

ALLEGHENY COUNTY HEALTH DEPARTMENT
ADMINISTRATIVE DECISION

UNITED STATES STEEL CORPORATION,	:	In Re:
	:	Enforcement Order No. 180601
Appellant,	:	
	:	
v.	:	
	:	
ALLEGHENY COUNTY HEALTH DEPARTMENT,	:	
	:	
Appellee.	:	
	:	
	:	
	:	
	:	
	:	
	:	
	:	
	:	
	:	

**APPELLEE ALLEGHENY COUNTY HEALTH DEPARTMENT’S
PRE-HEARING STATEMENT**

In accordance with this tribunal’s August 17, 2018 Case Management Order, Appellee Allegheny County Health Department (“ACHD” or the “Department”) hereby files and submits its pre-hearing statement as follows:

Narrative Statement

On June 28, 2018, the Allegheny County Health Department issued Enforcement Order (the “Order”) No. 180601 against Appellant United States Steel Corporation. The Order represents an amalgamation of violations and various penalties and corrective actions to be performed by Appellant. Because the Order contemplates numerous violations and remedies, the Department sets forth the following narrative to describe its position and where appropriate, sets forth the matters for which the Department bears a burden of proving by substantial evidence.

Quarterly Penalties

In the Order, the Department issued quarterly penalties for the fourth calendar quarter of 2017, the first quarter of 2018, as well as violations previously missed from the third quarter of 2017. This is far from unusual. The Department has issued penalties against Appellant on a quarterly basis for decades preceding the issuance of the Order.

Quarterly penalties were imposed, as they always have, based on violations to Article XXI of the Allegheny County Health Department Rules and Regulations. The Department reviews the violation data received from the inspectors. Appellant, too, receives daily reports of violations from both County and third-party inspectors. That data is processed and evaluated by the Air Quality Program's Enforcement Section and penalties are calculated based on the civil penalty policy effective as of the date the assessment is made. Here, all assessments against Appellant were made after the effective date of the 2018 civil penalty policy and were therefore subject to that policy. As a legal matter, the policy, as with all prior policies, allows for deviations from that policy. The only legal restriction on the Department's imposition of a civil penalty are with respect to the factors establishing the penalty amount (Section 2109.06.b) and the regulatory maximum of \$25,000 per day per violation. Neither provision was exceeded nor violated.

For the third quarter of 2017, the Department discovered that numerous violations to Article XXI were not captured in the third quarterly penalty assessment issued in Order No. 180301. Notably, the original penalties assessed for the third quarter of 2017 were issued in March 2018 and were calculated employing the civil penalty policy effective in March 2018. Appellants, however, did not appeal the imposition of that penalty. Specifically, the Department's Coke Oven Process Technicians and third-party Method 303 contractors observed violations to Section 2105.21.a during the charging portion of the coking process. Based on those observations, the Department employed the civil penalty policy effective at the time of the assessment and imposed a penalty in the amount of \$42,500.00. The Department's Coke Oven Process Technicians and/or third-party Method 303 contractors similarly observed violations to Section 2105.21.b. Based on observations made at the door areas of the coke ovens, the Department issued a penalty of \$6,450.00. Then, inspectors observed visible emissions emanating from offtake piping and noted violations of Section 2105.21.d. The Department, using that information, imposed a civil penalty of \$3,750.00. In aggregate, the Department imposed a civil penalty in the amount of \$52,700.00 for violations to Article XXI that were originally missed during the third quarter Order No. 180301.

This evaluation process was mimicked for the assessment of penalties attributable to violations occurring in the fourth quarter of 2017 and the first quarter of 2018. In the fourth quarter of 2017 inspectors observed violations to Sections 2105.21a, b, b.4, c, d, and i across various batteries at Appellant's facility. As a result, the Department imposed a civil penalty in the amount of \$437,950.00. Likewise, during the first quarter of 2018, inspectors observed numerous violations to Sections 2105.21a, b, b.4, c, d, and i. The Department noted further that the total major violations had increased in number from the fourth quarter. Because of these violations, the Department imposed a civil penalty, again employing the effective civil penalty policy as of June 2018, in the amount of \$601,300.

Although Appellant complains that the Department erred in employing the 2018 civil penalty policy effective at the time of the 2018 assessment and the Order, it must be noted that Appellant was subject to and appealed four other orders (not including the

third quarter 2017 penalty) that imposed penalties for violations to Article XXI, violations that took place between 2015 and 2018. Although Appellant appealed those orders, it has subsequently withdrawn those appeals. Under Appellant's theory, the Department would be bound to employ an ineffective policy for violations occurring as far back as 2011¹. This certainly makes no sense.

Exceedance of the SO₂ (Sulfur Dioxide) Limit

Based on a violation of the sulfur dioxide limit found in Appellant's installation permit 0052-I011 and concerning emissions from Appellant's Battery C quench tower, the Department twice demanded a corrective action to address the exceedance. Twice Appellant failed to provide the Department with a corrective action in the time afforded. As a consequence, the Department in the Order demanded that Appellant conduct a stack test and to propose corrective action. Despite Appellants protests on appeal, it did conduct the test and it did provide proposed corrective action in the time afforded. Thus, it has complied with the terms of the Order. Clearly, Appellant's protests on appeal are moot and no longer a subject of adjudication.

Corrective Action

Noticing that Appellant's visible emissions have increased over time and that civil penalties were not encouraging greater compliance with either Article XXI or the conditions of Appellant's Title V permit or applicable installation permits, the Department undertook a review of Appellant's previous compliance and measured it against the increased violations, unaccounted for emissions, and identified behavior of Appellant's employees that manifested in a hindrance of inspections conducted by county inspectors. The Department observed further that the PM_{2.5} annual values (monitored by a collection device located in Liberty) have been going up during 2017 since 2013 while regional emissions have been decreasing. Notwithstanding all efforts taken to ensure attainment with the PM_{2.5} standard, the Department deemed it necessary for the protection of public health to identify those areas of the facility known not to effectively capture and control the emissions of PM_{2.5}. At the time of the review, the Department further observed that emissions from the coke side of battery B were greater than that on the push side of that battery. Given the correlation between visible emissions and emission of PM_{2.5}, the presence of these visible emissions are also indicative of raw coke oven gas, which is composed of gaseous pollutants such as sulfur dioxide, naphthalene, hydrogen sulfide, benzene, toluene, ethyl-benzene, and xylene, coupled with the fact that these pollutants are not captured by the shed or baghouse connected to Battery-B and that said pollutants are known health hazards, the Department imposed an additional requirement that door leaks to the coke side of battery B be reduced to no more than 10 leaks based on a yard-equivalent standard. The Department also required Appellant to conduct an assessment of the emissions from its coke batteries and present the

¹ Article XXI limits the Department's authority to enforce against violations within 7 years of the order. Because of that, Appellant's theory would require the Department to employ a civil penalty that was no longer effective.

Department with a plan to reduce those emissions. It then afforded Appellant 30 days to implement its plan following the Department's approval. The Department then gave Appellant two quarters, following implementation of Appellant's approved plan, to improve its compliance with the regulations.

To date, Appellant has complied with the terms of the Order by timely conducting its assessment, submitting its plan, and is currently implementing its plans for improvement. Any argument to the contrary are now moot.

2016 Consent Judgment

Following the entry of the March 24, 2016 Consent Judgment entered into between the Department and Appellant, the Department continued to issue penalties for violations to Article XXI on a quarterly basis. Accordingly, the Department issued a civil penalty for violations occurring in the second, third, and fourth quarters of 2016, and the first, second, and third quarters of 2017. In all cases, as in the case at bar, the Department excluded penalty calculations attributable to 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 and have been noted in every penalty assessment since the entry of the 2016 Consent Judgment. Moreover, to the extent that Appellant would now claim that the Order somehow interferes with the implementation of the 2016 Consent Judgment, such claims are without merit. Initially, the 2016 Consent Judgment contains provisions which would allow for a party to dispute any facet of that judgment. Notwithstanding Appellant's position disputing the Department's action in the face of the Order, it had the opportunity to employ the dispute provisions and submit a notice of dispute with the Department. It has not done so. Absent any form of notice of dispute per the terms of the 2016 Consent Judgment, this tribunal is not in a position to conclude that the parties have any disagreement as to the limitations of that judgment, nor has Appellant alleged any specific provision of the Order that imposes a penalty for identical violations contemplated under the 2016 Consent Judgment.

Hindrance of County Inspections

Along with the aforementioned observations provided by county and third-party inspectors, the exceedance of the SO₂ limit, and increased violations quarter over quarter, county inspectors also reported activity by Appellant's employees whereby said employees were hindering inspections by blocking inspectors' view or advancing in front of inspectors and covering (or diverting) but not repairing emission points. However, the Department imposed no penalty nor required corrective action for the misconduct. The Department did apprise Appellant of its misconduct and warned of future penalties in the event of further hindrance. While Appellant may take issue with the allegations, the warning did not amount to a final action subject to appeal or create an issue properly before this tribunal. Accordingly, any claims or dispute with respect to the Department's finding of hindrance is not ripe for this tribunal's consideration.

Witness List

The Department identifies the following individuals it intends to call as witnesses during the scheduled hearing. The Department reserves the right to modify the identity and order of its witnesses to the extent necessary or in the event any one of the individuals is not available to testify at the time and place set for their testimony.

1. Jim Kelly, ACHD Deputy Director of Environmental Health
2. Jayme Graham, ACHD Air Quality Program Manager
3. Dean DeLuca, ACHD Air Quality Program Enforcement Section Chief
4. Angela Crowley, ACHD Air Quality Coke Oven Process Technician
5. Brian Harrington, Keramida
6. Walt Greenewald, Keramida

Exhibit List

Any documents previously submitted by the parties during discovery are subject to inclusion as an exhibit at the time of the hearing on the merits of Appellant's appeal. The Department intends to supplement this list of exhibits prior to Appellant submission of its Witness and Exhibit List. In addition to any of the aforementioned documents, the Department further intends to proffer the following as exhibits:

- 1 Brief in response to petition for stay
Email as clarification of the meaning and intent of the Total Penalty Assessment
ALLEGHENY COUNTY HEALTH DEPARTMENT'S BRIEF IN OPPOSITION TO APPELLANT'S PETITION FOR STAY 1863_001
USS Clean Coke Oven Gas SDS 15-26-2010 through 06-26-2020
PADEP Emission Inventory Production Report USS Clairton Works Input Form For 2017
ACHD Complaints by Facility *US Steel Clairton Coke Works 1863_036
ACHD Complaints by Facility *US Steel Clairton Coke Works 1863_046
Departments Brief in Opposition to Petition for Stay
- 2 # of quarterly violations and comp. percents per policy
- 3 PENALTY CALCULATION FORM DERIVED FROM 1-2018 CIVIL PENALTY POLICY USS Clairton - 1Q 2018 - Violations Number 180601
- 4 PENALTY CALCULATION FORM DERIVED FROM 1-2018 CIVIL PENALTY POLICY USS Clairton - 3Q 2017 - 180601 Violations originally missed
- 5 PENALTY CALCULATION FORM DERIVED FROM 1-2018 CIVIL PENALTY POLICY USS Clairton - 4Q 2017 - Violations Number 180601
- 6 United States Steel - Clairton Plant 1st Quarter Inspections 2018 - #180601
- 7 United States Steel - Clairton Plant 4th Quarter Inspections 2017 - #180601

8 PENALTY CALCULATION FORM DERIVED FROM 1-2018 CIVIL PENALTY
POLICY USS Clairton - 2Q 2018 - Violations Number 181002 Revised Calc
9 PENALTY CALCULATION FORM DERIVED FROM 1-2018 CIVIL PENALTY
POLICY USS Clairton - 2Q 2018 - Violations Number 181002
10 USS Clairton - 2Q 2018 Inspections Revised
11 USS Clairton - 2Q 2018 Inspections
12 2 Charge 10-04-2017
13 3 Charge 1-08-2018
14 3 Charge 05-29-2018
15 3 Charge 09-27-2017
16 Article XXI Part I - Enforcement §2109.01 Inspections
17 2016-03-24 Consent Judgement
18 2016-07-18 Notice of Violation/Settlement offer # 160701
19 2016-11-17 Notice of Violation/Settlement Offer #161003 Revised
20 2017-01-25 Notice of Violation/Settlement Offer #170101
21 2017-06-12 Notice of Violation/Settlement Offer #1 70403R
22 2017-07-05 Notice of Violation/Settlement Offer #170701
23 2017-10-30 Notice of Violation #171002
24 2018-02-27 Administrative Order #180202
25 2018-02-27 Administrative Order #180203
26 2018-03-02 Bill Clark Email US Steel Clairton: Administrative Orders #180202 &
#180203
27 2018-03-06 Administrative Order #180301
28 2018-03-30 Enforcement Order #180303
29 Michael Dzurinko to Jayme Graham United States Steel Corporation - Mon
Valley Works - Clairton Plant Administrative Order #180202
Michael Dzurinko to Jayme Graham United States Steel Corporation - Mon
30 Valley Works - Clairton Plant Administrative Order # 180203

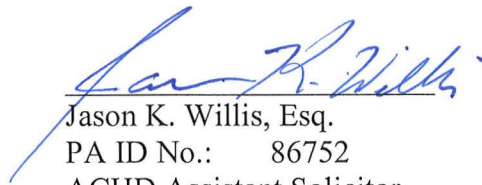
31 Jason Willis to David W Hacker United States Steel Corporation - Clairton Plant -
Administrative Order # 180202
Michael Dzurinko to Jayme Graham United States Steel Corporation - Mon
32 Valley Works - Clairton Plant Administrative Order # 180202

33 2018-06-13 Enforcement Order # 180504
34 Dean Deluca to Mike Dzurinko; Jonelle S Scheetz Inspections for Order
#180601
David Hacker to Willis, Jason; Winek, Michael Clarification of the meaning and
35 intent of the Total Penalty Assessment provisions of
Enforcement Order #180601.
Jonelle S Scheetz to Dean Deluca United States Steel Corporation-Mon Valley
36 Works - Clairton Plant Enforcement Order #180601 - Battery C Quench Tower
Stack Testing Notification
37 2017-02-09 Coke Oven Battery Method 303 Inspection Services - Quality
Assurance and Audit Program (QAAP)

Michael Rhoads to Dean Deluca U.S. Steel - Mon Valley Works - Clairton Plant
38 Consent Judgment Case No. GD-16-004611 Oven Wall Study Work Plan for Batteries 2,3,15,19
39 2017 Data Summary
40 USS Clairton door leaks - Battery B Back to 2014 #180601
41 AEMOD Primary PM 2.5 Impacts PDF
42 AEMOD Primary PM 2.5 Impacts Word Document
43 Air Studies
44 Charcaik Tube Data PPTX
45 Charging comp - 1989-2017 - USS Clairton
46 Clairton Site Map
47 Clairton 2018 Compliance Spreadsheet 04-30-2018- Charging
48 Clairton 2018 Compliance Spreadsheet 04-30-2018- Doors
49 Clairton 2018 Compliance Spreadsheet 04-30-2018- High Opacity doors
50 Clairton 2018 Compliance Spreadsheet 04-30-2018- Lids
51 Clairton 2018 Compliance Spreadsheet 04-30-2018- Off Takes
52 Clairton 2018 Compliance Spreadsheet 04-30-2018- Pushing
53 Clairton 2018 Compliance Spreadsheet 04-30-2018- Soaking
54 Email Chuck F Swallow to Dean Deluca - Clairton Inspections
55 Clean Coke Oven Gas SDS 12-16-2018 - 06-26-2020
56 2016-03-24 Consent Judgment GD-16-004611
57 Copy of # of quarterly violations and comp percent per policy
58 Door changes because of formula error
59 Door comp - 1989-2017 - USS Clairton
60 Global Clairton Order Matter Revision - Dean 06-26
61 High Opacity Doors Comp - 2014-2018 - USS Clairton
62 Keramida charging comments -01-01-18 - 07-31-2018
63 Label - Raw Coke Oven Gas SDS (82501)
64 Lid Comp - 1989-2017 - USS Clairton
65 Chuck F Swallow - Dean Deluca Bill Clark - 2018-04-02 Observation Charges
66 Pennsylvania SIP, Allegheny County Health Department Article XXI Part I, R
67 Pushing Comp - 1989-2017 - USS Clairton
68 Jonelle S Scheetz to Dean Deluca United States Steel Corporation Keramida Quote - Cybersecurity Review
69 US Steel (Clairton) re: Enforcement Order 180601
70 Soaking comp -02014-2017 - USS Clairton
71 U.S. Steel Clairton Satellite Image
72 USS 1994 Environmental Report
73 USS Clairton / tvop
74 Uss Clairton Compliance percentages for quarterly
75 Uss Clairton missed Q3 2017 violations
76 USS Claiton Satellite Image Google Maps

Dated: November 1, 2018

Respectfully submitted,



Jason K. Willis, Esq.
PA ID No.: 86752
ACHD Assistant Solicitor

Michael A. Parker, Esq.
PA. ID No.: 90979
ACHD Solicitor

Allegheny County Health Department
Air Quality Program
301 39th Street, Bldg. 7
Pittsburgh, PA 15201-1811
phone: (412) 578-8124
fax: (412) 578-8144

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing APPELLEE ALLEGHENY COUNTY HEALTH DEPARTMENT'S PRE-HEARING STATEMENT has been served upon the following via electronic and certified mail this 1st day of November, 2018:

Michael H. Winek, Esq.
Meredith Odatto Graham, Esq.
Mark K. Dausch, Esq.
Babst, Calland, Clements and Zomnir, P.C.
Two Gateway Center
Pittsburgh, PA 15222
mwinek@babstcalland.com
MGraham@babstcalland.com
mdausch@babstcalland.com
(Counsel for Appellant United States Steel Corporation)

David W. Hacker, Esq.
600 Grant Street, Suite 1500
Pittsburgh, PA 15219
dwhacker@uss.com
(Counsel for Appellant United States Steel Corporation)


Jason K. Willis, Esq.