steel would also expend an inestimable sum of money to return an idled battery to normal operation and make any necessary repairs.

13. U.S. Steel estimates that to comply with the Order (including the penalty assessment) would cost the company multiple millions of dollars. A resource expenditure of this magnitude requires executive board-level approval.

14. U.S. Steel reviewed some of the past Method 303 observation data and noted that these data show that more than 10 door leaks per month from the coke side of B Battery were observed in the calendar months of June and July 2018. The 10 leaks per month standard in the Order is not an existing applicable requirement. Prior to receiving the Order, U.S. Steel commenced an aggressive and voluntary maintenance campaign in this area of the Facility. U.S. Steel estimates that it could expend millions of dollars to implement measures aimed at improving the B Battery door leak rate without any reasonable assurance that the 10 leaks per month standard in the Order can even be met on a consistent basis under all operating conditions.

15. U. S. Steel cannot assure that stack testing SO2 emissions from the C Battery quench tower in the manner and time frame required by the Order can be completed, considering the unique considerations that the testing requires, including Department approval of protocols and availability of qualified stack testing companies.

16. I declare under penalty of perjury that the foregoing is true and correct and contains statements that are made subject to the penalties of 18 Pa. Cons. Stat. § 4904 relating to unsworn falsification to authorities.

By: 
Michael S. Rhoads

Date: 7-26-2018

ALLEGHENY COUNTY HEALTH DEPARTMENT
ADMINISTRATIVE DECISION

UNITED STATES STEEL CORPORATION, : In Re: Petition for Temporary Stay of
Appellant, : Enforcement Order No. 180601
v. : Copies Sent To:
ALLEGHENY COUNTY HEALTH DEPARTMENT, : *Counsel for Appellant:*
Appellee. : Michael H. Winek, Esq.
: Mark K. Dausch, Esq.
: Meredith Odatto Graham, Esq.
: BABST, CALLAND, CLEMENTS AND
: ZOMNIR, P.C.
: Two Gateway Center
: Pittsburgh, PA 15222
: *Counsel for ACHD:*
: Jason K. Willis, Esq.
: 301 39th Street, Building 7
: Pittsburgh, PA 15201

**DECISION AND ORDER OF THE ALLEGHENY COUNTY HEALTH
DEPARTMENT HEARING OFFICER**

AND NOW, this ___ day of July, 2018, it is hereby ORDERED that the Appellant's Petition for Stay of the Enforcement Order issued by the Allegheny County Health Department ("Department") and dated June 28, 2018 ("Order") is hereby GRANTED, for the following reason:

1. This tribunal, following review of the Petition for Stay filed by the Appellant determined that Appellant is entitled to a temporary stay of the Order while this tribunal evaluates any response(s) to the Petition for Stay filed by the Department and additional discussion with the parties.

_____/s/_____
Max Slater
Administrative Hearing Officer
Allegheny County Health Department

Dated:

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

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

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of July, 2018, a true and correct copy of the foregoing Notice of Appeal and Petition for Stay were served via hand delivery and addressed as follows:

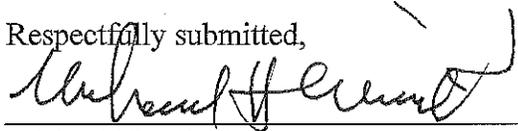
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The following individuals were served by electronic mail:

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Respectfully submitted,



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