

Via email to: [aqcomments@alleghenycounty.us](mailto:aqcomments@alleghenycounty.us)

July 30, 2019

## **Public Comments on ACHD/USS Proposed Settlement**

Allegheny County Health Department  
Air Quality  
301 39<sup>th</sup> Street, Bldg #7  
Pittsburgh, PA 15201-1811

Dear Deputy Director Kelly and Air Quality Program Staff:

We represent the interests of the Breathe Project/Collaborative, a coalition of citizens, environmental advocates, public health professionals and academics working to improve air quality, eliminate climate pollution and make Southwestern Pennsylvania a healthy, prosperous place to live. Our member organizations represent people who live and work in Southwestern Pennsylvania and Allegheny County where US Steel and the Clairton Coke Works present ongoing concerns about impacts to the health of residents in our community.

We appreciate the opportunity to share our assessment and recommendations pertaining to the proposed settlement agreement ACHD has negotiated with US Steel in the Clairton Coke Works matter. These comments are on behalf of the Breathe Project; Allegheny County Clean Air Now (ACCAN); Allergy and Asthma Wellness Centers (AAWC); Beaver County Marcellus Awareness Community (BCMAC); Climate Reality: Pittsburgh & Southwestern PA; East End Neighbors Fight Against Pollution; Environmental Health Project; The Environmental Integrity Project (EIP); Lawrenceville Clean Air Now (LCAN); PennEnvironment Research & Policy Center; PennFuture; Physicians for Social Responsibility (PSR) Pennsylvania; and Rail Pollution Protection Pittsburgh (RP3).

The **Breathe Project** is a clearinghouse for information on air quality in Pittsburgh, southwestern Pennsylvania and beyond. We use the best available science and technology to better understand the quality of the air we breathe and provide opportunities for citizens to engage and take action

**Allegheny County Clean Air Now (ACCAN)** is a citizen's watchdog group that works for better air quality in the Ohio Valley in the area including and around Neville Island.

**Allergy and Asthma Wellness Centers (AAWC)** is dedicated to providing accessible and state of the art care to all patients with asthma and allergic diseases.

**Beaver County Marcellus Awareness Community (BCMAC)** seeks to inform the citizens of Western Pennsylvania about all aspects of the petrochemical buildout in SWPA and to protect our health and environment by supporting sustainable energy alternatives to carbon-based energy sources.

**Climate Reality: Pittsburgh & Southwestern PA** represents more than 400 trained Climate Reality Leaders and community members who understand the link between local source pollution and the global climate crisis.

**East End Neighbors Fight Against Pollution** is a group of residents and/or those working in Pittsburgh's East End, committed to raising awareness of our region's dangerous air pollution and advocating for remediation.

The **Environmental Health Project** is a nonprofit public health organization that assists and supports residents of Southwestern Pennsylvania and beyond who believe their health has been, or could be, impacted by unconventional oil and gas development.

The **Environmental Integrity Project (EIP)** advocates for fair enforcement of environmental laws and regulations. Our work includes writing and distributing reports and data; taking legal actions against big polluters and government agencies, when necessary; and teaching communities how to participate in the public process regarding important local, county, state and federal environmental decisions.

**Lawrenceville Clean Air Now (LCAN)** is a community group of people who live and work in the Lawrenceville neighborhood of Pittsburgh that aims to mobilize support for efforts to address local and county air pollution and protect public health.

**PennEnvironment Research & Policy Center** investigates problems, crafts solutions, educates the public and decision-makers, and helps the public make their voices heard in debates over the quality of our environment and our lives.

**PennFuture** is a statewide environmental organization that advocates for clean air, clean water and a healthy climate.

**Physicians for Social Responsibility (PSR) Pennsylvania** promotes social responsibility by protecting health, the environment and communities through education, training, direct service, and advocacy.

**Rail Pollution Protection Pittsburgh (RP3)** is a group of Pittsburgh residents committed to addressing the risk and negative impacts of rail proliferation where it conflicts with urban health, sustainability, and personal well-being.

We want to thank Allegheny County Health Department for its efforts at enforcement to hold US Steel, the Mon Valley Works, and the Clairton Coke Works accountable to the Clean Air Act. For years, many community residents have borne the brunt of the significant number of emissions violations from US Steel and the Clairton Coke Works. Pollution from the Clairton Coke Works affects a large number of people, particularly a large number of low-income, elderly, and African American people in the Mon Valley. Everyone in Allegheny County and the Greater Pittsburgh region has been affected by degraded air quality as a result of US Steel's inability to operate its facilities lawfully. There are several aspects of the proposed agreement for which we want to express our support. We also wish to express our concerns about several aspects of the agreement and to offer some of our recommendations in those instances.

**1. There are several aspects of the agreement for which we wish to express our support.**

We support the aspects of the agreement that stipulate that US Steel must repair and upgrade some portions of the Clairton Coke Works. These repairs will likely reduce some air emissions from the plant. The agreement outlines planned improvements to battery operations to reduce fugitive and stack emissions; to the installation of air curtains for Battery B; to oven wall repairs in Battery 15; to upgrades to the baghouse equipment for batteries 13, 14, 15, 19 and 20; and to rebuild endflues for Batteries 1, 2, and 3. In addition, we are generally supportive of the concept of allocating penalty monies so that they are used for projects that improve the health of residents in the communities that have borne the brunt of many years' worth of emissions violations from the Clairton Coke Works.

**2. We also have several concerns about the settlement agreement for which we offer our assessment and recommendations.**

Overall, we state that the penalties do not provide adequate deterrence for ongoing pollution problems at the Clairton Coke Works because they are so small in comparison to US Steel's revenues and earnings.

We also stipulate that the settlement agreement does not go far enough into requiring US Steel to invest in major new pollution controls to end air pollution violations from the Clairton Coke Works. The current agreement does not specify these needed repairs adequately.

We recommend that ACHD should idle coke batteries that do not comply with air pollution rules until these batteries are fixed so that they do comply.

We recommend that any air pollution penalties that US Steel pays must help Mon Valley residents with health problems caused by air pollution in the community.

In addition to these overall themes, we have some more-specific concerns:

**2a. The agreement does not provide sufficient incentive to curtail future emissions violations and can be viewed as a pay-to-pollute arrangement.**

The agreement provides the impression that paying fines for air pollution violations can be viewed as the cost of doing business when the fines are much lower than the costs of actually fixing the problems causing unlawful operations of facilities.

[U.S. Steel](#) reported it had tripled its annual revenue to \$14.1 billion and net earnings of \$1.11 billion last year. It can afford to give the Clairton Coke Works an overhaul so that its operation that does not compromise the health of residents.

ACHD'S proposed civil penalty of \$2,732,504 is just 0.25% of US Steel's net earnings and just 0.02% of US Steel's revenue from last year. To put that into perspective, this cost is the equivalent of the median Pittsburgh household (total income \$58,521) paying about \$146, based on net income. This is less than the cost that the average Pittsburgh family pays in utilities for a month. If the calculation is based on revenue, the equivalent cost to a Pittsburgh family would be \$11.70. These numbers are hardly a deterrent for US Steel to stop polluting by investing in its equipment. It is simply less expensive for US Steel to keep paying fines instead of upgrading equipment in order to operate lawfully.

We believe that this agreement should require US Steel to shut down and repair old coking batteries that cannot operate lawfully, because penalty fines do not appear to be a sufficient deterrent to stopping emissions violations.

**2b. The settlement agreement does not go far enough into requiring US Steel to invest in major new pollution controls to end air pollution violations from the Clairton Coke Works**

US Steel's [announcement](#) on May 2 to invest \$1 Billion in the Mon Valley Works does not address its key community pollution problem: The Clairton Coke Works' coke ovens are over 50 years old. They leak and release fugitive emissions. None of this \$1 Billion goes to repairing or replacing these leaking coke ovens but to other technology investments. The investments may result in some air quality improvements but do not address the real problem: The old coke ovens leak and pollute.

US Steel was quoted as saying that [it would cost them \\$400 million](#) to shut down and completely repair these old, leaking batteries. They could afford to do this given their profits. They are choosing to invest their profits elsewhere in the Mon Valley Works for process automation instead.

It is again for this reason that we believe that this agreement should require US Steel to shut down and repair old coking batteries that cannot operate lawfully. They can afford to do this and are making alternate investment decisions that do not address the core issues relating to outdated and leaking coke ovens.

Many of the proposed repairs are required to be completed over too long of a period of time, in many cases not for another 2 – 5 years. These repair timelines need to be significantly shortened in order to protect the health of community members—within 12 - 18 months maximum.

US Steel should outright replace Batteries 1, 2, and 3 instead of applying band-aid repairs to facilities that date from the 1950s and that will continue to risk the health of the region's residents.

The process for selecting the environmental compliance auditor should be an open, public, transparent process that is open to public comment. The audit reports should be released publicly and easily accessible through posting on a public website.

**2c. ACHD needs to drive US Steel to a standard of 100% compliance with emissions requirements.**

For decades, quality engineering and statistical process control methods have outlined procedures to gain control over manufacturing processes that operate at a poor level of quality and reliability. These methods also highlight how environmental compliance is essentially a process quality concern. Organizations that can gain control over their operations so that they can reliably monitor and address quality and compliance using statistics demonstrate their commitment to core values centered on quality.

The current agreement does not guide US Steel to pursue quality in its processes and operations. ACHD used US Steel's facility-wide compliance rate of 98.152% as a baseline that US Steel established in the first quarter of 2018. Note that this baseline was chosen despite their being emissions problems with the facility. There was no specified statistical range of certainty with this measurement; therefore, this baseline does not require US Steel to demonstrate process control, nor is this baseline useful in any way to compare subsequent performance in any statistically meaningful way. US Steel's operational improvement of 0.1% over the baseline is essentially a meaningless statistic.

Furthermore, the agreement also sets as a baseline standard of performance for future-facing compliance the period of time between December 24, 2013 to December 23, 2018. During this period there were a large number of air quality violations, so choosing this baseline sets a low standard of performance for benchmarking purposes.

In six-sigma quality operations, processes are capable of operating at a 99.99966% rate of compliance—only 3.4 instances of noncompliance out of every 1 million operations. ACHD is holding US Steel to a much lower standard—below four sigma (99.38% compliance)—which allows for over 6200 quality failures in a million operations and probably closer to 15,000 such failures.

A business that operates with only 98% compliance and with such high rates of failure sends a signal to the market that it cannot control its processes adequately. In this particular case, the lack of control results in very high rates of emissions violations that compromise the air quality for millions of people in Allegheny County.

We recommend that ACHD require US Steel to achieve 6 sigma performance within three years at all facilities in the Mon Valley Works pertaining to meeting air quality emissions performance.

Such a standard should be recommended to the 3<sup>rd</sup> party consultant conducting an independent review as part of this agreement so that meaningful process control and compliance measurement can be achieved.

**2d. ACHD needs to ensure that the Community Benefit Trust is set up to be forever independent of US Steel and its influence and that the disbursement of monies from the trust goes to improving health in the adjacent communities to the Clairton Coke Works.**

We have concerns about the agreement specifying that US Steel is responsible for establishing the community benefit trust. Because this trust consists of penalty funds from past air quality violations, US Steel should not be involved in design of the trust nor its management or disbursement of any of these penalty funds.

We believe the trust should be housed at a community foundation that is wholly independent of US Steel and free from its influences. In addition, any decisions involving the disbursement of funds from the trust should be transparent – anyone from the public should be invited to participate in deliberations and decisions.

We believe that the funds from the trust should be allocated to address the health needs of community members in Clairton and adjacent communities. The funds should not be used for other community projects (road repairs, etc...) if they do not have a direct benefit to community health.

We believe that the selection process for members for trust administration should be done transparently and should be heavily weighted towards community public health experts and community members.

The accountability system for how money is used in the trust needs to be transparent, easily understandable, and easily accessible, such as a quarterly report that is published on a community website.

**2e. ACHD needs to ensure that the community advisory panel is set up to operate with a high degree of transparency and accountability, free from the influences of US Steel.**

First and foremost, we recommend that the panel reflect the diversity of Clairton and the other adjacent communities. Membership and core values of the panel must explicitly reflect diversity, equity, inclusion and justice, expressed in written form and displayed on a website.

In addition, we recommend:

- The advisory panel should include at least two experts in public health that are independent of the health department and US Steel.
- The advisory panel must include at least two residents from each of the impacted communities.
- The advisory panel should include at least three members of regional environmental nonprofit organizations with expertise in air quality.
- The advisory panel should meet at least quarterly.
- The advisory panel should meet with the Director or the Deputy Director of ACHD at least twice per year.
- The meetings should be treated as public meetings—advertised at least two weeks in advance; conducted in a public place; be open to the public in general; have agendas published at least two days in advance of the meeting on a public website; have minutes that are published within 1 week of the meeting on a public website.

**2f. ACHD should continue to project its authority to establish strident Coke Oven regulations and should not agree to terms that can interfere with its legal authority to enforce compliance with the Clean Air Act.**

Some of the restrictions for proposing more strident emissions controls in the agreement appear to unnecessarily restrain ACHD’s regulatory authority. For example, the agreement specifies, “any more stringent limit must be supported by a demonstration that the such limit is shown to correlate with a measurable reduction in hydrogen sulfide and benzene levels at the Liberty monitor.”

The stipulation that more strident limits must correlate with measurable reduction of H2S and Benzene at the Liberty monitor is an inappropriate measure for constraining new regulations. The Liberty monitor is used to determine compliance for the County’s airshed and reflects the performance of multiple facilities in its proximity. It is also subjected to fluctuations and variation of weather factors, all of which obscure the ability to easily show correlated, measurable reduction in H2S and Benzene from the Coke Works. This provision to show correlation is unnecessary and should be struck from the agreement.

The people of Allegheny County have been cleaning up this region for decades as a result of pollution from heavy manufacturing, particularly in the Mon Valley. Air quality continues to be an area of ongoing concern—one that must be addressed in order for our region to achieve a successful, prosperous future.

We advocate for policies that support clean air and health for our region—core economic development foundational criteria which are required for our region’s prospects.

We believe ACHD should continue to hold polluters accountable through meaningful and strident enforcement of the Clean Air Act, in accordance with its broad authority.

Thank you for your consideration and commitment to improving our region’s health and air.

Sincerely,

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