

ALLEGHENY COUNTY HEALTH DEPARTMENT

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

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Hearing held at
Clack Health Center,
Building 7, 301 39th Street,
Pittsburgh, Pennsylvania, on
December 4, 2018
at 9:30 a.m.

BEFORE: MAX SLATER, ESQUIRE, Hearing Officer

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PROCEEDINGS OF DECEMBER 4, 2018

HEARING OFFICER SLATER: Today is Monday, December 3, 2018. It is the time and date set for the case of United States Steel Corporation versus Allegheny County Health Department. At this point, I would like counsel for each party to please identify themselves. Let's start with the Health Department.

MR. WILLIS: Jason Willis for the Health Department.

MR. PARKER: Michael Parker.

HEARING OFFICER SLATER: And for U.S. Steel?

MR. DAUSCH: Mark Dausch for U.S. Steel.

MR. WINEK: Michael Winek for U.S. Steel.

MR. HACKER: Dave Hacker for U.S. Steel.

HEARING OFFICER SLATER: All right. Will any witnesses in this case please raise -- or any witness who is testifying today, please raise their right hand to be sworn in?

(All potential witnesses were duly sworn by the court reporter.)

HEARING OFFICER SLATER: Mr. Willis, you may proceed with your opening statement.

MR. WILLIS: Thank you. I wanted to start off the day with a bit of an anecdote to kind of keep us -- to keep our eyes on the prize of what we're

actually concerned about here today. I was on the bus a couple of weeks ago, and I was overhearing an argument about some family issue post or pre Thanksgiving.

One of the parties said, "You know, the things we -- the things we value least are what we need the most in our lives."

Granted, in that circumstance, they were talking about a brother or a sister that was causing a little bit of a ruckus right before Thanksgiving. But in my mind, it struck me that the thing that we value the least but need the most is air, and that's what we're here about today. We're here about violations with respect to Allegheny County's Health Department rules and regulations concerning air quality.

You know, as humans we can go weeks without food and days without water and days without shelter, but you can hardly go a half hour without air. If you could, you'd be Superman. And so, really what we're talking about is one of the most essential elements that we are concerned with in our day-to-day lives, but yet we give the least consideration to.

And so, as we make our way through all of the technical details about what standards apply and what regulations apply and what levels of emissions that

we're concerned about come up and begin to confuse the issue, I just wanted it to be in the back of everybody's mind that this is the essential crux of what we're concerned about, the air, the thing that we all need the most, but give the least consideration to.

With that, I would note that this appeal was filed with respect to our June 27th -- or June 28, 2018 Enforcement Order. That enforcement order came about as a result of over 300 violations of Article 21 of Allegheny County Rules and Regulations. They imposed -- the Department imposed, as a result of those violations, a penalty in excess of one million dollars.

Granted, it should be noted that that penalty is actually based on three quarters of violations. But in addition to that, and in taking a look at those violations that occurred, the Department gave due consideration to measures that could reduce those violations going forward and, in particular, to address certain issues with respect to criteria pollutants such as sodium dioxide -- or sulfur dioxide and particulate matter of 2 microns -- 2.5 microns or greater, both of which are -- are issues within Allegheny County in terms of air quality. And in so

doing, we instituted a few corrective actions that U.S. Steel has taken issue with and seem to be the brunt of their displeasure with the Department today.

It is our obligation today, as the party bearing the burden of proof, to demonstrate by the substantial evidence that will be a part of this record that the -- that the penalties, as imposed, are legal, are not arbitrary, are not an abuse of the Department's discretion, and that, in fact, to the contrary, it -- they are contemplated under Article 21, they comport with the current civil penalty policy as imposed as of the date in which the penalties were created, and that the corrective measures are reasonable and attainable by U.S. Steel based on our analysis of their operation.

And so, I'll leave it at that, only noting that we will gladly and shortly meet that burden, and that we hope for a speedy resolution to this issue going forward to the extent that we can get cleaner air for the citizens of Allegheny County.

HEARING OFFICER SLATER: Thank you, Mr. Willis. Mr. Dausch, do you want to make an opening statement?

MR. DAUSCH: Yes. It's not surprising that you've heard from the County about concerns about air

1 quality. The County said that that's something that
2 we've given the least consideration to. Well, you'll
3 hear in this hearing that that's not the case because
4 for several decades, U.S. Steel has worked with the
5 County to lower air emissions through negotiated
6 agreements that have involved several projects costing
7 millions of dollars.

8 That all changed in June. The County took a
9 different position and issued a unilateral enforcement
10 order, which is why we are here today. And we're here
11 today because when they took that action, they didn't
12 follow the law, and they didn't act reasonably.

13 Now, there's no question that U.S. Steel at
14 the Clairton Plant has to follow the air regulations
15 that apply. Those regulations are the most stringent
16 regulations in the entire country, and they involve
17 thousands of inspections and observations every single
18 day.

19 Those regulations come from the Federal
20 Government, they come from the County, they're
21 complex, and their voluminous. But just like U.S.
22 Steel has to follow those voluminous and complex
23 regulations, the County has to follow the law when it
24 enforces them, and that's what it didn't do.

25 The violations at issue in this case come

1 from fugitive emissions, and that means that those
2 violations are not based on measurements that were
3 taken from scientific equipment. It means those
4 violations are based on emissions that individual
5 inspectors claim to have seen with their eyes. And
6 because that's the case, those inspectors have to
7 follow very strict procedures.

8 They're called methods. You're going to hear
9 a lot about methods in this hearing. Those methods
10 exist to ensure that those inspectors follow
11 procedures that are consistent, that are reliable, and
12 that are correct.

13 That didn't happen. Not only did the
14 inspectors not follow the proper methods, the County
15 didn't follow the law when it in turn issued the
16 penalties and violations and enforcement order. The
17 County's failure to follow the law makes the entire
18 enforcement order unlawful, and it makes it so that
19 the entire order cannot stand.

20 The case can and should end right there, but
21 the County was also unreasonable. In the enforcement
22 order, there's a million-dollar penalty that isn't
23 even the tip of the iceberg because the enforcement
24 order also includes sanctions that could cost tens to
25 hundreds of millions of dollars and result in people

1 losing their jobs.

2 The enforcement order includes a requirement
3 that U.S. Steel hot idle two batteries at the Clairton
4 plant if U.S. Steel doesn't meet certain requirements
5 in the order. Hot idling means two of the coke
6 batteries at the Clairton plant would have to stop
7 producing coke. It's a last resort for coke plant
8 operators because hot idling causes stress to
9 batteries that either causes significant damage or, in
10 a worse case, causes a total loss.

11 Depending on the damage, the cost to U.S.
12 Steel could be tens of millions to \$400 million in a
13 worst case scenario. That hot ideal provision is
14 extreme, it's excessive, and it doesn't belong in the
15 enforcement order.

16 And one of the things in the enforcement
17 order that triggers hot idle is a new door leak
18 standard that the Department just made and that
19 applies to only one side of the doors on one of the
20 batteries, which is the B Battery. See, at Clairton,
21 there are 708 coke ovens, and every one of those ovens
22 has two doors. There's a door on what's called the
23 push side and a door on what's called the coke side.
24 Those doors are subject to Federal and County
25 regulations that say how many door leaks they can have

1 and still be compliant.

2 The Federal regulations are called NESHAP
3 Regulations, and they were created to address some of
4 the hazardous air pollutants that the County is
5 concerned about. Those regulations took several years
6 to develop, and the Department was involved. They
7 were developed after studies were done to determine
8 what's technologically feasible and what protects
9 public health.

10 The B Battery at Clairton is 100 percent
11 compliant with those regulations. The Department has
12 tried to make an end run around the rule making
13 process and put a new B Battery door Leak Standard in
14 that cannot be met. The standard in the enforcement
15 order is that if the coke side B Battery doors have
16 more than 10 leaks in any month in the first six
17 months of 2019, U.S. Steel has to hot idle two
18 batteries.

19 Eleven leaks in a month, and you hot idle two
20 batteries, and it might not even be the B Battery.
21 That standard is more than nine times more stringent
22 than the existing Federal standard, and U.S. Steel
23 data shows that it's never been met on any sustained
24 basis, and it doesn't make sense.

25 You're going to hear that the emissions from

1 the B Battery doors are minimal in the overall scheme
2 of emissions, and the B Battery coke side doors have
3 special air control equipment that's not on any of the
4 other batteries at Clairton. And guess how many B
5 Batteries coke side door leaks are in the enforcement
6 order? (Indicating).

7 The Department's right. It's their burden to
8 prove. They need to prove that the enforcement order
9 is both lawful and reasonable. It's neither of those
10 things. And after you hear the evidence, Mr. Slater,
11 we're going to ask that you vacate that order.

12 HEARING OFFICER SLATER: Thank you,
13 Mr. Dausch. Mr. Willis, you may proceed with your
14 first witness.

15 MR. DAUSCH: Mr. Slater, before we proceed,
16 --

17 HEARING OFFICER SLATER: Oh, yes.

18 MR. DAUSCH: -- should we put on the record
19 Joint Exhibits One and Two have been admitted into the
20 record?

21 HEARING OFFICER SLATER: Yeah, I will --
22 yeah. For the record, Joint Exhibits One and Two are
23 admitted.

24 MR. WILLIS: The Department would call Jim
25 Kelly.

1 JAMES KELLY, called as a witness, being
2 previously sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. WILLIS:

5 Q. Mr. Kelly, could you give -- state your full
6 name for the record please?

7 A. My given name is James Lynn Kelly.

8 Q. Thank you. And what's your current
9 occupation?

10 A. I'm the Deputy Director of the Environmental
11 Health Bureau for the Allegheny County Health
12 Department.

13 Q. Now, how long have you had that position?

14 A. Since January of 2017.

15 Q. And what did you do before you had that
16 position?

17 A. I was in -- I was the Planning Section Chief
18 for the Air Quality Program.

19 Q. Okay. And before -- how long did you have
20 that position?

21 A. I had that position for about two years.

22 Q. And prior to that, where did you work?

23 A. I worked for the Georgia Environmental
24 Protection Division.

25 Q. And what did you do for them?

1 A. The last 11 years, I was the Program Manager
2 for the Planning and Regulatory Development Unit for
3 the State of Georgia.

4 Q. What did that job entail?

5 A. Planning for the entire State of Georgia for
6 -- for basically incorporating the Clean Air Act
7 Requirements and responding to the four non-attainment
8 areas for the State of Georgia and making sure they
9 comply with the Clean Air Requirements and to
10 demonstrate attainment with those criteria pollutants.

11 Q. Okay. And in terms of your education, I take
12 it for granted that you've gone to high school,
13 correct?

14 A. Yes.

15 Q. And where did you go after high school?

16 A. After high school, I went to West Virginia
17 University of Student Technology where I achieved a
18 bachelor's of science and mechanical engineering.

19 Q. And did you do any education after that?

20 A. Yes, I have a masters of science in public
21 policy with a focus on environmental policy from
22 Georgia Tech.

23 Q. Do you have -- did you have any further
24 formal education after that?

25 A. Not as far as a degree.

1 Q. Okay. As far as anything else?

2 A. Well, I -- being in the position that I'm in,
3 and anybody that works in air quality, there's
4 constant education that you have to take to maintain,
5 you know, knowledge just, you know, for the area that
6 you work in.

7 Q. Okay. Could you explain for -- for the --
8 for the sake of Mr. Slater and for the record the
9 Clean Air Acts Regulatory Spleek Scheme?

10 A. Okay. So, the Clean -- this Air Quality
11 Program and any Air Quality Program in this country
12 exists because of the Clean Air Act. Now, that's not
13 withstanding the reality that the Allegheny County
14 Health Department and the program that proceeded that
15 actually existed before the Clean Air Act.

16 What the Clean Air Act does in -- for an Air
17 Quality Program -- the basis is that you have issued
18 permits, you enforce those permits, but also that you
19 have to monitor and respond to violations of the
20 criteria pollutants. And so, --

21 Q. What's a criteria pollutant?

22 A. And so, when -- the criteria pollutants are
23 defined by the Clean Air Act, and they are pollutants
24 for which there are health-based standards set. Those
25 pollutants are SO2, for which all portions of

1 Allegheny County is violating; there is NO2, which we
2 meet; there is ozone; and there is CO.

3 Ozone, we are technically in violation of the
4 ozone standard. We're currently meeting the standard,
5 but we haven't been designated attainment. And then
6 there's the fine particulate matter standard, which
7 the County is also failing the annual average, and
8 then there is lead.

9 Those are the criteria pollutant. And when you
10 have a criteria pollutant, the EPA is required every
11 five years to evaluate those standards and set
12 standards based on public health, regardless of the
13 costs associated with setting those standards.

14 Q. Okay.

15 A. And if you want me to continue -- then the
16 obligation for agencies like us is that -- the
17 Allegheny County Health Department is -- the EPA sets
18 these standards. They require the agencies to put out
19 a monitoring network to monitor those standards and
20 report that data back to the EPA.

21 When you violate that standard, then you have a
22 requirement under the Clean Air Act to come up with a
23 plan, which is a State Implementation Plan, that is
24 subject to the approval of the EPA to show how you
25 bring that area back into attainment with that

1 criteria pollutant.

2 Q. Okay. Now, you've gone over a lot of things
3 here. You mentioned the State Implementation Plan.

4 A. Yes.

5 Q. And that's a requirement under the Clean Air
6 Act for every state to provide?

7 A. Yes.

8 Q. To come up with a plan?

9 A. And that is broad. So, a lot of people are
10 confused with what a State Implementation Plan is.
11 And, again, our plan is -- we are a local agency. We
12 have to submit our portion of the plan to the State of
13 Pennsylvania and the State of Pennsylvania submits
14 that to the EPA. But our obligation -- basically all
15 of the programs that we have that incorporate those
16 provisions of the Clean Air Act is submitted to the
17 EPA as a State Implementation Plan.

18 And one of the things that affects this case
19 today is the fact that since we are violating both the
20 SO2 and the particulate matter standard, the fine
21 particulate matter standard, is we have an obligation
22 to submit a revision to that plan to show how we
23 demonstrate those standards.

24 Q. Okay. Just to back up a little bit, could
25 you explain to Mr. Slater and to the record what NAAQS

1 is?

2 A. So, that's the National Ambient Air Quality
3 Standard. So, the EPA has defined six criteria
4 pollutants, and then the Clean Air Act dictates that
5 the EPA, like I said before, every five years needs to
6 evaluate those six pollutants and develop a standard
7 called the National Ambient Air Quality Standard that
8 is protective of public health.

9 Q. Since we're going through definitions, could
10 you explain what NESHAP is?

11 A. So, NESHAP is the National Emissions Standard
12 for Hazardous Air Pollutants. So, that is part of the
13 Clean Air Act as well. The Clean Air Act defines
14 pollutants. There are criteria pollutants, which you
15 have a monitor network for, and then the Clean Air Act
16 also identifies 187 hazardous air pollutants.

17 The EPA is required to come up with a standard to
18 meet those pollutants. Now, this standard is not a
19 health-based standard. It is not a monitored
20 standard.

21 So, for criteria pollutants, we put out monitors,
22 and we monitor the air to make sure -- we have a
23 monitor on the ceiling -- the roof of this building.
24 And so, that's the combination of all of the
25 pollutants. And so, in NESHAP, that is a -- it will

1 set max standards that are specific to that industry.

2 Q. Okay.

3 A. And that -- yeah. And it's technology based.
4 It's not specifically health based. So, basically,
5 the top 12 highest performing is the basis of the --
6 you know, the top 12 highest performing types of
7 controlled technology applies to that standard.

8 Q. Okay. And you mentioned earlier that -- that
9 the -- that our region was not in attainment for which
10 criteria pollutants?

11 A. For SO2, sulfur dioxide; and for fine
12 particulate matter, which is particulate matter that
13 is 2.5 microns or smaller. The significance of which
14 that is, is it's the size of particulate matter that
15 you can breathe into your lungs, and it can actually
16 cross into your blood level causing serious health
17 issues.

18 Q. I see. And could you explain the monitoring
19 system and the pollutants in that system that are
20 being monitored in our current monitoring system? Are
21 our --

22 A. So, we have a county-wide monitoring system.
23 It's arguably one of the densest monitoring system
24 networks in the country. We have a monitor, the
25 Liberty Monitor, which is failing the particulate

1 matter standard in the Mon-Valley, and that same
2 monitor also has an SO2 monitor that is failing the
3 standard as well. All of the other monitors are
4 meeting those standards across the county. We have
5 nine particulate matter sites, and we have three SO2
6 sites.

7 Q. Is --

8 A. Does that help answer your question?

9 Q. Yes, it does. I was trying to figure out how
10 it is that the -- we've been designated as
11 non-attainment for those particular criteria
12 pollutants?

13 A. Yeah. We have co-located monitors at one
14 site, and both of those monitors are failing to meet
15 the standards of NAAQS, the National Ambient Air
16 Quality Standards, for the criteria pollutants fine
17 particulate matter and for SO2.

18 Q. Okay. And you mentioned one of the monitors
19 is at Liberty. Where is that located?

20 A. That's at the Avalon High School.

21 Q. It's at the Avalon High School?

22 A. Yes.

23 Q. Is it --

24 A. I'm sorry, South Allegheny High School.

25 Q. South Allegheny?

1 A. South Allegheny, I'm sorry.

2 Q. It's all right. So, it's sitting on the
3 school property somewhere?

4 A. Yes.

5 Q. I see. Is it possible for a region to
6 fall -- well, let's back up. Let's talk about the SIP
7 for a second. What is the County's contribution to
8 the Commonwealth of Pennsylvania SIP, and how do we
9 develop that?

10 A. So, we -- since we are a local control
11 agency, we have all jurisdiction within Allegheny
12 County. Part of that reason being is we actually
13 existed before the Clean Air Act and before a lot of
14 the infrastructure for the State. But we have
15 delegative authority under the Pennsylvania Air
16 Control Act to exist as -- basically with the full
17 authority of the Clean Air Act to, you know, develop a
18 Air Quality Program.

19 Local agencies are a little unusual. Not a lot
20 of states actually have local agencies, and not all of
21 those states are delegated all of those efforts. And
22 so, those efforts being the permitting program, SIP
23 development, and especially the provision for
24 maintaining a monitoring network. Usually the State
25 will do that for the entire state and won't -- that's

1 why we have a denser network than you'll find in most
2 other areas.

3 Q. And what do we actually provide the State in
4 terms of materials? Do we -- the regulations, are
5 those incorporated as part of the SIP?

6 A. Yes. So, all of our regulations -- almost --
7 most of our regulations in Article 21 -- Article 21 is
8 the articles that we use to protect air quality here
9 in Allegheny County, and those regulations that are
10 specific to the provisions of the Clean Air Act will
11 be submitted to EPA through Pennsylvania Department
12 of Environmental Protection for approval into that
13 plan. And so, that -- what that does is, is it makes
14 those federally enforceable.

15 Q. Does the State have an opportunity to review
16 our portion of that?

17 A. Yes, they do.

18 Q. Okay. So, do they have any say in terms of
19 approval for submission to the EPA?

20 A. They do have -- well, they -- the EPA
21 approves them ultimately, but basically -- with the
22 EPA, it's basically a pass through. They -- as far as
23 I know, they have never not approved the approach that
24 we have taken.

25 Q. Okay. And once it's been approved by the

1 EPA, what effect does it have to the SIP?

2 A. Well, it makes it federally enforceable.

3 Q. So, with respect to Article 21, did that
4 incorporation make that a federally enforceable
5 article?

6 A. Yes, for those provisions that were submitted
7 to the EPA to request approval. Not everything in
8 Article 21 has been approved by the EPA, but
9 overwhelmingly they have. Like the Coke Oven Emission
10 Rule, that is a rule from a previous SIP that was
11 required to be more stringent than State or Federal
12 Regulations because the area had failed to attain --
13 the Clean Air Act says that you need to come up with
14 whatever measures are necessary to meet those criteria
15 pollutant -- to meet the NAAQS.

16 And so, we have rules that are more stringent
17 than what the State or Federal Government would
18 require, and then we submit those to the EPA, and the
19 EPA has the capability of enforcing those.

20 Q. You've raised an interesting point. With
21 respect to the -- the NESHAP, that's a national
22 standard?

23 A. Yeah. That's a national standard that
24 applies to the facility and basically to the
25 equipment. It defines which control equipment that

1 you need to operate. So, it's not -- even though it
2 is response, it's response to the -- they have, you
3 know, the 187 hazardous air pollutants that the Clean
4 Air Act defines, and then the Clean Air Act says that
5 the EPA has to come up with standards for those.

6 And again, those standards are for the facility,
7 not for the air. So, it's not basically a health-
8 based standard. Which is interesting because it's an
9 air toxic, and you would think it's a health-based
10 standard, but it's a performance standard.

11 It's basically you look at the 12 percent best
12 performing, like, boilers. You know, there are
13 thousands of boilers across the country. The NAAQS
14 says you look at the top 12 percent best performing,
15 and that is the requirement that will be subject.

16 Coke ovens are a little interesting because we
17 don't have a lot of coke ovens, and so -- I wasn't
18 involved in the development of those NAAQS standards,
19 but there wasn't a whole lot to look at. So, --

20 Q. When was that NAAQS -- do you know when that
21 NAAQS standard was developed?

22 A. I really -- I don't know.

23 Q. Was it in the '00's or the '90's?

24 A. I couldn't tell you for sure, sir.

25 Q. Okay. Let's see. Just because -- okay. And

1 with respect to the SIP, you indicated that if we are
2 out of attainment, that that SIP requires us to come
3 up with some method to come back into attainment?

4 A. Yes. Yes, it does.

5 Q. What are the methods that can be employed to
6 come into attainment?

7 A. So, the Clean Air Act gives us the authority
8 to basically do what's necessary. They'll require
9 reasonably available controlled technology under
10 certain situations. And like for Ozone, that's fairly
11 well defined. In this situation, it's not. They give
12 us certain rules and regulations and, you know,
13 permitting requirements and things like that, that
14 allow us to be more stringent.

15 But specifically, the bottom line is, is that
16 requires us to submit an attainment demonstration.
17 That attainment demonstration says by a certain year
18 in the future, we have to come up with a plan with
19 regulations or permitting requirements to reduce
20 emissions to meet that, and that's where we become
21 more stringent than the Federal rules or the State
22 rules.

23 Because it is a non-attainment area, it requires
24 a unique approach that is specific to the industry
25 that we have, the problems that we have, and the air

1 pollution that we have to meet that standard. That is
2 why we currently have arguably the most stringent coke
3 oven regulation in the country.

4 This coke oven exists in a non-attainment area
5 and it's putting public health at risk. That standard
6 is failing. It has continued to fail. And then we
7 have to -- you know, that rule is more stringent
8 because of that reason.

9 That NESHAP really doesn't help us with that.
10 That NESHAP is for a different reason altogether.

11 It's not protective of the criteria pollutants SO2 and
12 PM 2.5. It is only set as a technology standard for
13 those hazardous air pollutants.

14 Q. I see. All right. You mentioned permitting
15 as an avenue through which we can -- we can bring
16 ourselves into attainment. Have we done that with
17 respect to U.S. Steel? Has there been any --

18 A. Yes.

19 Q. -- permitting activity that would bring them
20 -- that, at least on its face, would bring them into
21 attain- -- bring us into attainment?

22 A. Yes. So, we recently submitted an SO2
23 attainment demonstration that was recently proposed by
24 the EPA for approval. And within that, instead of
25 adopting a new rule, we adopted permit conditions and

1 revised the permits to include those more stringent
2 emission limits at the facility like stack emissions,
3 fugitive emissions, and various things like that.

4 An emission limit, like in pounds per hour. Like
5 this stack can only emit, like, 10 pounds per hour of
6 SO2. That's an example of what that would be. So, the
7 permit specifies what those limits are.

8 Q. And you mentioned a demonstration. How do
9 you go about demonstrating coming into compliance?

10 A. So, the demonstration -- the Clean Air Act is
11 very specific. It gives you very specific criteria
12 for what you need to do to submit a State
13 Implementation Plan, a SIP demonstration. One of
14 those things is you develop an emission inventory, and
15 then you have to do the modeling based on that
16 emission inventory from the past and make sure your
17 model works. And then you have to come with a sweep
18 of emission controls and emission reductions. And
19 that could be an interrupt process.

20 And so, say for PM, we need to attain by 2021.
21 And so, we put in a number of emission controls and
22 run the model. It takes, you know, the emissions
23 inventory from the past, we add those -- whether it's
24 permit conditions or rules and regulations that
25 reduces those emissions, and it sets a type of

1 meteorology from a time in the past, and you project
2 that to the future and it runs that.

3 And if we come in below -- at or below that
4 standard, then it shows attainment. And so, there can
5 be several iterations.

6 Q. Does any of that take into consideration
7 compliance?

8 A. No, it doesn't. There's no way we could do
9 that. It's just assuming that we are meeting the
10 standard. And I forgot to mention -- so, that's a --
11 it's a computer simulation. It's a model. It's a
12 model platform.

13 Q. Okay. And with respect to an emission
14 inventory, how are those used in the compliance --
15 well, not the compliance demonstration, but for the
16 SIP demonstration?

17 A. So, we start with a National Emissions
18 Inventory, which is something that we have to submit
19 to EPA every year for large sources and every three
20 years for smaller sources, so we have that basis. And
21 then for SIP planning, we have to improve upon that
22 because it's -- for some sources, it's really good.

23 Let's say a power plant. They all have
24 continuous emission monitors. We know exactly what's
25 coming out of those plants 24 hours a day. And so we

1 have really good data, and so we don't have to improve
2 upon that.

3 But let's say for a coke oven. So, that's --
4 there's a lot of emissions. And we probably need to
5 talk about, you know, how a coke oven operates, so you
6 can say -- so, you have fugitive emissions sources.
7 So, when you have stack emissions, that's easier to
8 calculate. But then when you have fugitive emissions,
9 leaks of gases and plumes and smoke from different
10 places, that's really hard, and the SIP doesn't do a
11 really good job of that. You make some estimates.

12 I know we've worked with U.S. Steel in the past
13 to estimate certain emissions for door leaks and
14 things like that, but it doesn't -- you know, it's
15 really messy, and it's not really -- you know, the
16 National Emissions Inventory doesn't well represent
17 that.

18 And so, we take that, and then we have to look at
19 the plant's operation and try to find a better way of
20 improving that. And sometimes the model responds
21 well, but some forms show no, there's got to be some
22 more emission from there regardless of what the
23 National Emissions Inventory is because we know that
24 this is coming from there. We don't know much, but
25 the model is showing a response to that.

1 Does that make sense?

2 Q. Yeah, it does. But they -- U.S. Steel, and
3 frankly all Title Five Sources, will have to submit to
4 the Commonwealth of Pennsylvania an emissions
5 inventory that we subsequently review? That's -- we
6 review that submission?

7 A. We -- I believe we probably -- we submit it
8 to the EPA eventually, so yes.

9 Q. Okay. And with respect to that, does the --
10 does the emissions inventory take into consideration
11 violations?

12 A. No, it doesn't.

13 Q. But it's used as a part of the SIP process?

14 A. Yes. It's the start of a SIP process.

15 Q. The start of a SIP process?

16 A. Yeah. Because, again, the SIP -- well, you
17 know, we have to model actual emissions. And the
18 emissions inventory is not always your best -- you
19 know, considering we have, what, 400 sources of
20 emissions, we're not going to be able to scrutinize to
21 death every one of those sources if they have
22 non-stack emissions to make sure they're the best
23 emissions.

24 We have to use emission factors and data that
25 U.S. Steel provides us that's maybe the only data that

1 we have to try to come up with what those emissions
2 are.

3 Q. And then -- I'm sorry. I just wanted to ask
4 really quickly, by stack you mean smoke stack?

5 A. Yes, a smoke stack.

6 Q. Okay.

7 A. Those emissions are a lot easier because
8 they're a steady state. You know the volume, you know
9 the temperature, you know the fuels that are going
10 into it, the pollutants, and whether there's a control
11 device. So, you can make pretty good calculations,
12 even if you don't have a monitor located in that stack
13 that gives you a feedback and tells you what's there.

14 But then when you have fugitive emissions, like
15 coke ovens, you know, you can have lots of leaks here
16 and there, and it's really difficult to determine what
17 those emissions are going to be.

18 Q. And you mentioned stacks having monitors?

19 A. Yes.

20 Q. Are you talking about COMS?

21 A. So, COMS is a sort -- is a type of monitor.
22 So, there are CEMs, a Continuous Emission Monitor,
23 that tells you what that pollutant is. Like for a
24 power plant, SO2. You've got a monitor that says what
25 the SO2 is.

1 But then in some stacks, you have particulate
2 matter standards. And so, there's no real good
3 technology for measuring particulate matter. The EPA
4 has been working on that for a while, and they do have
5 some procedures in place for some companies.

6 But what's typically used is what's called COMS,
7 which is a Continuous Opacity Monitor. And so, what
8 that does is it shoots a beam of light across the
9 stack and returns. And then that monitor is going to
10 read what is -- how much that light is diminished.
11 And basically, that's going to tell you -- that's the
12 percentage of smoke that's in the stack.

13 So, let's say zero to 100 percent is you can't
14 see anything through it. But if that stack (sic) goes
15 through and comes back and gives you a reading of 50
16 percent, well, that's fifty percent opacity. And
17 there's going to be some emission factors that's going
18 to associate that with a relative particulate matter
19 emission rate. It's a surrogate, is basically what it
20 is. And so, it's trying to approximate particulate
21 matter.

22 Q. So, it's a stand-in for what would otherwise
23 would be a SIM, something that would --

24 A. Yes. It's a surrogate. It's a stand-in.
25 It's --

1 Q. And you've mentioned the Liberty Monitor. Do
2 stack emissions -- are stack emissions picked up by
3 that monitor?

4 A. Yes.

5 Q. How about fugitive emissions?

6 A. Yes, probably. So, stack emissions, keep in
7 mind, -- so, when you have a stack, the stack has
8 temperature and velocity. And the reason stacks --
9 it's like the oldest type of control device that you
10 have. It's not really a control device, but it's a
11 method of pollutant -- pollution dispersion.

12 And so, you have tall stacks and they're hot and
13 they have velocity. So, the pollutants, they come out
14 and they're pushed high into the air and they
15 disperse.

16 Fugitive emissions, they just -- say you have a
17 battery and it just leaks and it stays close to the
18 ground. And so, -- the Liberty Monitor is not that
19 far away. And so, depending on the meteorology,
20 fugitive emissions, you can argue, may have a higher
21 chance of -- a higher percentage of those fugitives
22 could have a bigger impact, let's say, per ton.

23 Let's say this stack, 100 tons of PM come out of
24 it, and so it's going to disperse, but only a portion
25 of that is going to reach that monitor. Let's say

1 just arbitrarily -- so, 100 tons of pollution comes
2 out of there a day, and maybe 10 tons may be able to
3 reach that monitor. I know that's a very rough
4 approximation.

5 But fugitives, -- well, that monitor is on the
6 ground. Well, it's at the high school, so it's
7 probably on the roof. And so, those fugitive don't go
8 very far. They don't have that ability to disperse.
9 So, if the wind is blowing right, those fugitives are
10 going straight to that monitor. So. A higher
11 percentage of those fugitives -- so, it's what we call
12 sensitivity.

13 Q. Okay.

14 A. It's like -- the best way to talk about this
15 is ozone. The biggest contribution -- ozone is a
16 secondary form of a pollutant, and so you have to have
17 oxides of nitrogen. They come from burning fuel. And
18 then you have volatile organic compounds, like
19 gasoline. They have to form to create ozone.

20 Power plants produce the most emissions,
21 arguably, for that, but then they're the easiest to
22 control. But power plants are farther away. They're
23 produced as background. But your cars, you know,
24 they're roughly 40 or 50 percent of your total
25 emissions for NAAQS, but almost 100 percent of that

1 turns into ozone because it's right there where the
2 monitor is.

3 So, ozone forms with volatile organic compounds
4 and nitrogen oxides at the ground level, and that's
5 where people are breathing it. The cars are emitting
6 right there, and it's turning in. Whereas this power
7 plant, it's dispersing, it's going up into the
8 stratosphere, and so not as much of that can actually
9 form at the ground level. So, does that make sense?

10 Q. Yes.

11 A. So, the fugitive emissions are at ground
12 level, and they can have a higher sensitivity. More
13 -- a higher percentage of that pollutant can be
14 related to the monitor, as opposed to a stack, even
15 though the stack emissions can be a much higher
16 number.

17 Q. I see. Before we get too far down the trail
18 of what a -- about this particular coke facility, I
19 would like you to give us -- Mr. Slater and the record
20 an understanding of what is a coke facility, and why
21 we are concerned about it? Could you explain to
22 Mr. Slater what a coke facility is?

23 A. Okay. To really oversimplify this, and I
24 know that there are people -- people in here that will
25 probably cringe at this. So, to visually look at what

1 a coke oven looks like, say a loaf of bread. And so,
2 they are a long, thin battery of ovens. And so, each
3 slice of bread, say, is a separate oven.

4 And so, this coke oven -- coke ovens can be well
5 over 100 feet long, you know, usually maybe close to
6 the length of a football field, and they have these
7 individual ovens that are, like, 18 inches wide. And
8 so, like, each slice of bread is an oven, and all of
9 these ovens are stacked together.

10 And in each one of those ovens, what you do is
11 you open ports at the top, and you drop coal into it.
12 And then for a minimum of probably 19 hours or so,
13 you're cooking that coal sealed off and in the absence
14 of oxygen to create what's called coke. And so,
15 you're baking it for, let's say, 20 hours, it's close
16 to 2,000 degrees, and then what happens to that -- to
17 that coal is it becomes coke and all of the volatiles.

18 So, the reason -- you know, a piece of coal has a
19 lot of things in it. And so, when you heat it up in
20 the absence of oxygen, things start to volatilize.
21 You have tars, you have light oils, you have benzene,
22 you have a lot of toxic -- all of these things are
23 driven off and to the point where all you have left is
24 basically a chunk of carbon.

25 But those volatiles are -- are a very useful

1 product, and so they are all collected. The light
2 oils, the tars, the benzene is withdrawn, and even
3 however much sulfur comes out of it. But then the
4 gases in general -- once all of those useful products
5 are stripped out of the gas, you have what's called
6 coke oven gas. So, I'd say it's something like
7 natural gas, with half the BTU content.

8 And that gas, after you withdraw all of these
9 other valuable components that are used in the
10 chemical's industry, that gas is actually used back in
11 the oven to heat that oven up. That's the -- that's
12 the actual fuel that's used in the oven to create that
13 temperature to create coke. So, you have this oven
14 that drives off these volatiles. You collect that,
15 the gas comes back, and you heat it -- you know, it's
16 used to heat the oven.

17 That coke goes on. It's used in the iron making
18 process. You know, that gives you your heat, but it
19 also helps to extract the iron oxide from the ore as
20 well. So, we won't get into that because it's a
21 little more complicated.

22 So, once that's done -- coke ovens are a very
23 manual process. So, you have to -- there's a door on
24 each side of the piece of bread. You have one door
25 that you open up and then this rod comes in and pushes

1 all the coke out and the other doors open up and it
2 pushes that out.

3 So, if the coke oven -- so, if the coke is coked
4 out pretty good, that process should be pretty clean,
5 and you shouldn't see a lot of smoke or emissions.
6 Again, this is a big opportunity for emissions. And
7 then that -- that coke is dropped into a cart, and
8 it's taken to a quench tower where it's quenched. And
9 then from there, it works its way to the iron plants.

10 Q. And what do you mean by quench?

11 A. So, they drop a lot of water on it to cool it
12 down in a hurry.

13 HEARING OFFICER SLATER: And, Mr. Kelly, just
14 to clarify, the two doors that you were referring to
15 were the push door and the coke door?

16 MR. KELLY: Yes, the push door is where you
17 initiate, yes.

18 HEARING OFFICER SLATER: All right.

19 MR. KELLY: Does that help?

20 HEARING OFFICER SLATER: Yeah. I'm just
21 making sure.

22 MR. KELLY: And the coke side door is where
23 it comes out.

24 HEARING OFFICER SLATER: Okay.

25 MR. KELLY: And that's -- that's where you

1 typically have your emissions from the doors. Now,
2 you've got a lot of opportunities -- again, you know,
3 this is -- this is kind of old technology. The doors
4 can leak. When you have a door that's leaking, that's
5 raw coke oven gas.

6 Raw coke oven gas is actually listed as one
7 of those 187 air toxics as a hazardous air pollutant
8 by the EPA. And that coke oven gas that's leaking
9 out, it includes what we call BTEX, which is benzene,
10 toluene, ethylbenzene, and xylene, and all of those
11 are listed as the 187 hazardous air pollutants by EPA.

12 You have opportunities when you're charging
13 the coke oven, which is when you actually fill it up
14 with coal, for the emissions as well because, you
15 know, it's still hot in there, and you have an
16 opportunity for that. You have an opportunity for
17 emission during soaking. And so, what soaking means
18 is the coal -- 20 hours, it's coked out. And so --

19 BY MR. WILLIS:

20 Q. If I could just --

21 A. Yeah.

22 Q. If I could just stop you right there, so we
23 can -- so we can go through this process, the coke
24 making process step-by-step?

25 A. Yes.

1 Q. The first step you mentioned was the dropping
2 of the coal --

3 A. Yes.

4 Q. -- into the oven?

5 A. Yes, that's charging.

6 Q. That's charging?

7 A. Yes.

8 Q. And then you were going to describe soaking
9 next?

10 A. You charge and then you coke and then soaking
11 happens before you push. And so, like I said, you're
12 -- this battery is collecting all of the gases and
13 volatiles that's coming off the coke. And so, once
14 it's coked out, there shouldn't be any more left. And
15 so, when you damp that off, you're not collecting it
16 anymore, and you open these ports to vent it before
17 you push to make sure there's nothing left in there.
18 So, that's an opportunity for emissions as well.

19 Again, if the coke is -- if the coke oven is
20 operating properly, and everything is coked out, you
21 really shouldn't see many emissions. And then after
22 soaking, then you push.

23 Q. Okay. And if you could describe the -- the
24 chemical -- well, let's say we open a door 10 hours
25 into the coking cycle on the coke side of the battery,

1 what would happen, theoretically, once you opened that
2 door and introduce it to air?

3 A. Well, number one, there's the coke oven gas
4 -- but it can combust, and that's when you -- that's
5 when you're going to see massive amounts of dark
6 smoke. So, again, you're heating this up in the
7 absence of oxygen to drive these components off.
8 That's above the combustion temperature. And if there
9 are still components in there, that's going to catch
10 fire.

11 Q. Okay. And in terms of the chemical
12 composition of any of these chemicals, could you
13 describe what happens to the primary pollutants that
14 we're concerned about here?

15 A. Okay. So, again, obviously there's the issue
16 with hazardous air pollutants. But then for the
17 criteria pollutants, there's a large amount of
18 particulate matter and oxides of sulfur. So, you're
19 going to have SO2 form because it's combustion. That
20 coke oven gas also contains hydrogen sulfide, which is
21 the -- the rotten egg smell.

22 But then again, you have those two components for
23 the criteria pollutants, which would be SO2, because
24 it's combustion of coal, and the H2S can catch fire as
25 well. And then you have the particulate matter. Any

1 time you see visible emissions, that's particulate
2 matter.

3 Q. So, in terms of the chemistry, the -- the H2S
4 that is present in the oven prior to the door being
5 opened, once it hits the oxygen in the air, does that
6 change the chemistry of the H2S, or does it remain
7 H2S, and you'd have --

8 A. Well, if you're talking about a door leak,
9 you know, when you have your coke oven gas emitting
10 into the atmosphere, H2S is a big component in that.
11 Like, if you open the door prior to coking, then it's
12 going to combust, and then H2S can actually turn into
13 SO2.

14 But H2S really doesn't persist very long in the
15 atmosphere. It's eventually going to break down into
16 oxides of sulfur, SO2 being one of those.

17 Q. I see. And this is what's being picked up at
18 the monitors?

19 A. So, the monitors -- the primary purpose of
20 those monitors is, again, for the criteria pollutants
21 SO2 and fine particulate matter. But the same
22 monitoring location has an H2S monitor as well as a
23 benzene monitor.

24 Q. Okay. At Liberty?

25 A. Yes.

1 Q. Okay. Could you describe the health risks as
2 you know them to be with respect to those compounds
3 that are coming out, the fugitive emissions?

4 A. For -- for which one? I mean, there's --
5 again, these fugitive emissions. There's a mess
6 there. There's PM, you know, there's ozone issues.
7 You know, PM causes respiratory issues, heart
8 ailments, distress as well. And SO- --

9 HEARING OFFICER SLATER: PM is particulate
10 matter?

11 MR. KELLY: Yeah, I'm sorry, particulate
12 matter. And it's the fine particulate matter. That's
13 the primary issue there. And then SO2, again, it
14 causes a lot of respiratory issues and heart issues as
15 well. But then you have all of the toxics. I mean,
16 once you have the toxic components, besides other
17 detrimental health effects, you know, you have your
18 risk of cancer for prolonged exposure.

19 BY MR. WILLIS:

20 Q. Are you talking about BTEX in that regard?

21 A. Yes. And again, coke oven gas as a whole is
22 identified by EPA as an air toxic, and it contains not
23 only the BTEX; that benzene, the toluene, the
24 ethylbenzene, and xylene, which are the nastiest, it
25 also contains a host of other things as well.

1 Q. Okay.

2 A. Including a large amount of H2S.

3 Q. Are you familiar with the -- the shed on the
4 coke side of Battery B?

5 A. Yes.

6 Q. There are certain gases that you've mentioned
7 thus far. And beyond the particulate matter, are
8 those gases that would escape the coke -- the battery
9 doors, are those being captured by the shed?

10 A. No. That's not what the shed is designed
11 for. So, you know, to help Max out here, -- so,
12 typically you have just a coke battery -- again,
13 picture that loaf of bread -- out in the open. You
14 push and then, you know, there's nothing collecting
15 those emissions. Well, Battery B, it actually has --
16 on the coke side, it actually has a control device
17 that is designed to capture those pushing emissions.

18 So, when you push them out -- because, you know,
19 you can have a lot of emissions during pushing -- it's
20 collected in a car. The shed is designed to capture
21 those emissions, but only the particulate matter
22 because it's a bag house. Bag houses only collect
23 particulate matter.

24 Any gaseous emissions are not going to be
25 collected. They'll go through the bag house and right

1 off into the atmosphere. But a concern that we do
2 have is that that shed was not designed to capture
3 leaking door emissions because they're -- they're
4 right there, and the shed is not airtight. And so,
5 those door emissions can leak.

6 And our inspectors have actually observed those
7 emissions just leaking out right in front of the shed
8 because they're right there at the edge. And so,
9 again, that's coke oven gas. That's particulate
10 matter. And back to the shed, the shed cannot control
11 gaseous emissions.

12 Q. So, it's my understanding, and correct me if
13 I'm wrong, the shed is not fully enclosed?

14 A. No. So, it's open on both ends, and it's --
15 there's -- you know, there's some space between the
16 battery and the top of the shed as well. There's a
17 gap, you know, between there, so it's not fully
18 enclosed.

19 Q. Okay. I'll keep moving right along here.
20 With respect to our Enforcement Order that's at issue,
21 can you tell me specifically what it was intended to
22 address?

23 A. Primarily, it is intended to address that
24 you're in compliance. Very specifically identified in
25 here, you have places where they were at 100 percent

1 compliance, and now they're at 70 percent. So, I
2 mean, it shows that the numbers are there. They were
3 able to do better in the past, and they're not doing
4 it now.

5 And it's also to address the on-going issues with
6 the deteriorating air quality being read at the
7 Liberty Monitor. This area has been at non-attainment
8 for a long time. And, again, we have that Liberty
9 Monitor that measures both PM and SO2. There's been a
10 decades-long trend of decreasing emissions. Starting
11 in 2014, those emissions are starting to go back up.

12 Q. Now, you need to qualify that. Is it going
13 back up county wide?

14 A. No, no. County wide emissions still continue
15 to decrease, with the exception of 2017. There was a
16 bump, you know, not only in the county, but regionally
17 where, you know, emissions went up a little bit. They
18 went up more at Liberty. But before that, all of the
19 other County monitors continued to decrease, where as
20 the Liberty Monitor was increasing that value above
21 the standard each year.

22 Q. Okay. And just to be clear, you signed that
23 Enforcement Order that's at issue today?

24 A. Yes.

25 Q. Okay. So, you had an opportunity to review

1 it?

2 A. Yes.

3 Q. Did anything about the civil penalty that was
4 imposed or any of the corrective actions that were
5 requested -- did any of that strike you as
6 unreasonable?

7 A. No. Now, you have to keep in mind that this
8 is for two consecutive quarters. This is not for one
9 quarter. We had just initiated our new Civil Penalty
10 Policy, so we had an expectation that -- you know, for
11 repeated violations, that there was going to be an
12 accelerator for that, and there's going to be a
13 component that could increase that.

14 Q. You mentioned the Civil Penalty Policy. When
15 did that go into effect?

16 A. That went into effect January of 2018.

17 Q. And when did this order go out?

18 A. This order went out June 28, 2018.

19 Q. So, the Penalty Policy was already in place
20 at the time that the order was issued?

21 A. Yes.

22 Q. Do the -- the penalty that was imposed, do
23 you believe that's something that can be achieved by
24 U.S. Steel? And I'm going to be specific. With
25 respect to the B Side Battery -- or coke side Battery

1 B 10 door Leak Standard, do you believe that that is
2 something that can be achieved by U.S. Steel?

3 **A. I absolutely do. Obviously, nothing in this**
4 **order requires something that U.S. Steel hasn't**
5 **demonstrated that they did in the past. There are**
6 **specific examples in here for a lot of things. You**
7 **know, the compliance rates -- obviously they show that**
8 **things are getting worse. We just need to be better.**
9 **Okay? And so, they have been.**

10 **With Battery B, that's an interesting situation**
11 **because we did -- we looked back. There was a**
12 **five-month period in 2015 where, you know, there's,**
13 **like, two door leaks a month, or something like that,**
14 **something really low. So, they have achieved that in**
15 **the past.**

16 **But it's also interesting to note that Battery B,**
17 **since it has a shed -- Article 21 requires a -- you**
18 **know, they have a specification for door leaks. The**
19 **problem is that we have a procedures manual that**
20 **conflicts with that. And so U.S. Steel kind of gets a**
21 **-- you know, they kind of get a gimme on that.**

22 **They actually don't have to take care of their**
23 **doors, so they haven't been because the procedures**
24 **manual allows them to -- because there's some**
25 **restrictions manual for reading those doors, so that**

1 **keeps them from reading them and complying with**
2 **Article 21. And so, basically, they haven't been**
3 **taking care of those doors.**

4 **And, again, that's speculation because they don't**
5 **have to because they're not subject to those**
6 **provisions for the coke side Battery B, as they are on**
7 **all of the others.**

8 **Q. Now, let's make one thing clear about that.**
9 **So, we've been following the manual, and is that the**
10 **Source Testing Manual?**

11 **A. Yes, that's the Source Testing Manual.**

12 **Q. We've been making use of the Source Testing**
13 **Manual in terms of compliance with the coke side of**
14 **Battery B in that we do not do any -- we do not**
15 **penalize them for exceedances on that side?**

16 **A. For the door leaks, yes.**

17 **Q. For door leaks on that side, even though the**
18 **regulation requires --**

19 **A. You're correct. The regulation requires, you**
20 **know, limits for those door leaks.**

21 **Q. So, is it fair to say that up until now -- up**
22 **until this Enforcement Order, U.S. Steel has had the**
23 **benefit of having door leaks on that side without any**
24 **penalty?**

25 **A. Yes.**

1 **Q. Is it fair to say that if there are fewer**
2 **violations, there would be less emissions?**

3 **A. Absolutely.**

4 **Q. And to take that one step further, if we said**
5 **that there were fewer emissions; SO2, BTEX, and**
6 **benzene -- well, I guess benzene is BTEX.**

7 **A. Yeah, BTEX.**

8 **Q. That that will reduce the health risk to the**
9 **public?**

10 **A. Yes.**

11 **Q. Okay.**

12 **A. We are a Public Health Department, and so our**
13 **main need is for the protection of public health.**

14 **Q. In the Enforcement Order, to your**
15 **recollection, we do not outright shut down the**
16 **facility; am I correct on that?**

17 **A. No, we do not.**

18 **Q. And is there -- beyond the requirement that**
19 **there be improvement, is there any specific threshold**
20 **that they must meet to demonstrate improvement? Did**
21 **we say, "You have to have five percent improvement"?**

22 **A. You have to improve basically by a minimum**
23 **standard of the compliance record for, let's say, 20-**
24 **-- the first quarter of 2018. That's the standard.**
25 **You just have to do better than the first quarter of**

1 2018.

2 **Q. And by first quarter of 2018, what's the**
3 **metric that we use to determine performance for the**
4 **two quarters?**

5 **A. That's the average of compliance for all**
6 **fugitive and COMS emission across the plant.**

7 **Q. Is it just COMS, or are there other**
8 **components to that?**

9 **A. The inspections as well.**

10 **Q. Our inspections?**

11 **A. Our inspections. The 303 Inspections, which**
12 **we can deduce the violations of our standards.**

13 **Q. So, the baseline is the summation of the COMS**
14 **data from the Continuous Opacity Monitors, plus the --**

15 **A. Inspections.**

16 **Q. -- the Karamida Inspections, or third-party**
17 **inspections, --**

18 **A. Yes.**

19 **Q. -- and ACHD Inspections --**

20 **A. Yes.**

21 **Q. -- to determine the compliance percentage?**

22 **A. Yes.**

23 **Q. Is that fair?**

24 **A. Yes.**

25 **Q. So, to your knowledge -- there were other**

1 requirements and I believe there was a requirement for
2 a plan and some other testing. To date, has there --
3 is U.S. Steel in compliance with that order?

4 **A. Yes, they're absolutely in compliance with**
5 **everything required by the order. They had 60 days to**
6 **submit a plan. We've reviewed the plan, we approved**
7 **the plan, and they've initiated the plan.**

8 Q. To your knowledge, is there anything that
9 would -- and just based on your review of the records
10 and your understanding of this facility -- you already
11 mentioned that there was five months in which they had
12 -- were under the 10 leaks?

13 **A. The 10 door leaks, yes.**

14 Q. The 10 door leak requirement. Is there
15 anything, to your mind, that would preclude them from
16 getting six months, as opposed to five months?

17 **A. No. I mean, I don't understand why. I mean,**
18 **it's just basically operation. You know, we're not**
19 **requiring them to install any control devices. Do**
20 **what you've done in the past. You've demonstrated**
21 **that you can do it. So, I really don't understand**
22 **where there's an argument that it can't be done.**

23 Q. I understand. And with respect to the hot
24 idling provisions that are in there, is there -- what
25 triggers that, to your recollection?

1 **A. So, the baseline is going to be the**
2 **compliance average from 2018. So, you know, there's**
3 **going to be a number there. So, what is the**
4 **compliance? And so, you get the first quarter of**
5 **2019, and you have to be better than that. And then**
6 **the second quarter of 2019, you have to be better than**
7 **that.**

8 Q. Better than --

9 **A. Better than that quarter before. So, the**
10 **first quarter of 2019 has to be better than the first**
11 **quarter of 2018. And then the second quarter of 2019**
12 **as to be better than that preceding quarter.**

13 Q. And so, that is just continuing improvement?

14 **A. Yes, showing a continuing improvement.**

15 Q. Okay.

16 **A. It's not just doing it and step out. I mean,**
17 **you have to show that you're continuing to improve.**

18 Q. And we didn't -- we did not impose any
19 requirements as to -- well, let me take that back. We
20 did not tell U.S. Steel what to do in order to reach
21 that compliance?

22 **A. No, they -- we just wanted a plan that we**
23 **would approve, and it was up to them. They had the**
24 **flexibility to determine how to meet the order.**

25 Q. So, basically the success or failure is

1 really dependent upon their plan --

2 **A. Yes.**

3 Q. -- that they provided to the County?

4 **A. Yes. The plan addressed those concerns that**
5 **we had.**

6 Q. How so?

7 **A. We have pushing issues. We have door leak**
8 **issues. And so, the plan shows that they have**
9 **something in place to address those concerns.**

10 Q. To your recollection, did the plan involve
11 the addition of staff?

12 **A. Yes, training and staff.**

13 Q. Training and staff?

14 **A. Yes.**

15 Q. Do you believe that training and staff is
16 sufficient to remedy the problems that we outlined in
17 the order?

18 **A. Absolutely. I mean, -- again, because this**
19 **facility was demonstrating that in the past. I know,**
20 **our inspectors have -- they've observed, in the last**
21 **few years, a degradation in the training and the**
22 **approach to maintenance and, you know, those concerns.**
23 **There's just declining quality control at the**
24 **facility.**

25 Q. Do you recall --

1 MR. WILLIS: And just for the sake of your
2 understanding, Mr. Slater and opposing counsel, I
3 would just like to ask the questions of the witness
4 and then go through the exhibits, just because I don't
5 have the flow to manage them both at the same time.
6 So, I'm going to go through exhibits at the end of
7 each of the witness' testimony just to make it flow a
8 little bit better.

9 HEARING OFFICER SLATER: That's fine with me.

10 BY MR. WILLIS:

11 Q. Okay. Are you aware of the 2016 Consent
12 Judgment --

13 **A. Yes.**

14 Q. -- involving U.S. Steel and the County?

15 **A. Yes.**

16 Q. Were you a part of that?

17 **A. No, I was not.**

18 Q. Okay. What -- you were still with the
19 Department in 2016?

20 **A. I was in Planning.**

21 Q. You were in Planning?

22 **A. Yes.**

23 Q. When did you get elevated to Deputy Director?

24 **A. January 2017.**

25 Q. So, this judgment was already in place when

1 you took over?

2 **A. Yes.**

3 **Q. Would you agree that COMS data is an**
4 **important metric in determining performance?**

5 **A. It is part of the story.**

6 **Q. How is it part of the story?**

7 **A. Well, the COMS -- well, I'm just going to**
8 **tell you. Those are for combustion stacks. And so,**
9 **what they are doing is --**

10 **Q. What's a combustion stack?**

11 **A. So, remember when I talked about earlier how**
12 **we have this coke oven gas? You know, you coke the**
13 **coal, the gaseous volatiles come off, you strip those**
14 **things that you want out of that, and then the**
15 **remaining gas comes back to the battery to heat it.**
16 **And so, it's fired underneath and then, you know, it**
17 **comes up in between the ovens and that stack basically**
18 **is collecting those emissions.**

19 **And so it's got to go somewhere. So, when you're**
20 **burning that coke oven gas, it's still -- even though**
21 **it's cleaned and stripped, it's still relatively dirty**
22 **gas, and it's going to the stacks.**

23 **And so, the COMS, obviously, are measuring the**
24 **emission in that stack. If it was just raw coke oven**
25 **gas, -- I mean, if it was just the processed coke oven**

1 **gas being burned and going up that stack, there really**
2 **shouldn't be any visual emissions that the COMS would**
3 **read. You know, there should be very, very little, if**
4 **any.**

5 **So, what the COMS can do, is it -- it's going to**
6 **give you an indicator of when you have problems with**
7 **the battery itself and how that battery is operating**
8 **as far as the combustion. If you have leaks in this,**
9 **-- so, again, when we go back to that loaf of bread,**
10 **and you have all of those individual ovens. Well,**
11 **between each loaf of bread is an area --**

12 **HEARING OFFICER SLATER: Slice of bread.**

13 **MR. KELLY: Yeah, I'm sorry. Between each**
14 **slice of bread, there's an area underneath and below**
15 **and between where you're combusting this gas to heat**
16 **the oven. And so, over time, you can degrade, and you**
17 **can have holes.**

18 **And so, you're going to get, you know,**
19 **emissions that are coming into the combustion area,**
20 **and you'll have various problems. You can have clogs**
21 **and stuff like that. And then you're going to start**
22 **getting that smoke.**

23 **So, that COM is just basically saying how**
24 **well of shape that this coke oven is. If it hasn't**
25 **been maintained, you're going to have stuff coming**

1 **from the coke in the oven leaking through the walls**
2 **into that combusted gas going up the stack, and you're**
3 **going to have increased emissions.**

4 **And so, the COM is only telling you basically**
5 **whether that -- and this is a little bit of an**
6 **oversimplification because, again, there is damping**
7 **and there are some other things that you can do. But**
8 **it's basically telling you that the coke oven itself**
9 **is in good enough shape, that it's, you know, solid,**
10 **and you shouldn't have many leaks and the emission**
11 **aren't that high.**

12 **So, that's basically half the equation to**
13 **operating a coke oven is, like, whether it's**
14 **fundamentally sound.**

15 **BY MR. WILLIS:**

16 **Q. If -- if -- if the operating -- let's say the**
17 **facility is not operating as it should, would the COMS**
18 **remain as important as they are or were in the past?**

19 **A. Well, again, I hesitate to place a lot of**
20 **importance because, again, that's half the equation.**
21 **You can have a perfectly -- you know, you can have a**
22 **brand new coke oven, and you're COMS are nothing. But**
23 **then you're not taking care of door leaks, pushing,**
24 **and charging, and you can have a ton of other**
25 **emissions. And so, that's the way you have to look at**

1 **it. That's -- I'm sorry. I'll get back to your**
2 **question.**

3 **Q. Yes.**

4 **A. So, there's one thing that the coke oven is**
5 **in shape, and then there's the other thing of how are**
6 **you operating the coke oven. And that's when those**
7 **inspections -- that's that other part of that**
8 **compliance. Like, are the doors leaking? Are there**
9 **emissions from charging, pushing emissions, soaking**
10 **emissions, and things like that?**

11 **Q. And so, --**

12 **A. Even though pushing emissions aren't part of**
13 **this report.**

14 **Q. I was going to say, you would agree though**
15 **that the COMS data is showing improvement since 2016?**

16 **A. Yes. The 2016 order has demonstrated that**
17 **there is improvement. U.S. Steel has met their**
18 **requirements and their plans. They evaluated -- they**
19 **had to evaluate three of the ovens to determine what**
20 **is necessary to basically fix them. And so, they are**
21 **on their way. They are doing it. They met their**
22 **requirements, and so the COMS values have been**
23 **improving.**

24 **Q. I know you weren't involved in the 2016**
25 **Consent Judgment, but you've had an opportunity to**

1 review that, and you've certainly reviewed your own
2 Enforcement Order. Would you say that the Enforcement
3 Order penalizes the same things as the 2016 Consent
4 Judgment?

5 **A. No. I mean, it's very specific. I mean,**
6 **there's no fine and there's no penalty for COMS**
7 **violations. There's only the penalty -- the million**
8 **dollar penalty is only for those inspection**
9 **violations.**

10 Q. Well, how you would explain the difference?
11 Because you would agree that the COMS are used as a
12 part of the metric in the enforcement order in terms
13 of their future compliance. Isn't that the same thing
14 as a penalty?

15 **A. Well, when you're doing a metric on how the**
16 **facility is operating, yeah. I mean, that's not a**
17 **penalty. I mean, that's just part of the metric. And**
18 **so, you're not penalized for that because the 2016 --**
19 **it stipulates. You violate opacity, and you pay a**
20 **penalty. It is just a part of a performance matrix.**
21 **And so, you can't determine the performance of the**
22 **plant without including COMS data with your inspection**
23 **data.**

24 MR. WILLIS: Okay. I'm going start going
25 through some of these exhibits, and we are going to

1 consume a little bit of time because I didn't have the
2 opportunity to staple them prior to assembling them,
3 or while assembling them, but I did provide a stapler.

4 BY MR. WILLIS:

5 Q. If you'll turn to Number One?

6 **A. Volume one?**

7 Q. Volume One, Number One of the U.S. Steel
8 Corporation Hearing Exhibits.

9 HEARING OFFICER SLATER: Is this the
10 Enforcement Order?

11 MR. WILLIS: Yes, sir.

12 HEARING OFFICER SLATER: Okay. I'm making
13 sure I'm looking at the right thing.

14 BY MR. WILLIS:

15 Q. Does this look familiar to you?

16 **A. Yes.**

17 Q. And you executed this order and issued it?

18 **A. Well, I signed it. So, yeah, I enforced it.**

19 **I enforced it, and U.S. Steel executed it.**

20 Q. And again, you felt comfortable with the
21 remedies as being something that could be achieved?

22 **A. Yes.**

23 Q. Okay. Well, I will ask you -- I know that
24 this was done under consultation with you and executed
25 by you, but on Page 27 of that order -- it's under the

1 section of Total Penalty Assessment.

2 **A. On Page 27?**

3 Q. Yes. Number Four says, "Door leaks."

4 **A. Yeah. Okay, yes.**

5 Q. Okay. Now, it says, "Battery B shall reduce
6 -- and we're talking about door leaks -- shall be
7 reduced to be no more than 10 leaks per month based on
8 the yard equivalent reading for the Department's
9 Method 303 Contractor's Inspections."

10 If you could help me deconstruct, who are the
11 Method -- the Department's Method 303 Contractors?

12 **A. Karamida.**

13 Q. Karamida. And what are they inspecting?

14 **A. They're basically there inspecting for the**
15 **NESHAP Requirements.**

16 Q. Okay. And does ACHD Inspectors inspect for
17 NESHAP Requirements?

18 **A. They inspect for Article 21 Requirements.**

19 Q. Okay. So, they're looking at two different
20 things?

21 **A. Yes.**

22 Q. And just almost by definition, -- well, let
23 me ask, do ACHD Inspectors make use of Method Nine?

24 **A. Yes.**

25 Q. Are you familiar with Method Nine?

1 **A. Yes. I was certified for Method Nine for 11**
2 **years.**

3 Q. Have you had the opportunity to do a Method
4 Nine Inspection?

5 **A. Yes, I've done many.**

6 Q. Now, would that be with the County?

7 **A. No. That would be with the State of Georgia.**

8 Q. So, it's been some time since you've done it
9 yourself?

10 **A. It has. I mean, I started my career in**
11 **emissions monitoring and testing, so I'm very**
12 **familiar.**

13 Q. How long did you do that?

14 **A. For almost 10 years or 9 years.**

15 Q. Okay. Are you familiar with Method 303?

16 **A. Somewhat.**

17 Q. Somewhat. Are you familiar with the yard
18 equivalent reading?

19 **A. I'm not that familiar.**

20 Q. Okay.

21 **A. I'm not the person to talk to about that.**

22 Q. Okay. If you look at Number 12 in the
23 booklet that you have in front of you, are you
24 familiar with that document?

25 **A. Yes.**

1 Q. Could you describe that document?

2 A. Yeah. So, this is our Civil Penalty Policy.
3 And so, this basically dictates how we determine
4 calculating our penalties for violations of Article
5 21. Do you want me to go on about why this was
6 developed?

7 Q. Well, -- well, yeah, if you could tell me why
8 it was developed?

9 A. So, when -- in January of 2017, when I became
10 the Environmental Deputy for the Environmental Bureau,
11 you know, one of the things that I was looking at at
12 the time, and also our relatively new Solicitor, Mike
13 Parker, was looking at at the time was we were looking
14 at all of our enforcement procedures, and we both
15 basically had the same concern. You know, we needed
16 to be consistent.

17 We needed to have a very clear identification of
18 the procedure for how we do enforcement. And so, I
19 have five Bureaus, and I'm looking at all of those to
20 make sure that they are consistent, that they are not
21 arbitrary, and that they are, you know, indefensible.
22 And so, you know, we looked at that.

23 And then I believe Mike had been assigned this
24 project to come up with the new Civil Penalty Policy
25 with Assistant Solicitor Jeff Daily. And so, -- and

1 we worked on this, and obviously the EPA's policy, as
2 well as the DEP's policy, and formed this -- as well
3 as Article 21 has very specific provisions on, you
4 know, what needs to be considered for penalties. And
5 so, those were all -- all of those were consulted by
6 Jeff in putting this together.

7 Q. Do you know how long that process took?

8 A. It was a few months. I couldn't tell you for
9 sure.

10 Q. Half a year or six months?

11 A. I --

12 Q. Five months or three months?

13 A. I really honestly don't know because Jeff
14 could have been started, you know, before I was aware
15 of it, or before he started consulting me over the
16 last few months of those provisions. I don't know
17 when he actually began that, so -- this was quite a
18 project. You know, it's a lot of effort to put
19 something together like this.

20 Q. It says that it was -- that it was effective
21 January 10th. Did it exist in any sort of form or a
22 draft form before January?

23 A. Not that we were operating under.

24 Q. And there's an approval signature. Whose
25 signature is that?

1 A. That's Dr. Karen Hacker.

2 Q. And she would have been the party who would
3 have been approving a policy such as this?

4 A. Yes.

5 Q. Did this go through the Board of Health?

6 A. No.

7 Q. Did this go through -- I'm sorry.

8 A. I mean, this is a policy. And so, this is
9 by, you know, direction of the Director. This -- and
10 she approves all of the policies. And so, it's not a
11 regulation.

12 Q. Okay. So, it didn't go through County
13 Council?

14 A. No, it did not.

15 Q. Okay. Because it is a policy, do you know
16 whether or not we must adhere to this policy in every
17 instance?

18 A. We don't have to adhere in every instance.

19 Q. Do you know why that is?

20 A. Because it's not a regulation. A policy is
21 direction, and a lot of times direction is based on
22 interpretation.

23 Q. Do you know if this new policy is any more or
24 less stringent than the prior Civil Penalty Policy?

25 A. I would argue that it's more stringent. I

1 think it's more consistent with our Article 21
2 Requirements, definitely with showing an emphasis on
3 the protection of public health and repeat violations
4 as well.

5 Q. And by repeat violations, how does that play
6 into this policy?

7 A. So, there is a multiplying factor for
8 repeated violations in the policy.

9 Q. So, the more violations you have, the higher
10 your penalty will be?

11 A. Repeat violations -- well, obviously any --
12 from any starting point, the more violations that you
13 have will result in a higher penalty. But if you have
14 those same violations repeating over the quarters,
15 then that's going to increase as well.

16 Q. Just by chance, do you know the -- a
17 regulatory maximum for a penalty?

18 A. It's \$25,000 per day per violation.

19 Q. In the development of this Enforcement Order,
20 are you aware of any of the violations coming to
21 \$25,000?

22 A. No, not even close.

23 Q. Okay. We'll move to -- if you'd go back to
24 Number One and go towards the back of that document?
25 It's going to be Page 19 of 24.

1 A. Okay. What am I looking at 19 of 24?

2 Q. Page 19 of 24, yeah. It's the --

3 A. One, Exhibit One?

4 Q. Yes. It's -- because there's two documents.
5 There is the Enforcement Order, and attached as an
6 exhibit is the 2016 Consent Judgment.

7 A. Am I looking at the 2018 or the 2016?

8 Q. So, it's even further back. It's about half
9 way.

10 A. Am I looking at --

11 MR. PARKER: It's in the attachment -- excuse
12 me. It's -- the attachment to the 2018 Order is the
13 2016 Order.

14 MR. KELLY: Okay. All right. The Re-opening
15 Dispute. Okay, I see that.

16 BY MR. WILLIS:

17 Q. Okay. Do you see Paragraph B?

18 A. Yes.

19 Q. Now, could you read that for me?

20 A. "If, in one party's opinion, there is a
21 dispute between the parties with respect to
22 implementation of this Consent Judgment or the
23 implementation of any provision of the this Consent
24 Judgment, the party may send a written Notice of
25 Dispute to the other party outlining the nature of the

1 dispute and requesting informal negotiations to
2 resolve the dispute.

3 The parties shall make reasonable efforts to
4 informally, and in good faith, resolve all disputes or
5 differences of opinion regarding the implementation of
6 this consent judgment. Such periods of informal
7 negotiations shall not extend beyond 30 days from the
8 date when the Notice of Dispute was received, unless
9 the period is extended by written agreement of the
10 parties. A dispute shall be considered to have arisen
11 when one party receives the other party's Notice of
12 Dispute."

13 Q. Would you agree that U.S. Steel has a dispute
14 with respect to the implementation of this Consent
15 Judgment?

16 A. They have not formally provided a dispute.

17 Q. Well, that's -- that's another question. I
18 would say, is --

19 A. This appears --

20 Q. Would you -- would you agree that there is
21 some dispute with respect to the implementation of the
22 Consent Judgment?

23 A. Yes.

24 Q. Okay. But we did not receive a Notice of
25 Dispute?

1 A. We did not receive a formal Notice of
2 Dispute.

3 Q. Okay. We'll move to Section 16.

4 A. Okay.

5 Q. Are you familiar with this document?

6 A. Yes, I am.

7 Q. Can you identify this document?

8 A. So, this is the Annual Air Quality Data
9 Summary. This gives the -- and this is for 2017.
10 This is the most recent report for which we have air
11 quality data because -- keep in mind that there's a
12 lag until 2018 is completed, we submit our data to
13 EPA, and it's finalized. We don't have that data
14 available.

15 So, 2017 is the most recent year for which we
16 have data. So, this is an Air Quality Summary that
17 shows data for our monitoring network up through 2017.

18 Q. Is there monitoring data with respect to the
19 Liberty Monitor in here as well?

20 A. Yes, there is.

21 Q. Could you identify that please?

22 A. For which criteria pollutant?

23 Q. For SO2.

24 A. For SO2, that would be on Page 14.

25 Q. And correct me if I'm wrong, but it looks

1 like the numbers for the Liberty Monitor are
2 substantially higher than that for the rest of the
3 enumerated -- I'm presuming these are monitors; the
4 Liberty, North Braddock, South Fayette, Lawrenceville,
5 Avalon?

6 A. Yes.

7 Q. Are those all monitoring sites?

8 A. Yes.

9 Q. Okay.

10 A. You'll notice that all of the other monitors
11 are well below the standard, and the Liberty Monitor
12 continues to be above the standard.

13 Q. Do you have any information as to what would
14 cause that monitor to be substantially higher than the
15 other monitors?

16 A. So, SO2 is what's known as a source specific
17 pollutant. You have criteria pollutants. So, other
18 pollutants, like ozone, it's a regional issue. It
19 takes a lot of contribution from over an area because
20 it forms in the atmosphere, and so it's a regional
21 issue.

22 SO2 -- so, when you have a non-attainment
23 designation, which means that you failed to meet the
24 standard, the area is subject to a plan to bring it
25 into standard. SO2 is different. SO2 is source

1 specific. And so, what that means is either you have
2 a single source or a group of closely aligned sources
3 that are producing a lot of SO2 to violate that
4 standard.

5 And so, basically what this is telling us is that
6 the Clairton Coke Works, which the Liberty Monitor is
7 downwind of, is -- has a significant contribution to
8 this monitor. And you'll see that this contribution
9 is, you know, over 50 PPB in some instances. That's
10 quite a gradient.

11 Q. Now, you say that U.S. Steel is a
12 contributor. I don't see that anywhere in here.

13 A. That's not going to be in here. This report
14 only gives you the data from the monitors. It's not
15 going to say where the pollutant comes from or
16 originates.

17 Q. So, it is possible that there are other
18 sources that could combine with U.S. Steel to bring
19 you to this number?

20 A. Well, there are two other U.S. Steel Plants,
21 and, yes, there are some other -- there is other
22 industry, but SO2 doesn't persist that long in the
23 atmosphere. It quickly forms a secondary pollutant,
24 which is a contribution to particulate matter as well.
25 So, that's why the standard is source specific.

1 Q. Could you re- -- could you say that again? I
2 didn't understand.

3 A. Starting with SO2 doesn't persist that long?

4 Q. Yeah, yeah.

5 A. It doesn't persist that long in the
6 atmosphere.

7 Q. How long does it persist?

8 A. I couldn't tell you for sure. It's dependant
9 on -- you know, it may be anywhere from a day to 40
10 days or so. It typically reacts with ammonia fairly
11 quickly, so it doesn't persist that long in -- what it
12 does is it reacts with ammonia quickly to form
13 secondary particulate matter, believe it or not.

14 Of course, U.S. Steel Clairton Coke Works is also
15 a source of ammonia as well. And so, you already have
16 the two sides for that to happen. And so, obviously,
17 it's not reacting that fast because we're still
18 reading a lot of SO2 here.

19 Was that confusing?

20 Q. No, it's not. No, it's fine. I'm trying to
21 determine whether -- whether and to what extent there
22 would be another source in that area which would --

23 A. It's the largest source of SO2.

24 Q. -- impact that?

25 A. I mean, it's -- there's nothing in the same

1 region, so --

2 Q. What about the municipal sewage treatment?

3 A. They're very, very minor compared to this.

4 Q. Are there some in the area?

5 A. And they don't -- okay. Now, you're starting
6 to confuse your pollutants here because sewage
7 treatment plants don't create SO2. They create H2S.
8 Of course, when H2S is burned, it creates SO2. So,
9 this is a measure of SO2, and sewage treatment plants
10 create zero SO2. They do create H2S, which is that
11 rotten egg smell.

12 Q. So, H2S doesn't naturally convert to SO2 in
13 the atmosphere?

14 A. Oh, it can. Yes, it can.

15 Q. It can?

16 A. Yeah.

17 Q. So, there is some component that can be
18 attributable to other sources based on the conversion
19 from H2S to SO2? Is that a possibility?

20 A. It's a possibility, yes.

21 Q. Okay. That --

22 A. But that's very minor compared to the
23 emissions of H2S from -- from the Clairton Coke Works
24 versus -- H2S and SO2 from the Clairton Coke Works
25 versus the H2S from any types of sewage treatment

1 plants.

2 Q. That conversion from H2S to SO2, is that a
3 catalytic process? Is there a required -- is
4 something required to cause that to happen, or that a

5 --

6 A. Well, combustion.

7 Q. Okay.

8 A. But it -- naturally, H2S is not a stable
9 compound. It only persists in the atmosphere from 1
10 to 40 days, so --

11 Q. Okay.

12 A. And then it's just going to break down.
13 There are a lot of things in the atmosphere, secondary
14 organics, that will, you know, combine and break it
15 down.

16 Q. Okay. And with respect to particulate
17 matter, is that also discussed --

18 A. Yes, it is.

19 Q. -- in this? Could you direct me to that?

20 A. Well, particulate matter -- fine particulate
21 matter in 2.5 microns is on Page Eight.

22 Q. And again, correct me if I'm wrong, but it
23 looks as though the Liberty Monitor is at the top of
24 that list in terms of the annual standard -- against
25 the annual standard for 12 micrograms per cubic meter?

1 A. Yes. And you'll see all of the other
2 monitors measuring fine particulate matter are below
3 the standard and are all continuing to trend downward,
4 with the exception of a minor increase in 2017.

5 But you'll see that the Liberty Monitor has been
6 increasing. The first year of increase, after decades
7 of improvements, started in 2014, and there's a
8 continued increase in the particulate matter. The
9 Liberty Monitor is in a location directly downwind
10 from the Clairton Coke Works.

11 Q. And as we've discussed already, Allegheny
12 County is currently in non-attainment for SO2 and PM
13 2.5 --

14 A. Yes.

15 Q. -- in the same region of this Liberty
16 Monitor?

17 A. Yes.

18 Q. And the Liberty Monitor is primarily impacted
19 by the operations at U.S. Steel?

20 A. Yes.

21 Q. Okay.

22 A. That's why it is located where it is located.

23 Q. I'm sorry, what's that?

24 A. That's why it is located where it is located.

25 Q. The monitor?

1 A. Yes.

2 Q. The monitor was specifically placed there
3 because of U.S. Steel?

4 A. From what I understand. I wasn't here when
5 the monitor was located.

6 Q. Do you remember when --

7 A. But the SO2 monitor location would be
8 required by EPA regulation to measure the facility at
9 that location.

10 MR. WILLIS: Okay.

11 HEARING OFFICER SLATER: Let's go ahead and
12 take our mid-morning break.

13 MR. WILLIS: Do you want to take a break?

14 HEARING OFFICER SLATER: Yeah. Or are you --
15 is this a decent stop?

16 MR. WILLIS: We can take a break. I have,
17 like, three additional exhibits.

18 HEARING OFFICER SLATER: Okay. Yeah, let's
19 take a break and come back at about 10:50. It's
20 around 10:40 now.

21 (The hearing recessed at 10:40 a.m. and
22 reconvened at 10:57 a.m.)

23 HEARING OFFICER SLATER: Let's go back on the
24 record then.

25 BY MR. WILLIS:

1 Q. Okay. So, we left off at introducing
2 additional exhibits, and I wanted you to speak to a
3 few of them. This is one that opposing counsel does
4 not have that I've just provided, and I will show you
5 a copy. That will be Exhibit Four (sic). Okay. Are
6 you familiar with that document?

7 A. Yes, I am.

8 Q. And what's it titled?

9 A. Charcoal Tube Sampling Results.

10 Q. Okay. And we've talked about some of the
11 levels and concentrations of the things like BTEX?

12 A. Yes.

13 Q. Does this give us any guidance as to the
14 amount or form of BTEX that is coming up at those
15 monitors?

16 A. It does. The last page in this presentation
17 will give you an idea of that. This is a --
18 basically, it's a VOC Toxics Study that was done at
19 Avalon, which is a monitor that used to monitor the
20 downwind emissions from the Shenango Coke Facility,
21 and this is also -- and then the other -- the Liberty
22 Monitor, which is located at South Allegheny High
23 School, measures the downwind toxic concentration from
24 the Clairton Coke Works.

25 Q. And to your recollection, do you recall the

1 operations that existed at Shenango prior to its
2 closing?

3 A. It was -- it was a coking operation. They
4 had one battery.

5 Q. They had one?

6 A. Yeah.

7 Q. Were you familiar with any of the enforcement
8 activity with respect to Shenango?

9 A. I wasn't here at the time, but there was
10 significant activity with Shenango in the past.

11 Q. And why do you think that was, or why do you
12 recall that being the case?

13 A. From what I understand, they were -- it was
14 just that they were a problem child. Enforcement was
15 the only way to get them to do what they had to do.

16 Q. Okay. And you mentioned that Avalon was the
17 monitor that was picking up the -- primarily the
18 emissions from that facility?

19 A. Yes. It is directly across the river, and it
20 is located directly downwind of the monitor.

21 Q. Okay.

22 A. And modeling was used to locate where that
23 monitor was as well.

24 Q. Okay. And in comparison and as we look at
25 this, what are we learning here with respect to

1 benzene, for example?

2 A. So, if you look at the benzene value, these
3 are two coke facilities in -- you know, located in
4 populated areas. If you look at the maximum readings,
5 the benzene from South Allegheny is 9.2, and I believe
6 that's PP- -- PPD. I don't think that's been
7 converted yet to PPB.

8 Q. Pre-precipitation would suggest PPD?

9 A. Yeah.

10 Q. Is that correct?

11 A. Yes, it does. Yes, PPB. So, that's 9.25
12 parts per billion located at the Liberty Monitor
13 monitoring the coke facility. The other coke facility
14 -- and that monitor that's actually closer to Shenango
15 was only measuring 1.6. Both of those values are to
16 be -- you know, are values to be concerned about. But
17 9.2 versus 1.6 shows you that there's a significant
18 gradient between the two monitors.

19 Q. Now, the distance to the facility, does that
20 make a difference?

21 A. Yes, it does.

22 Q. How so?

23 A. Well, benzene is a -- it's a toxin, but it's
24 also a fairly reactive compound, so it does really --
25 you know, it's going to -- the farther you are,

1 obviously, it's going to disperse, and it's going to
2 dilute. But also, benzene is fairly reactive as well.
3 That's why it's toxic. I mean, it reacts to your
4 cells, and it does a lot of damage.

5 Q. Okay. And what's the take-away from the
6 numbers that we're seeing here? I mean, I'm not a
7 scientist, but it looks as though the numbers at South
8 Allegheny are significantly higher than that at
9 Avalon; is that correct?

10 A. Yes. They're very significantly higher.

11 Q. Can you just qualify that? I mean, is it --

12 A. Well, I mean, I wouldn't want to be breathing
13 it. But this is something -- we had an epidemiologist
14 in our program before she -- she left and she was
15 working on this and she was probably evaluating the
16 health risk associated with that. That's something
17 that we will look at at a future date as well, of what
18 -- of how does that relates to this.

19 Q. Have you any understanding of the health
20 risks with respect to benzene? I mean, do you --

21 A. It's just cancer. I mean, that's one of the
22 worst, so --

23 Q. I'm sorry?

24 A. It's cancer. I mean, it's benzene. It's
25 hard to look at these numbers because those values

1 that I was just discussing is a maximum reading.

2 You'll see that the annual average is 1.2 PPB for the
3 South Allegheny Monitor, which is at Liberty, and .239
4 at the Avalon monitor.

5 I'm not an epidemiologist. I can't show you
6 that. A cancer risk is a risk that's going to be a
7 chronic exposure over 20 years, and so you can't infer
8 what that risk is from this chart. However, you can
9 see that those are elevated values.

10 Q. Is there a way --

11 A. What -- this does not give you is the EPA's
12 isis levels of, you know, exposure and risk.

13 Q. Do you know what the levels would be for --

14 A. I really don't know.

15 Q. Okay.

16 A. I'm not an epidemiologist. Even if I knew
17 what the levels were, I really wouldn't want to relate
18 this to risk. It's just that these are elevated
19 values.

20 One of the take-aways from this is that the
21 Avalon Monitor says the maximum is 1.6 parts per
22 billion. That's measuring -- that's not even ambient.
23 That's elevated. That is another coke facility. And
24 then the maximum reading at Liberty is 9.258 from
25 that. Because when Shenango shut down, you'll see at

1 the bottom of this chart or table in 2016 the Avalon
2 value was down to .487. And so, that's probably
3 closer to a background that would be associated with
4 minor industrial and typical traffic transportation
5 contributions to benzene.

6 Q. Is there anything that you can recall near
7 the Avalon Monitor that would contribute to that, that
8 number specifically, any other industrial facility?

9 A. As large as -- I'm not specifically familiar
10 with -- I know there's a number of industrial
11 facilities. As far as their benzene contributions, I
12 cannot speak directly to that.

13 Q. Okay. I'm going move to the map. I think
14 you -- we should mark that as ACHD One.

15 HEARING OFFICER SLATER: The map, or --

16 MR. WILLIS: Yeah. No, the study.

17 HEARING OFFICER SLATER: Okay.

18 BY MR. WILLIS:

19 Q. We're moving onto ACHD Two. Does this look
20 familiar to you?

21 A. Yes. That's the City of Clairton and the
22 Clairton Coke Works.

23 Q. And in relation to the City of Clairton, if
24 you were to estimate, what's -- what's the size of
25 that facility? I know it's a satellite image, but

1 could you roughly estimate the size of what you're
2 seeing there?

3 A. I know, top to bottom, the facility is
4 pushing three miles. That's -- you know, don't take
5 me at my word for that, but I know it's a very large
6 facility, and it covers over a very large area. I
7 know it is North America's largest coking facility.

8 Q. With how many batteries?

9 A. Ten batteries.

10 Q. Okay. And just to circle back, with respect
11 to our Enforcement Order, the worst case scenario, how
12 many batteries would have to go off line?

13 A. Two.

14 Q. Out of 10?

15 A. Out of 10.

16 Q. Okay. We're going to go with ACHD Three. Do
17 you know who Jim -- James Thompson is?

18 A. He was my predecessor. He was the previous
19 Deputy Director of the Environmental Health Bureau
20 prior to my -- my position.

21 Q. Okay. Do you know what we're looking at
22 here? I know it says, "H2S NRV," but do you know what
23 this relates to?

24 A. Yes. So, from what I understand -- I wasn't
25 here during this time, and you can ask Jayme Graham

1 when you question her specifically about how this came
2 about. So, what this is -- these are modeling results
3 that were submitted by U.S. Steel. Apparently, there
4 was -- the Allegheny County Health Department
5 attempted an enforcement.

6 I don't know if it was an order or if it was just
7 a penalty against U.S. Steel for violations at the H2S
8 monitor at Liberty. And in response, U.S. Steel
9 provided this modeling, dispersion modeling, -- just
10 the outputs, not the inputs -- showing from their
11 modeling demonstrating that the Clairton Municipal
12 Sewage Treatment Plant had a more significant impact
13 than U.S. Steel.

14 Q. Now, as an engineer, as a scientist, and as
15 somebody who has worked in this area for many years,
16 does the data on this sheet seem sufficient to you to
17 satisfy your understanding of what H2S impacts are?

18 A. No, it doesn't. It really doesn't. When I
19 received this -- at the time, you know, there were
20 some concerns about complaints for H2S. Again, that's
21 that rotten egg smell. And before I had a chance to
22 talk to my monitors and even the water pollution
23 control people about, you know, the impacts of these
24 facilities, you know, this was all I had at the time.

25 Because I had asked our Planning people, "What do

1 you have on the emissions?" and they had sent me this
2 without sending me the emissions inventory data. And
3 then I got an opportunity to review the emissions
4 inventory data, and this -- it doesn't pass the
5 eyeball test that this 15 pound per hour of SO2
6 emissions from, you know, this facility compared to
7 the contributions from Clairton Coke Works. It just
8 does not make sense.

9 Q. Okay. All right. And you've reviewed the
10 emissions inventory for the U.S. Steel at Clairton?

11 A. It's been a long time.

12 Q. It's been a long time?

13 A. Yeah. I couldn't give you specific numbers
14 about the emissions data.

15 Q. Okay. To your understanding, does that
16 emissions data reflect violations to opacity
17 standards? Are those included in the emissions data?

18 A. No. You're talking about two different
19 things. So, the opacity standard, that's --

20 Q. Well, any violations? Does that contemplate
21 any violations of exceedances?

22 A. The opacity standard?

23 Q. Yeah.

24 A. For --

25 Q. For the emissions inventory. Let me take it

1 back one --

2 A. Well, you're talking about two different
3 things here, so --

4 Q. Well, let me take it back one step. The
5 emissions inventory does contemplate leaks for the
6 doors; am I correct?

7 A. There might -- there are probably some
8 emission factors that contemplate a specific amount of
9 leaks subject to the rule. And so, when you develop
10 the rule, and you -- those emissions that you use in
11 the SIP development are assuming that you're meeting
12 -- is that what you're talking about?

13 Q. Yes.

14 A. They're assuming that you're meeting that
15 rule. And so, the regulations say you're allowed so
16 many leaks. And so, that's what the regulation --
17 that's what you set. And so, when you do the
18 emissions modeling, you take into consideration how
19 many of those leak. But if there are more than that,
20 the modeling and the emissions inventory doesn't take
21 that into consideration if you're violating it.

22 Q. Okay.

23 A. Does that make sense?

24 Q. Yeah, it does. And that emissions inventory
25 data is, as you mentioned earlier, used as a part of

1 the SIP process?

2 **A. It's the starting point.**

3 Q. The starting -- I'm sorry, the starting
4 point?

5 **A. Yes, the starting point.**

6 Q. And to the extent that it does take into
7 consideration the fact that there is a leak, does it
8 take into consideration the quality of the leak, which
9 is to say, does it take into consideration duration of
10 a leak or opacity of a leak?

11 **A. I know of no way that that could be possible.**
12 **I mean, a leak can be just a whisp of smoke or half a**
13 **door open. I mean -- so, no. There's -- from what I**
14 **understand, there's -- you know, I'm not familiar**
15 **enough with that process, but it does not make sense**
16 **that they would take the quali- -- well, the quantity**
17 **of the leak is what you're getting at, correct?**

18 Q. Yeah, yeah.

19 **A. Yes.**

20 Q. Well, quantity and quality, I guess.

21 **A. Yeah.**

22 Q. The fact that there's a leak does not --

23 **A. Yes. It's, like, binary. It's yes or no.**

24 Q. I see.

25 **A. And the regulation says you're allowed leaks,**

1 **and then that's where the emissions factors will be**
2 **subject to, assuming that you're meeting the rule.**

3 MR. WILLIS: Okay. I have no further
4 questions.

5 HEARING OFFICER SLATER: Mr. Dausch, do have
6 you some questions for Mr. Kelly?

7 MR. DAUSCH: I do.

8 HEARING OFFICER SLATER: Actually,
9 Mr. Dausch, before you get to those questions, is
10 there any objection to the admission of ACHD One, Two,
11 and Three, or were those the same as identified in
12 ACHD prehearing, one through --

13 MR. DAUSCH: There's no objection.

14 HEARING OFFICER SLATER: No objection?

15 MR. DAUSCH: No, sir.

16 HEARING OFFICER SLATER: Okay. ACHD One,
17 Two, and Three are admitted.

18 MR. DAUSCH: And should we mark the Joint
19 Exhibits One and Two? I'm not sure if we actually
20 marked them.

21 HEARING OFFICER SLATER: Yeah. Let me mark
22 those. I forgot which one -- is the one that's only
23 one page Joint Exhibit --

24 MR. DAUSCH: I'm not sure it matters which
25 one is One and Two.

1 HEARING OFFICER SLATER: Okay.

2 MR. DAUSCH: Just as long as they have a
3 number.

4 HEARING OFFICER SLATER: All right. I'll
5 mark the one that's only one page as J1, and then the
6 one that's two pages can be J2. So, J1 and J2 are
7 admitted.

8 MR. DAUSCH: And just for the record, those
9 are two -- One and Two are emails that are
10 communications between counsel regarding stipulations
11 in the hearing.

12 Mr. Slater, can I proceed?

13 HEARING OFFICER SLATER: Yes, you may.

14 CROSS-EXAMINATION

15 BY MR. DAUSCH:

16 Q. Mr. Kelly, the Clairton Plant is subject to
17 the most stringent regulations in the entire country?

18 **A. Yes.**

19 Q. And those regulations include County
20 Regulations?

21 **A. Yes.**

22 Q. They also include Federal Government
23 Regulations?

24 **A. Yes.**

25 Q. And the County enforces both of those, both

1 the State -- or both the County and the Federal
2 Regulations?

3 **A. Yes.**

4 Q. And those regulations that you mentioned
5 earlier are in a permit?

6 **A. Yes.**

7 Q. Title Five Operating Permit is a permit that
8 would apply to the Clairton Plant?

9 **A. Yes.**

10 Q. That's a comprehensive document that would
11 have both the Federal and the County Regulations in
12 it, correct?

13 **A. Yes.**

14 Q. And one of the things that the County does is
15 it uses its enforcement section to enforce those
16 regulations?

17 **A. Yes.**

18 Q. And that's what we did -- or that's what was
19 done to put us in this hearing, correct?

20 **A. Yes.**

21 Q. There was an Enforcement Order, correct?

22 **A. Yes.**

23 Q. And that Enforcement Order includes a
24 monetary penalty?

25 **A. Yes.**

1 Q. It also includes a corrective action?

2 A. Yes.

3 Q. And the corrective action is a little bit
4 different because it requires U.S. Steel to meet
5 certain things that are in the order, correct?

6 A. Yes.

7 Q. And those certain things are things that the
8 County came up with and put in the order?

9 A. Well, we didn't come up with those. I mean,
10 Article 21 gives us a pretty broad discretion, so I
11 wouldn't determine that we just came up with that.

12 Q. You mentioned a door leak standard that's in
13 the Enforcement Letter?

14 A. Yes.

15 Q. The County came up with that door leak
16 standard. It's not in Article 21, correct?

17 A. You are correct.

18 Q. The County came up with the baseline
19 calculation that you mentioned earlier, correct?

20 A. Yes.

21 Q. The Enforcement Order includes violations of
22 fugitive emissions sources, correct?

23 A. Yes.

24 Q. But not all of them at the batteries, right?

25 A. Yeah. I believe -- I'm not sure. Soaking

1 and traveling and pushing are not part of that.

2 Q. Right. And so, when you were explaining to
3 Mr. Slater earlier with the slices of bread --

4 A. Yes.

5 Q. -- and one door opens and coke is pushed out,
6 --

7 A. Yes.

8 Q. -- that's pushing emissions, correct?

9 A. That is. Those are pushing emissions.

10 Q. Pushing emissions -- there are no violations
11 of pushing emissions in the Enforcement Order,
12 correct?

13 A. Yes. Wait a minute. Yeah, I believe so.

14 Q. I'm correct?

15 A. Yeah. That's specific. So, pushing and
16 soaking, I believe, are specific, but they are not
17 part of this case.

18 Q. You also mentioned battery stacks?

19 A. Yes.

20 Q. Okay. Each battery -- there are 10 batteries
21 at Clairton?

22 A. Yes.

23 Q. Each battery has a stack that's specific to
24 the battery?

25 A. Yes, for combustion emissions.

1 Q. All right. And the stack is the large
2 chimney structure that you could see if you were
3 driving down the road?

4 A. Yes.

5 Q. Okay. And those stacks you have described
6 are Continuous Opacity Monitors?

7 A. Yes, COMS, Continuous Opacity Monitors.

8 Q. And that's a piece of equipment that takes a
9 recording on almost a second-by-second basis, correct?

10 A. Yes.

11 Q. Okay. And it takes a recording, and it
12 compares the data that's captured by the equipment to
13 a standard that's in Article 21 or in a Federal
14 Regulation, correct?

15 A. Yes.

16 Q. Okay. And there are no battery stack
17 violations in the Enforcement Order, correct?

18 A. That's correct.

19 Q. Okay. You mentioned that earlier this year
20 the Department came up with a new Penalty Policy?

21 A. Yes.

22 Q. This was a policy to make it more clear what
23 its procedures would be for enforcement actions,
24 correct?

25 A. Yes.

1 Q. It was significantly more stringent than what
2 the Department had been doing in the past, correct?

3 A. It depends on the scenario. Because I know
4 when Jeff had created the penalty policy, they ran the
5 policy through all the previous years' penalties, and
6 some of those penalties would have actually reduced in
7 value.

8 Q. The testimony earlier was that the goal was
9 to be more stringent; is that correct?

10 A. The goal was to be more specific to Article
11 21 and protective of public health.

12 Q. And was the goal to be more stringent?

13 A. If that's what's necessary to protect public
14 health, yes.

15 Q. Do you, on occasion, make presentations to
16 the Board of Health?

17 A. Yes.

18 Q. And have you done that with respect to this
19 Penalty Policy?

20 A. Yes. I gave an update on the Penalty Policy.

21 Q. And when you give updates to the Board of
22 Health, do you try to be honest?

23 A. Yes.

24 Q. Do you try to be accurate?

25 A. Yes.

1 Q. Do you recall earlier this year giving the
2 update on the Penalty Policy?

3 A. Yes.

4 Q. Well, let's look at that document. Could you
5 look at Exhibit Two please?

6 HEARING OFFICER SLATER: This is U.S. Steel
7 Exhibit Two?

8 MR. DAUSCH: This is U.S. Steel Exhibit Two.

9 HEARING OFFICER SLATER: Okay.

10 BY MR. DAUSCH:

11 Q. And on the seventh page of this document, it
12 should be on the right-hand side, there's a Section E.

13 A. There are no page numbers, so --

14 Q. Right.

15 A. Okay.

16 Q. If you look at the bottom right of the page,
17 you'll see, "E, Update of Air Quality."

18 A. Yes.

19 Q. All right. And so, it says, "E, update of
20 Air Quality Civil Penalty Policy," correct?

21 A. Yes.

22 Q. And we looked at it earlier. The Penalty
23 Policy became effective on January 10th of 2018,
24 correct?

25 A. Yes.

1 Q. The Enforcement Order that's at issue in this
2 case covers three separate quarters, correct?

3 A. Yes.

4 Q. The first quarter is the third quarter of
5 2017?

6 A. Yes.

7 Q. Obviously, this new Penalty Policy wasn't
8 effective in that quarter?

9 A. No, it was not.

10 Q. The second quarter that's at issue in this
11 penalty is the fourth quarter of 2017, correct?

12 A. Yes.

13 Q. The new Penalty Policy was not in effect when
14 that fourth quarter of 2017 occurred; is that fair?

15 A. That is fair.

16 Q. Okay. The third quarter that's at issue in
17 this enforcement action is the first quarter of 2018,
18 correct?

19 A. Yes.

20 Q. And when that quarter started, the Penalty
21 Policy was not effective; is that correct?

22 A. When it started, yes.

23 Q. Okay. Do you recall telling the Board of
24 Health that one of the purposes of the new Penalty
25 Policy was to increase deterrents?

1 A. Yes.

2 Q. And the idea is you make a Penalty Policy
3 publicly available so that companies understand what
4 kind of penalties could exist in certain situations,
5 right?

6 A. Yes.

7 Q. And you make it publicly available, so that
8 the regulated industry has advanced notice of what can
9 happen in an enforcement action?

10 A. Yes.

11 Q. Obviously, if a Penalty Policy is not in
12 effect, the regulated industry wouldn't have that
13 advanced notice; is that fair?

14 A. That is fair. But Article 21 was also in
15 effect, and these are violations of Article 21.

16 Q. Well, you also told the Board of Health that
17 you were trying to create increased deterrents for
18 future violations, correct?

19 A. Yes.

20 Q. And at this point, we were into the last
21 quarter of three quarters that are at issue in this
22 case?

23 A. Yes, that is correct.

24 Q. Okay. And the Department still used this new
25 2008 (sic) Penalty Policy for the Enforcement Order

1 that's in this case?

2 A. 2018.

3 Q. The 2018 Penalty Policy?

4 A. Yes.

5 Q. Correct?

6 A. Yes.

7 Q. One of the things that was changed in this
8 new Penalty Policy that didn't exist for a majority of
9 the quarters that are at issue, is the Department
10 changed its violation target; is that correct?

11 A. Yes.

12 Q. Okay.

13 A. Well, that's an interesting way to
14 characterize it, so --

15 Q. Well, didn't you characterize it that way for
16 the Board of Health earlier this year?

17 A. I did.

18 Q. Okay.

19 A. It's not spelled out in the policy, but yes.

20 Q. And what you told the Board of Health is that
21 the new Penalty Policy has a violation target of 99
22 percent compliance, correct?

23 A. Yes.

24 Q. And before that, the prior policy that the
25 Department had looked for a violation of target

1 between 85 percent and 95 percent?

2 **A. Yes.**

3 Q. That's a big increase?

4 **A. Yes.**

5 Q. It's a big increase to go and say to the
6 regulated public, "We're looking for 85 to 95 percent
7 compliance," and then one day, "We're looking for 99
8 percent compliance."

9 Is that fair?

10 **A. It depends on what you mean by fair. Again,
11 Article 21 has always been in effect. So, if you're
12 just assuming that you can violate to a certain amount
13 and never be in -- do you see what I'm saying? I mean
14 --**

15 Q. I don't, sir.

16 **A. All right.**

17 Q. What I'm asking you about is violation targets
18 that you told the Board of Health about.

19 **A. Yes. I think it's completely fair because
20 apparently our violation targets before weren't
21 working because this monitor is -- continues to
22 decrease in compliance.**

23 Q. And so, let's say we use the violation target
24 that existed in 2017 when two of the three quarters at
25 issue occurred.

1 **A. Yes.**

2 Q. U.S. Steel is substantially above those
3 violation targets?

4 **A. I couldn't tell you for sure what those
5 numbers were. I'm not involved in the calculation of
6 those, so I can't say yes or no, they were
7 significantly above those violation targets.**

8 Q. Sir, you signed this Enforcement Order?

9 **A. I did sign this Enforcement Order.**

10 Q. And you don't know U.S. Steel's compliance
11 percentage for the three quarters that are at issue?

12 **A. Well, I do. I have the numbers, but I'm not
13 saying -- I know what their compliance percentages
14 were for the quarter -- for what this was. I don't
15 know if it was significantly above, you know, what we
16 were previously doing.**

17 Q. Let's not say significantly.

18 **A. Yeah.**

19 Q. We can agree that they were above the 85 to
20 95 percent range that was the violation target,
21 correct?

22 **A. That's across the facility, yes. But we have
23 certain instances of Article 21 where the violations
24 were below that.**

25 Q. And so, across the facility, U.S. Steel was

1 above the violation target that existed in the third
2 quarter of 2017?

3 **A. Yes.**

4 Q. It was above the violation target that
5 existed in the fourth quarter of 2017?

6 **A. Yes.**

7 Q. And it was above the violation target that
8 existed when the first quarter of 2018 started?

9 **A. Facility wide -- so, we were looking for 99
10 percent, and facility wide it was, what, 98.152. So,
11 no.**

12 Q. When the first quarter of 2018 started --

13 **A. The first quarter of 2018 started --**

14 Q. The new Penalty Policy wasn't effective,
15 correct?

16 **A. The Penalty Policy becomes -- I mean, when we
17 calculate the Penalty Policies, it's effective the day
18 we calculate those policies.**

19 Q. That wasn't my question, sir.

20 **A. Okay.**

21 Q. When the first quarter of 2018 started, that
22 Penalty Policy wasn't in effect?

23 **A. Yes, when the quarter started.**

24 Q. It was not in effect, correct?

25 **A. Yes, it was not in effect on January 1st.**

1 Q. And you told Mr. Willis that the public
2 didn't have any advanced notice of a draft of that
3 that policy before it became effective?

4 **A. No.**

5 Q. And so, the first time that it became
6 effective was after the third of three quarters
7 started in this case?

8 **A. Yes.**

9 Q. Okay. When that first quarter of 2018
10 started, the Department's violation target that you
11 told the Board of Health was between 85 and 95
12 percent; is that correct?

13 **A. Yes.**

14 Q. And the Department calculated U.S. Steel's
15 compliance for the first quarter of 2018, didn't it?

16 **A. Yes.**

17 Q. Above 98 percent?

18 **A. Yes, for the entire facility.**

19 Q. Can we agree that above 98 percent is
20 significantly above the 85 to 95 percent target that
21 existed at the beginning of 2018?

22 **A. We can agree that those numbers are larger,
23 yes.**

24 Q. You told the Board of Health that this new
25 and more stringent Penalty Policy that was being

1 created at the beginning of 2018 was going to increase
2 penalties by 60 percent on average?

3 **A. On average over the calculations for the year**
4 **before.**

5 Q. One of the things that the Board of Health
6 wanted to know when you told them about this 99
7 percent compliance range that had changed was why not
8 100, right?

9 **A. Yes.**

10 Q. And you told them that nowhere is 100 percent
11 compliant?

12 **A. Yes.**

13 Q. And that's a fair statement?

14 **A. Yes.**

15 Q. You have a mechanical engineering background,
16 correct?

17 **A. Mhmm (affirmative). You can have**
18 **breakdowns, yes.**

19 Q. And you understand that the U.S. Steel's
20 Clairton Plant has thousands of inspections and
21 observations each day?

22 **A. Yes.**

23 Q. I mean, there are hundreds of doors, there
24 are hundreds of lids, there are hundreds of off-takes
25 that are all inspected?

1 **A. Yes.**

2 Q. Right?

3 **A. There are 6300 emission points.**

4 Q. Sixty-three hundred emission points that are
5 all equipment, correct?

6 **A. Yes.**

7 Q. And equipment can break down?

8 **A. Yes.**

9 Q. Okay. And that's why nowhere is 100
10 compliant; is that correct?

11 **A. Yes.**

12 HEARING OFFICER SLATER: So, did you say
13 63,000 emissions points or 6300?

14 MR. KELLY: Sixty-three hundred.

15 HEARING OFFICER SLATER: Sixty-three hundred,
16 okay.

17 MR. KELLY: Approximately.

18 BY MR. DAUSCH:

19 Q. I want to talk a little bit about the
20 baseline calculation that you were explaining earlier,
21 okay?

22 **A. That I was explaining?**

23 Q. Did you talk about the baseline calculation
24 in the Enforcement Order and how it works?

25 **A. Yeah. The baseline was the compliance rate**

1 **for 2018. I didn't talk about the calculation. I**
2 **just said, specifically, it was --**

3 Q. Let's talk about the baseline then?

4 **A. Okay.**

5 Q. The Enforcement Order includes a requirement
6 that first the Department calculated a baseline
7 calculation?

8 **A. Yes.**

9 Q. Okay. And what the Department did was it
10 looked at the entire compliance rate for all of the
11 batteries at Clairton for the first quarter of 2018?

12 **A. Yes.**

13 Q. Okay. And what it did was it looked not just
14 at the fugitive emissions points that are at issue in
15 the Enforcement Order, but all of the different
16 emission points, correct?

17 **A. Yes.**

18 Q. And so, the baseline calculation includes
19 things like pushing where there are no violations in
20 the Enforcement Order, correct?

21 **A. Yes.**

22 Q. That calculation includes things like
23 soaking, where there are no violations in the
24 Enforcement Order?

25 **A. Yes.**

1 Q. Okay. Half of that baseline calculation
2 includes battery stack compliance, correct?

3 **A. Yes.**

4 Q. And that's the COMS that we talked about
5 earlier?

6 **A. Yes.**

7 Q. There are zero battery stack violations in
8 the Enforcement Order, correct?

9 **A. The 2018 Enforcement Order, correct.**

10 Q. Yes. Battery stack and COMS are 50 percent
11 of the baseline in the Enforcement Order?

12 **A. Yeah, approximately 50 percent.**

13 Q. Okay. And the baseline calculation the
14 Department came up with was over 98 percent?

15 **A. Slightly over 98 percent.**

16 Q. Okay. Baseline is an important number in the
17 Enforcement Order, correct?

18 **A. Yes, it is important.**

19 Q. Because the way the Enforcement Order works
20 is you take this baseline calculation of above 98
21 percent, and then U.S. Steel has to beat that in the
22 first quarter of 2019?

23 **A. Yes.**

24 Q. And then whatever it had in the first quarter
25 of 2019, it has to beat that again in the second

1 quarter of 2019?

2 **A. Correct.**

3 Q. Okay. And if it doesn't do either of those,
4 it has to hot idle two batteries?

5 **A. Yes.**

6 Q. When the Department issued the Enforcement
7 Order, it didn't even know what the baseline
8 calculation was, did it?

9 **A. I couldn't tell you for sure because I wasn't
10 the one who calculated that, so --**

11 Q. Well, you signed the Enforcement Order,
12 right?

13 **A. I did, but --**

14 Q. And when you signed it, you didn't know what
15 the baseline calculation was?

16 **A. Baseline was the performance from 2018 with a
17 significant number of violations. That was the
18 baseline.**

19 Q. Sir, my question was very simple.

20 **A. Yeah.**

21 Q. When you signed the Enforcement Order, --

22 **A. Yes.**

23 Q. -- you didn't know what the baseline
24 calculation was?

25 **A. Not with the calculation.**

1 Q. Occasionally, the Department gets media
2 inquiries; is that fair?

3 **A. Yes.**

4 Q. Something like an Enforcement Order that
5 includes a million-dollar penalty --

6 **A. Yeah.**

7 Q. -- is something that would cause these media
8 inquiries?

9 **A. Yes.**

10 Q. And that happened in this case, and there's
11 media here today?

12 **A. Yes.**

13 Q. Okay. Would you look at Exhibit 54 in your
14 second binder? And, sir, because this is an email
15 chain, we're going to start at the back and work our
16 way forward because that's how the email chain works.
17 Okay?

18 **A. Okay.**

19 Q. Do you see the first email that's from August
20 28th of this year?

21 **A. Yes.**

22 Q. August 28th would have been about two months
23 after the Enforcement Order was issued, correct?

24 **A. Yes.**

25 Q. And this email was from Don Hoppe. Do you

1 see that?

2 **A. Yes.**

3 Q. Mr. Hoppe is a reporter for the Post Gazette?

4 **A. Yes.**

5 Q. The email is to Ryan Scarpino, correct?

6 **A. Yes.**

7 Q. Mr. Scarpino handles media inquiries for the
8 Allegheny County Health Department?

9 **A. Yes. He's the Public Information Officer.**

10 Q. Okay. Mr. Hoppe says that U.S. Steel is
11 claiming that it has a higher than 98 percent
12 compliance rate, right?

13 **A. Yes.**

14 Q. And he says, "If so, that raises the question
15 of how a facility in compliance 98 percent plus of the
16 time deserves a one million dollar fine?"

17 Do you see that question that he asked?

18 **A. Yes.**

19 Q. And then if you look, Dr. Hacker had an
20 internal communication --

21 MR. WILLIS: Which I'm going to object to at
22 this point. That's an internal communication
23 including myself as counsel, so all subsequent
24 communication including me is subject to attorney-
25 client privilege.

1 MR. DAUSCH: You cannot just include yourself
2 on an email chain as an attorney and say it's
3 attorney-client privilege. This is a media inquiry --

4 MR. WILLIS: I have --

5 MR. DAUSCH: -- and this isn't legal advice
6 and there isn't a single attorney response on this
7 entire email chain.

8 MR. WILLIS: It is being presented to me for
9 attorney -- for legal advice.

10 MR. DAUSCH: And there is not a single piece
11 of legal advice given in this entire email chain.

12 MR. WILLIS: Irrespective of that, it is
13 included to me for presentation of -- of legal advice.
14 Whether I give it is really immaterial. It's
15 information being provided to counsel for legal
16 advice. And, in fact, it mentions legal advice.

17 HEARING OFFICER SLATER: Mr. Dausch, did you
18 have a response to that?

19 MR. DAUSCH: Yeah. There's not a single
20 piece of legal advice. This is a business inquiry
21 about public relations. Dr. Hacker responds and asks
22 two non-attorneys, Mr. Kelly and Ms. Graham, for their
23 response. She says, "We do need to clarify what Don
24 Hoppe's asking."

25 MR. WILLIS: Excuse me. Before we go into an

1 on-the-record discussion about what's actually being
2 said, I have to assert attorney-client privilege to
3 respect to the responses and correspondence after the
4 correspondence from Don Hoppe to Ryan Scarpino.

5 MR. DAUSCH: Where is the attorney-client
6 communication in this email chain?

7 MR. WILLIS: It is being communicated to me,
8 as counsel, for the purpose of provision of legal
9 advice. Regardless of whether or not I provide that
10 advise, they are reaching out to me, as counsel, to
11 provide legal advice.

12 HEARING OFFICER SLATER: All right.

13 MR. DAUSCH: Mr. Slater, that's not the
14 attorney-client privilege rule in any jurisdiction.

15 HEARING OFFICER SLATER: All right. Let me

16 --

17 MR. WILLIS: Actually, it's in the Federal
18 Jurisdiction, so --

19 HEARING OFFICER SLATER: All right. Let me
20 -- I understand your arguments. Let me just take a
21 look at these. Give me one moment.

22 All right. I'm going to overrule Mr. Willis'
23 objection, but I will take it as to the weight of
24 whatever is being said on behalf of the Health
25 Department.

1 MR. WILLIS: Sure.

2 BY MR. DAUSCH:

3 Q. Mr. Kelly, let me back up and reorient us.
4 Mr. Hoppe asked the question, "It raises the question
5 of how a facility in compliance 98 percent of the time
6 deserves a one million dollar fine?"

7 Do you recall that?

8 A. Yes.

9 Q. And Dr. Hacker would be your boss?

10 A. Yes.

11 Q. And she said, "We do need to clarify this,"
12 right?

13 A. Yes.

14 Q. And she asked specifically for you and
15 Ms. Graham's advice on this, correct?

16 A. Yes.

17 Q. And your response, two months after the
18 Enforcement Order was issued, "Although they have not
19 been specific about their 98 percent claim, we believe
20 that it's in reference to the opacity limits subject
21 to the 2016 Consent Order." Is that what you said?

22 A. Yes.

23 Q. And so, at this point, two months after the
24 Enforcement Order was issued, you thought the 98
25 percent only applied to the battery stacks?

1 A. I wouldn't characterize it as that because,
2 again, I do a lot of enforcement. And so, at the time
3 I was performing this evaluation, there was a lot of
4 numbers presented over a large number of days. So, I
5 can't say for absolute certain, and I told you this
6 before, whether or not I was fully familiar with that
7 98 percent. I was --

8 Q. Let me back up, Mr. Kelly. Your sentence is,
9 "We believe that it's in reference to the opacity
10 limits subject to the 2016 Consent Order."

11 A. Yes.

12 Q. Right?

13 A. Yeah.

14 Q. That means the battery stacks?

15 A. Yes.

16 Q. Okay. So, you thought the 98 percent related
17 to the battery stacks?

18 A. Yes, incorrectly.

19 Q. And you thought that two months after the
20 Enforcement Order was issued?

21 A. Yeah.

22 Q. Right?

23 A. Yes.

24 Q. Okay. You didn't think the 98 percent
25 applied to all of the batteries -- all of the

1 emissions points?

2 A. No, I wasn't sure.

3 Q. Okay.

4 A. And I think this demonstrates that lack of
5 certainty.

6 Q. Right. And after Dr. Hacker had said, "We
7 need to clarify this," the County figured out that
8 U.S. Steel was right?

9 A. Yeah. And so, why don't you read my next one
10 where it says, "Where an obscures --

11 Q. Excuse me, sir.

12 A. Yes?

13 Q. Okay.

14 MR. WILLIS: No, let him finish his answer.

15 HEARING OFFICER SLATER: Yeah, let Mr. Kelly
16 finish.

17 MR. KELLY: You're cherry picking this, so --
18 I mean, come on.

19 "So, it looks like for the entirety of the
20 plant may be 98 percent, which obscures problems at
21 poorly performing batteries."

22 We can break down compliance per battery per
23 standard, and that is the evaluations that I was using
24 during the creation of this order, was the per battery
25 compliance per standard.

1 BY MR. DAUSCH:

2 Q. And so, after Dr. Hacker said, "We need to
3 clarify this," and you determined that the 98 percent
4 did apply --

5 A. Yes.

6 Q. -- to all of the battery points, you didn't
7 clarify this, correct?

8 A. What do you mean by, "Didn't clarify this"?

9 Q. Well, you told Mr. Hoppe, "It's inappropriate
10 to comment."

11 A. Well, that's true because by that time the
12 appeal had been -- does that make sense? I mean, the
13 appeal had been filed, and so I can't really comment
14 back to Don Hoppe about that, so --

15 Q. After Dr. Hacker said, "We need to clarify
16 this"?

17 A. She told me -- but then obviously -- you
18 know, we would need to step back and look at the
19 situation before we respond to media and see where we
20 are. And the reality is, we're under appeal, and we
21 do not comment on ongoing litigation or legal matters.

22 Q. I'm going to switch topics and talk a little
23 bit more about the battery stack compliance and the
24 COMS. That's subject to a 2016 Consent Judgment,
25 correct?

1 A. Yes.

2 Q. That was entered in the Court of Common Pleas
3 of Allegheny County?

4 A. I was not part of that, so I really can't
5 comment on how that provision came about.

6 Q. You don't know where the Consent Judgment was
7 entered?

8 A. No, I don't. I wasn't part of that. I
9 didn't draft it. I wasn't part of signing it. I was
10 not even in this position at the time.

11 Q. You do know that it relates to battery stack
12 compliance though, right?

13 A. Yes.

14 Q. Okay. And U.S. Steel has two separate
15 requirements that -- or standards that relate to
16 battery stacks, correct?

17 A. Yes.

18 Q. There's a 60 percent opacity standard and a
19 20 percent opacity standard?

20 A. Yes.

21 Q. Is that right? The 60 percent opacity
22 standard has never been a problem at Clairton?

23 A. I don't know if it would characterize that,
24 so -- has never been a problem.

25 Q. It's always had a high compliance rate; is

1 that correct?

2 A. I don't know what their compliance rate is
3 for the 60 percent.

4 Q. Well, they've never needed to improve the 60
5 percent; is that fair?

6 A. It may be. But it was subject to the order,
7 so apparently there was some type of consideration
8 there. Those considerations, that I wasn't a part of,
9 -- but it was part of that order.

10 Q. Let's look at U.S. Steel's Exhibit 29.

11 A. In which binder?

12 Q. The first binder.

13 HEARING OFFICER SLATER: It's the first one.

14 BY MR. DAUSCH:

15 Q. And I want to point you to the document
16 that's Bates Labeled ACHD 12868. You'll see that at
17 the bottom right-hand corner.

18 A. Which number tab?

19 HEARING OFFICER SLATER: Twenty-nine.

20 MR. KELLY: Okay.

21 HEARING OFFICER SLATER: I'm sorry, can you
22 say the Bates Number again?

23 MR. KELLY: Yeah, it's 12868.

24 HEARING OFFICER SLATER: Okay.

25 MR. KELLY: In the bottom right-hand corner.

1 BY MR. DAUSCH:

2 Q. Are you there, sir?

3 A. Yes.

4 Q. And this is an email chain between you and
5 Dr. Hacker, correct?

6 A. Okay. I see that, yes.

7 Q. And Dr. Hacker is your boss?

8 A. Yes.

9 Q. And in this, you're discussing the two
10 standards that apply to battery stacks, correct?

11 A. Yes.

12 Q. The 60 percent and the 20 percent?

13 A. Yes.

14 Q. Do you recall, I just asked you if U.S. Steel
15 has always had a high compliance rate with the 60
16 percent, and you said you don't know, correct?

17 A. Yes.

18 Q. You knew earlier this year when you were
19 having a private email communication with Dr. Hacker,
20 correct?

21 A. I had to -- I didn't know at the time. I had
22 to go ask somebody at the time to determine what that
23 was because, again, this was from the 2016 Consent
24 Order, which I was not involved in. And so, when
25 there were issues with that and questions have to be

1 asked of me, I have to go to our Enforcement Staff to
2 determine what this value is. It's not something that
3 I knew before she asked. This was a response to that.
4 I've moved on, and so apparently I did not retain that
5 information very well.

6 Q. Okay. Now reading this, --

7 A. Yes.

8 Q. -- will you agree --

9 A. Yes.

10 Q. -- that they've always had a high compliance
11 rate with the 60 percent?

12 A. Okay. Yes, a high compliance rate with the
13 60 percent.

14 Q. Okay. And you also told Dr. Hacker that the
15 60 percent has never been a problem and didn't need to
16 improve?

17 A. Well, characterizing this is just saying that
18 the 20 was one of the problems. So, are you -- you're
19 interpreting that as it doesn't need to improve?

20 Q. No. I'm asking if you said that?

21 A. What it says here is, "The 60 percent
22 standard has always shown a high compliance rate since
23 it's much harder to violate."

24 Q. Could you look at the page on the left, sir?

25 A. Okay.

1 Q. Do you see the second email from the bottom?

2 A. Yes.

3 Q. "Sixty percent can go either way."

4 A. Yeah.

5 Q. "It doesn't show an improvement, but it also
6 shows that --

7 A. Yeah.

8 Q. -- it was never really much of a problem and
9 didn't need to improve." Correct?

10 A. Yes.

11 Q. Okay. So, you had that knowledge earlier
12 this year?

13 A. Yes.

14 Q. You just forgot that?

15 A. Yes.

16 Q. The 20 percent is what's at issue in the 2016
17 Consent Judgment?

18 A. Yes.

19 Q. And that's because the 60 had always been
20 high compliance?

21 A. Well, apparently so. Again, I wasn't a part
22 of that.

23 Q. And there's been major improvements since the
24 2016 Consent Judgment with battery stack opacity,
25 correct?

1 A. Yes.

2 Q. And battery stack opacity, although it's part
3 of the 2016 Consent Judgment, it's also part of the
4 baseline calculation?

5 A. As a performance metric, not as a punitive
6 measure.

7 Q. Right before this Enforcement Order was
8 issued, you questioned whether it made sense to use
9 battery stacks and COMS as part of the baseline; do
10 you recall that?

11 A. At what time, sir?

12 Q. Right before the order was issued.

13 A. Yeah. What do you mean? So, what is your
14 evidence that I questioned that at the time? I had
15 questioned it, yes.

16 Q. Yeah.

17 A. But where is your documentation that I
18 questioned that?

19 Q. Starting with your recollections, sir, do you
20 recall right before the enforcement was issued, you
21 questioned whether the Department should use battery
22 stack opacity as part of that baseline?

23 A. I didn't -- I don't recall questioning that.

24 Q. Are you saying you didn't?

25 A. No. I don't recall. I don't think I would

1 question that at all, so --

2 Q. All right. Well, let's look at Exhibit 20.

3 A. As long as it doesn't -- my -- I was very
4 clear, as long as it doesn't conflict with the 2016
5 Enforcement Order.

6 Q. Can you look at Exhibit 20, sir?

7 A. Okay.

8 Q. And the way to do this that would be the
9 easiest would be to look at the second page of Exhibit
10 20 with the Bates Label 10591. Do you see that?

11 A. Yes.

12 Q. And if you see, at the very bottom you sent
13 an email on June 26, 2018 saying that you offered some
14 comments below.

15 A. Yes.

16 Q. Okay. Let's look at your comments, which are
17 on Page ACHD 10593. Do you see the third full
18 paragraph on this page that starts with, "Within 60
19 days"?

20 A. I'm reading it. Okay, yes.

21 Q. And do you see your comment where you said,
22 "Should we include opacity monitors," which is battery
23 stacks, "since they're part of the consent decree?"
24 Does that refresh your recollection?

25 A. This is a cumulative document, so I could not

1 say for sure if that was me who put that in there.
 2 But obviously, as the Bureau Chief, I would have
 3 definitely asked that question because what are --
 4 what are the consequences of including the COMS as
 5 part of that? But U.S. Steel wasn't being penalized,
 6 and so, obviously, the Council discussions resulted in
 7 the fact that it was not an issue.

8 Q. Sir, help me understand. Is your testimony
 9 that you did or you didn't question use of COMS or
 10 battery stacks in the baseline?

11 A. Okay. Let's go with I questioned whether or
 12 not that was appropriate, yes.

13 Q. Okay. And you questioned whether or not it
 14 was appropriate because it was also in the 2016
 15 Consent Judgment?

16 A. Yes.

17 Q. Okay. That Consent Judgment is ongoing?

18 A. Yes.

19 Q. And there are no battery stack violations in
 20 the Enforcement Order?

21 A. You're correct. There's no -- and that
 22 answered that question correctly right there because
 23 there were no -- there was not penalties associated
 24 with the COMS.

25 MR. DAUSCH: Mr. Slater, what time do you

1 plan to break? I'm about to get into a new area.

2 HEARING OFFICER SLATER: We can go until
 3 probably 12:15 or 12:30.

4 MR. DAUSCH: Okay.

5 BY MR. DAUSCH:

6 Q. I want to switch topics, sir, and ask you
 7 about the B Battery door Leak Standard that's in the
 8 Enforcement Order?

9 A. Okay.

10 Q. You mentioned that a little bit earlier on
 11 your direct testimony?

12 A. Yes.

13 Q. What specific pollutants were the -- was the
 14 Department trying to regulate with that new standard?

15 A. Visible emissions, air toxics, particulate
 16 matter, and SO2.

17 Q. And air toxics, that's the same thing as
 18 hazardous air pollutants?

19 A. Yes.

20 Q. There's a rule making process that occurs
 21 before a regulation becomes part of Article 21,
 22 correct?

23 A. Yes.

24 Q. You're familiar with that process?

25 A. Yes.

1 Q. Rules are developed, correct?

2 A. Yes.

3 Q. They're sent to a regulatory subcommittee?

4 A. Yes.

5 Q. They're sent to an advisory committee?

6 A. Yes.

7 Q. They're sent to the Board of Health?

8 A. Yes.

9 Q. There's public comments?

10 A. Yes.

11 Q. There's public hearings?

12 A. If necessary.

13 Q. They're sent to County Council?

14 A. Yes.

15 Q. There's an involved process before a rule
 16 comes from being proposed to final, correct?

17 A. Yes.

18 Q. And that didn't happen with the B Battery
 19 Door Leak Standard, correct?

20 A. It's not a regulation.

21 Q. That didn't happen with the B Battery Door
 22 Leak Standard?

23 A. No, it did not. Yes.

24 Q. Okay. And when you're developing a

25 regulation, you have to determine what's reasonable

1 and what can be achieved, correct?

2 A. Yes.

3 Q. And you evaluate things like technology?

4 A. Yes.

5 Q. You evaluate things like best operating
 6 practices?

7 A. Yes.

8 Q. You evaluate manufacturer's recommendations
 9 for equipment?

10 A. Yes.

11 Q. Okay. That wasn't done with the B Battery
 12 Door Leak Standard?

13 A. No.

14 Q. Okay. You mentioned that the B Battery Door
 15 Leak Standard is based on what U.S. Steel could meet?

16 A. Yes.

17 Q. Okay. Have you seen the date on which that
 18 standard was based?

19 A. Yes.

20 Q. Can you look at Exhibit Eight? Sir, Exhibit
 21 Eight is the data on which the B Battery Door Leak
 22 Standard was based, correct?

23 A. No.

24 Q. It's not?

25 A. No. I had mentioned this before during this

1 hearing that there was a five-month period in 2015 for
2 which the B Battery was able to meet that standard.

3 This is not all of the data. This is 2016 data.

4 Q. So, your testimony now, under oath, is that
5 this is not the data on which the Department based the
6 B Battery Door Leak Standard?

7 A. I could not tell you without a reasonable
8 doubt if this was the only data that was used for
9 that. But I know that I am aware that there's data in
10 2015 that shows that U.S. Steel can meet that
11 standard.

12 Q. All right. Sir, I need to understand what
13 your testimony is. You realize that you're under
14 oath, right?

15 A. I realize that I'm under oath, but also --

16 Q. Well, let me ask you the question.

17 MR. WILLIS: Let him finish his comment.

18 HEARING OFFICER SLATER: Let Mr. Kelly finish
19 his answer.

20 MR. KELLY: Okay. This is not all of the
21 data. This is data that was -- this is the most
22 recent data that was being used to develop this
23 standard. There is more data. And so, if this -- I
24 don't know if this was the only data that was shared
25 with you.

1 I don't know if this was the only data that was
2 considered, but there is data that demonstrates that
3 U.S. Steel can reasonably meet that standard. And not
4 only were they meeting it in 2015, they were -- the 10
5 leaks per month, they were meeting it far below that
6 standard.

7 BY MR. DAUSCH:

8 Q. Okay. So, let me back up to my question.

9 A. Okay.

10 Q. Is this the data on which the Department
11 based the B Battery Door Leak Standard?

12 A. I do not know if this is the only data that
13 was used to base that standard.

14 Q. Okay. Did you know that we asked the
15 Department to respond to that question through
16 verified discovery responses in this case?

17 A. Yes.

18 Q. Okay. And you understand that a party can
19 ask another party for verified discovery responses,
20 right?

21 A. Yes.

22 Q. And the County has to provide verified
23 discovery responses back to those questions, right?

24 A. Yes.

25 Q. And those responses are provided under

1 penalty of perjury, right?

2 A. Yes.

3 Q. Okay. And that happened in this case,
4 correct?

5 A. What happened?

6 Q. U.S. Steel asked those types of questions to
7 the County?

8 A. Yes.

9 Q. Let's look at those. Let's look at Exhibit
10 Seven. About one-third the way through this document
11 are the County's responses to U.S. Steel's second
12 request for production of documents, and I
13 specifically want to look at Number 14. It's about
14 two-thirds of the way through the document.

15 HEARING OFFICER SLATER: Is it the one that
16 starts with, "Identify all emission -- or --

17 MR. DAUSCH: No, it's the second response to
18 the document requests, Number 14. It's about
19 two-thirds of the way to the back.

20 MR. KELLY: Right here.

21 HEARING OFFICER SLATER: Okay. I've got it.
22 Thank you.

23 BY MR. DAUSCH:

24 Q. Okay. I want to ask you about Number 14.
25 And you understand that a party can ask --

1 A. Yes.

2 Q. -- another party for documents, right?

3 A. Yes.

4 Q. And one of the reasons you do that is because
5 when the County issues an Enforcement Order, U.S.
6 Steel obviously doesn't know all of the information
7 that the County used to develop that Enforcement
8 Order?

9 A. Yes, I understand.

10 Q. And that's one of the reasons we have this
11 discovery tool available to us?

12 A. Yes.

13 Q. And we ask this question on Number 14. We
14 asked the County to provide all documents, including
15 but not limited to spreadsheets and communications,
16 that show the Department's methodology for deriving
17 the B Battery Door Leak requirement in Paragraph Four
18 on Page 27 of the Enforcement Order, right.

19 A. Yes.

20 Q. And the Department responded?

21 A. Yes.

22 Q. It identified a document with a Bates Label?

23 A. Yes.

24 Q. Do you see the response?

25 A. Yeah.

1 Q. It identified Document ACHD 007211?
 2 **A. Yes.**
 3 Q. That's the only document that it identified,
 4 correct?
 5 **A. According to this document, yes.**
 6 Q. And this document that's referenced in
 7 Document Request 14 is the exact document that we just
 8 looked at that's Exhibit Eight, correct?
 9 **A. Yes.**
 10 Q. Okay. So, the Department told us that the
 11 only document on which they used -- or the only
 12 document that they used to base their methodology for
 13 the B Battery Door Leak Standard was Exhibit Eight,
 14 correct?
 15 **A. I wasn't part of that response, so I can't**
 16 **verify that.**
 17 Q. Yeah, I know. That's what it says, right?
 18 **A. Yeah, that's what it says.**
 19 Q. Okay. Well, let's look at Exhibit Eight.
 20 The Enforcement Order says that U.S. Steel has to have
 21 10 door leaks or less from the B Battery coke side
 22 doors every month for six months, correct?
 23 **A. Yes.**
 24 Q. Is there any six-month period on the document
 25 on which the Department based that standard where U.S.

1 Steel met that?
 2 **A. For a six-month period, no. There are seven**
 3 **here that they very easily made that standard. So,**
 4 **obviously, you can meet the standard. Just attaining**
 5 **and maintaining the standard seems to be the problem.**
 6 Q. What happens if U.S. Steel doesn't meet that
 7 10 door leak standard during any month out of those
 8 six months?
 9 **A. You have to hot idle your two worst**
 10 **performing batteries.**
 11 Q. And that doesn't even mean the B Battery,
 12 correct?
 13 **A. It's the two worst performing batteries.**
 14 Q. Which may or may not be the B Battery?
 15 **A. It may or may not be the B Battery.**
 16 Q. Okay. The Department doesn't know the
 17 expected impact on ambient air of this B Battery door
 18 Leak Standard; is that fair?
 19 **A. It would be difficult to evaluate.**
 20 Q. Right. So, you don't know.
 21 **A. Yeah. This is a comprehensive effort though.**
 22 Q. I'm correct that you don't know?
 23 **A. Yes. Exactly, yes.**
 24 Q. You talked a little bit -- I'm switching
 25 topics now. You talked a little bit about inspection

1 methods during your testimony with Mr. Willis,
 2 correct?
 3 **A. Yes.**
 4 Q. And you understand what methods are, right?
 5 **A. Yes.**
 6 Q. Methods are a process that inspectors use to
 7 make sure that their inspections are done reliably?
 8 **A. And consistently.**
 9 Q. And consistently, correct. They're
 10 important?
 11 **A. Yes.**
 12 Q. Okay. There are methods that are detailed in
 13 Federal Regulations?
 14 **A. Yes.**
 15 Q. One of those would be Method Nine?
 16 **A. Yes.**
 17 Q. And you've actually been certified for Method
 18 Nine, correct?
 19 **A. Yes.**
 20 Q. And methods -- for example, like Method Nine,
 21 you have to be certified, correct?
 22 **A. Yes.**
 23 Q. You have to go through training, correct?
 24 **A. Yes.**
 25 Q. You have to go through testing?

1 **A. You have to certify every six months.**
 2 Q. Right. Not only are you certified, you have
 3 to become re-certified on a regular basis?
 4 **A. Yes.**
 5 Q. Right. There's a method called Method 303
 6 that's also a Federal Method, correct?
 7 **A. Yes.**
 8 Q. Okay. And that's another inspection method
 9 that's in the Federal Regulations?
 10 **A. Yes.**
 11 Q. And that method requires that inspectors have
 12 a certification?
 13 **A. Yes.**
 14 Q. Okay.
 15 **A. I assume. I'm not familiar with Method 303,**
 16 **so I can only assume. And I would prefer not to**
 17 **assume, so --**
 18 Q. That's fair.
 19 **A. Yes.**
 20 Q. Method Nine relates to opacity, correct?
 21 **A. Yes.**
 22 Q. And what that is, is you're looking at the
 23 plume and trying to determine the percentage of
 24 opacity, correct?
 25 **A. Yes.**

1 Q. And you mentioned opacity a little bit
2 earlier in your testimony?

3 A. Yes.

4 Q. Very generally, can we say that's how dark a
5 plume would be?

6 A. Yes.

7 Q. Okay. And so, Method Nine observers would
8 look at a plume and try to essentially estimate how
9 dark that plume was --

10 A. Yes.

11 Q. -- and assign that a percentage?

12 A. Yes.

13 Q. Okay. That's the same thing that the COMS
14 does on the battery stack through equipment?

15 A. Yes.

16 Q. And because Method Nine involves humans,
17 there could be human error?

18 A. Yes. But the EPA has actually done studies,
19 I know back in the '90's, that shows there's a
20 surprisingly good consistency in association with
21 emissions from Method Nine.

22 Q. Right. And they did that study, and that's
23 part of the reason why Method Nine has such strict
24 procedures, right?

25 A. Yes.

1 Q. And in order to have that accuracy and
2 consistency, you want to make sure your inspectors are
3 following Method Nine?

4 A. Yes.

5 Q. And you would expect that from both the
6 County Inspectors --

7 A. Yes.

8 Q. -- and the Karamida Inspectors?

9 A. Yes.

10 Q. Okay. The County Inspectors don't follow
11 Method 303; is that right?

12 A. I really couldn't tell you exactly which
13 methods they're following.

14 Q. Okay.

15 A. Because I know they're 303 certified. That's
16 about as far as I know. Anything else, I really can't
17 -- I'm not familiar with their inspection methods.

18 Q. And there are two County Inspectors, correct?

19 A. Yes.

20 Q. And your testimony is that they are both
21 Method 303 certified?

22 A. I would like to assume that.

23 Q. And you'd like to assume that --

24 A. I have not physically seen whether they're
25 certified, so --

1 Q. You don't know one way or the other?

2 A. Well, I really couldn't tell you for sure
3 because, again, I have not verified, and I have not
4 personally seen that, so I'm not going to testify
5 absolutely that I am aware that they are certified.

6 Q. Okay. And besides Allegheny County's two
7 inspectors, there are inspectors from a third-party
8 that are at Clairton seven days a week?

9 A. Yes.

10 Q. And those are inspectors from a company
11 called Karamida?

12 A. Yes.

13 Q. Okay. And the County hires Karamida?

14 A. Yes.

15 Q. And U.S. Steel pays for Karamida's
16 inspections?

17 A. Yes.

18 Q. And they inspect seven days a week for the
19 entire year, correct?

20 A. Yes.

21 Q. And those inspectors are looking for fugitive
22 emissions, correct?

23 A. Yes.

24 Q. And that's what the County Inspectors are
25 looking for, fugitive emissions?

1 A. Yes, for different rules though.

2 Q. And so, they apply different rules?

3 A. Yes.

4 Q. Okay. The Karamida Inspectors follow
5 different rules than the County Inspectors; is that
6 correct;

7 A. I -- for compliance with different rules.

8 Q. Okay. And your testimony on direct was that
9 these two groups of inspectors are looking at two
10 different things. Is that your testimony?

11 A. Well, I'm not that familiar with 303, again.
12 And so, I know 303 is associated with the NESHAP. And
13 so, I'm not going to go on record saying I absolutely,
14 beyond a shadow of a doubt, know the differences
15 between the two inspections because I am really not
16 that familiar with the differences between the two
17 inspections.

18 Q. Okay. And did you do anything before you
19 signed the Enforcement Order to make sure that the
20 appropriate inspections and methods were done?

21 A. Why would I do that? I have a high
22 functioning Enforcement Staff, and so they know what
23 they're doing. I'm not going to go and check their
24 inspections and determine whether or not they're
25 performing these correctly. That seems kind of

1 asinine, doesn't it?

2 Q. Well, let me ask my question again. Did you
3 do anything to ensure that the proper inspection
4 methods were followed?

5 A. No, I didn't because I am not the person who
6 has the expertise to determine whether or not they are
7 following those methods. I'm not certified in 303.

8 Q. You had looked earlier at the Air Quality
9 Annual Data Summary that's Exhibit 16. Do you recall
10 that?

11 A. Yes.

12 Q. Can we open that document please, sir? The
13 second page of this document, it doesn't have a
14 number, but it shows a map. Do you see that page?
15 Exhibit 16.

16 A. Yes.

17 MR. WILLIS: Hold on.

18 HEARING OFFICER SLATER: It's the map of
19 Allegheny County.

20 MR. DAUSCH: It's the map that's inside the
21 cover page.

22 MR. WILLIS: Oh, okay.

23 MR. KELLY: It's not an actual -- it's not
24 Page Two.

25 MR. WILLIS: Okay.

1 BY MR. DAUSCH:

2 Q. Right. There is no actual page numbers.
3 It's the second page in the exhibit, correct?

4 A. Yes.

5 Q. And there is a map of Allegheny County,
6 correct?

7 A. Yes.

8 Q. This map shows all of the different monitors
9 that are in Allegheny County; is that correct?

10 A. Yes.

11 Q. The monitor that's on the western most side
12 of the County is South Fayette; is that correct?

13 A. Yes.

14 Q. And we know that the prevailing winds for the
15 County come from a southwesterly direction; is that
16 fair?

17 A. Yes.

18 Q. Okay. So, South Fayette, because it's the
19 southwestern most monitor, is considered a background
20 monitor?

21 A. Yes.

22 Q. And can you explain what a background monitor
23 is?

24 A. And so, it's basically the monitor that's
25 trying to measure air pollution as it enters the

1 County. And so -- and it's also relative. And so,
2 this is probably one of the areas we hope to be the
3 cleanest in our county, but it doesn't mean it's going
4 -- upwind can be a significant amount of industry. We
5 do not know that. I mean, I do not know that.

6 Q. Okay.

7 A. But again, it's trying to measure what's
8 coming into the county.

9 Q. Okay. So, South Fayette, because it's
10 background, is measuring pollution that comes into the
11 county from somewhere else?

12 A. Yes.

13 Q. Okay. Emissions from Clairton or the
14 Clairton Plant, you wouldn't expect those to impact
15 the South Fayette Monitor; is that fair?

16 A. That is fair.

17 Q. Okay. I wanted to look at Page Eight. Page
18 Eight relates to PM 2.5; is that correct?

19 A. Yes.

20 Q. And PM 2.5 is one of the two criteria
21 pollutants that you mentioned earlier in your
22 testimony?

23 A. Well, I mentioned all six, but I mentioned
24 two being in -- failing to attain for Allegheny
25 County.

1 Q. Right. And one of those two is PM 2.5,
2 correct?

3 A. Yes, fine particulate matter.

4 Q. Okay. And 2017 is the most recent data that
5 we have available to us; is that fair?

6 A. That is fair.

7 Q. Okay. On Page Eight there's a chart that
8 shows how the data for PM 2.5 has changed from 2016 to
9 2017; is that correct?

10 A. Yes.

11 Q. It shows each monitor, correct?

12 A. Yes.

13 Q. And the South Fayette Monitor increased more
14 than any other monitor; is that correct?

15 A. Yes.

16 Q. Okay. So, background PM 2.5 went up more
17 than any other monitor in the County, correct?

18 A. Yes.

19 Q. Okay. And obviously background represents PM
20 2.5 that would be transported into the County,
21 correct?

22 A. Yeah, and that's background under those
23 conditions.

24 Q. The Liberty Monitor is the monitor that you
25 would associate with the U.S. Steel Clairton Plant,

1 correct?

2 **A. Yes.**

3 Q. That didn't go up as much as background; is

4 that fair?

5 **A. That is fair.**

6 Q. And you talked a little bit about H2S in your

7 direct testimony. Do you remember that?

8 **A. Yes.**

9 Q. H2S, there's no federal standard?

10 **A. No.**

11 Q. It's not a public health standard?

12 **A. No, it's not.**

13 Q. H2S doesn't have an impact on public health?

14 **A. Well, there's -- there's no federal standard**

15 **for the protection of public health for H2S.**

16 Q. Okay. It's a nuisance standard?

17 **A. It is. The State has a standard, and it's**

18 **based on nuisance.**

19 Q. Right, and the nuisance would be odor?

20 **A. Yes.**

21 Q. It's not a health-based standard?

22 **A. It is not based on health, and the State is**

23 **clear about that.**

24 Q. And the Department has an odor regulation in

25 Article 21?

1 **A. Yes.**

2 Q. Okay. And it has an odor regulation where if

3 there's an odor complaint, the Department can go out

4 and do an investigation of that odor complaint,

5 correct?

6 **A. Yes.**

7 Q. And the Department has a Source Test Manual?

8 **A. Yes.**

9 Q. And that Source Test Manual has detailed

10 procedures that the Department has to follow when it

11 goes out and does that odor complaint inspection?

12 **A. I don't know how detailed it is. I don't**

13 **know the procedures manual for the odor test.**

14 Q. Okay. Can we at least agree that the Source

15 Test Manual does have a procedure?

16 **A. Yes.**

17 Q. Okay. Can we agree that there are no alleged

18 violations of the odor regulation in the Enforcement

19 Order?

20 **A. Yes.**

21 Q. And can we agree that U.S. Steel has not

22 received any notice of violations related to the odor

23 regulation in the period that's at issue in this case?

24 **A. Yes.**

25 Q. The Clairton Plant isn't subject to any H2S

1 emission limits at any emissions points at the

2 facility; is that fair?

3 **A. That is fair.**

4 Q. Okay. You testified earlier that the

5 modeling data that's Allegheny County Health

6 Department Exhibit Three is not sufficient?

7 **A. No, it's not.**

8 Q. You just don't believe it?

9 **A. It's not that I don't believe it. I have**

10 **never in my professional career ever received modeling**

11 **results without inputs. I mean, that's something**

12 **that's just so bazaar. You would not -- it just**

13 **doesn't make sense.**

14 **It's like, "Take my word."**

15 **Okay. And then -- because when you receive**

16 **modeling results -- if you use modeling results, then,**

17 **well, what are your inputs, what are your assumptions,**

18 **and how did you run the model? That's how you receive**

19 **modeling results.**

20 **You don't get a one-page summary that says,**

21 **"Here. This is the results."**

22 **And so, it doesn't pass the eyeball test.**

23 Q. Was that apparent to you as soon as you

24 received it?

25 **A. It wasn't. I was concerned because I saw**

1 **this data and I made some comments and then I followed**

2 **up on this data in talking to our modeling folks. And**

3 **I was like -- I would hope that they had more than**

4 **just this. They did not, and I did not know that at**

5 **the time.**

6 Q. This document shows that the water treatment

7 plant has the biggest impact on H2S --

8 **A. Yes.**

9 Q. -- in Clairton?

10 **A. Yes, according to modeling with no results**

11 **and no assumptions.**

12 Q. I understand that you're saying that now, but

13 there was a time period when you were telling people

14 that in written documents that the water treatment

15 plants have the biggest impacts on the H2S?

16 **A. Yes. You're absolutely correct, and I was**

17 **incorrect at the time.**

18 Q. Okay. So, now you're changing your position?

19 **A. I was very clear about this. I was making a**

20 **statement based on the only data that I had available**

21 **at the time. And so -- and I followed up on that data**

22 **to make sure. And then this didn't pass the eyeball**

23 **test, so --**

24 Q. And we can agree that the County hasn't done

25 any H2S modeling; is that correct?

1 A. Not that I'm aware of.

2 Q. Okay. Is it your testimony that air

3 emissions inventories are more accurate than modeling?

4 A. Well, it depends on what they're being used

5 for. And so, -- and there's a lot of assumptions.

6 That's a very broad statement that very few people

7 would make.

8 Q. Well, are you saying that you never believed

9 this document with the modeling results for H2S

10 because it's inconsistent with air emissions inventory

11 data?

12 A. I didn't say I never believed it. I said at

13 first I had hoped that it was correct because it was a

14 document that we had. And then in following up, I

15 realized that there was insufficient data to put any

16 confidence in this whatsoever. And I think you're

17 getting at because there was no emission inventory

18 data --

19 Q. You mentioned emissions inventory data in

20 your direct testimony, correct?

21 A. Yes.

22 Q. And did you say that that data is what makes

23 you not believe this modeling data?

24 A. That is one of the things that makes me not

25 believe this because it's a model. And so, you --

1 what do you start with? You start with emissions data

2 and then you have to make correct assumptions on

3 meteorology and then you have to make correct

4 assumptions on the characteristics of the plans. And

5 so, you have a stack, and you have to know the height,

6 you have to know the temperature, and the velocity.

7 For Clairton Municipal Sewage Treatment Plant,

8 which is located here, you have to look at this. How

9 does -- how is that going to be modeled because that

10 is all fugitive emissions? And so, those are a lot of

11 assumptions.

12 It's pretty difficult to model fugitive

13 emissions. We have very, very specific procedures for

14 modeling your batteries because they're fugitive

15 emissions. And so, -- again, these are these things

16 that don't add up because they should cause anyone

17 familiar with modeling to start to doubt this.

18 Q. Because the County has never done its own H2S

19 modeling, it doesn't have any modeling results that

20 are inconsistent with this document; is that fair?

21 A. That I'm aware of, yes, that is fair.

22 Q. Hot idling is one of the sanctions that's in

23 the Enforcement Order, correct?

24 A. Yes.

25 Q. It's a significant sanction?

1 A. Yes.

2 Q. Okay. And you know -- you're a mechanical

3 engineer?

4 A. Yes.

5 Q. You know that hot idling can have detrimental

6 effects on a battery?

7 A. I would assume that it probably would.

8 That's what I heard from U.S. Steel repeatedly, that

9 it has detrimental effects, so I'll have to take you

10 at your words.

11 Q. Well, you're not a novice. You're a

12 mechanical engineer?

13 A. Yeah. I'm a mechanical engineer, and thermal

14 stresses. But being also an engineer, -- it's, like,

15 what are the thermal stresses between hot idling and

16 regular coking operations? I don't know what those

17 differences are. If they're significantly different,

18 there's going to be degradation.

19 Q. And you understand the idea of thermal stress

20 being caused by hot idling?

21 A. Yes.

22 Q. And you understand that the age of the

23 battery can impact the thermal stress in whatever

24 damage is caused to a battery?

25 A. Yes.

1 Q. Okay. And you understand that thermal stress

2 can have a greater impact on batteries that are older?

3 A. Yes.

4 Q. When deciding on the hot idle sanction in the

5 Enforcement Order, the Department didn't consider

6 impacts on the community in terms of jobs?

7 A. Why would we? Do you want me to explain

8 that?

9 Q. No. I want to know if you considered it, yes

10 or no?

11 A. No, we did not.

12 Q. Okay. And the Department didn't consider

13 what it could potentially cost U.S. Steel to deal with

14 this order with a hot idle?

15 A. No. I mean, we knew that it was going to be

16 a significant impact as far as being something that's

17 going to dissuade this type of activity.

18 Q. And hot idle is one of the penalties that's

19 --

20 A. That's one of the penalties. You know, it is

21 our understanding that U.S. Steel wasn't taking care

22 of their batteries.

23 And so, you say, "Well, an older battery is going

24 to be effected by a thermal stress more."

25 And well, if it was properly maintained, is it

1 going to be the same? I think we're in this situation
2 because our inspectors have observed a lack of
3 maintenance in maintaining your batteries.

4 Q. You had mentioned earlier the NESHAP
5 Regulations. Do you recall that?

6 A. Yes.

7 Q. What's NESHAP stand for?

8 A. The National Emission Standards for Hazardous
9 Air Pollutants.

10 Q. Okay. And those are Federal Regulations that
11 apply specifically to coke batteries?

12 A. Well, they apply to all sources of emissions
13 for hazardous air pollutants as the EPA has
14 promulgated.

15 Q. One of those sources being batteries?

16 A. One of those sources would be coke ovens.
17 That's not the only NESHAP.

18 Q. And I think you mentioned that one way that
19 NESHAP regulations are developed are you actually look
20 at existing sources?

21 A. Yes.

22 Q. And you look at the technology that exists?

23 A. Yes.

24 Q. And you base the NESHAP standards on the top
25 12 highest performing sources in the country?

1 A. Well, the EPA does. I don't.

2 Q. Right. When someone is -- there's a process
3 that goes through that?

4 A. Yes, there is.

5 Q. Do you know what the top 12 highest
6 performing coke plants were when the NESHAPs were
7 created?

8 A. I have no familiarity with this NESHAP
9 process.

10 Q. Okay. So, you wouldn't know whether or not
11 Clairton was the Number One performing facility?

12 A. I would not, no.

13 Q. And NESHAP regulates fugitive emissions
14 sources at the batteries, correct?

15 A. NESHAPs measure -- or regulate hazardous air
16 pollutants. Fugitive emissions is a surrogate for
17 that.

18 Q. That's fair. And the NESHAPs that regulate
19 those hazardous air pollutants, these regulations,
20 U.S. Steel is 100 percent compliant with those?

21 A. Yes.

22 MR. DAUSCH: That's all I have.

23 HEARING OFFICER SLATER: Any redirect,
24 Mr. Willis?

25 MR. WILLIS: Yes, sir.

REDIRECT EXAMINATION

1 BY MR. WILLIS:

2 Q. Mr. Kelly, you're familiar with the Penalty
3 Policy that was in effect in 2017, the prior Penalty
4 Policy?

5 A. I'm vaguely familiar with that policy.

6 Q. Well, as a general principle, would you agree
7 that that policy was not a regulation?

8 A. It was not a regulation.

9 Q. And in 2017, could the Department deviate
10 from that policy?

11 A. Yes.

12 Q. And so, to the extent that the new policy
13 took -- came into place and substituted the old
14 policy, could we have followed that new policy, even
15 under the 2017 policy?

16 A. Again, it's policy. You know, we have the
17 option to do that. We have the discretion.

18 Q. And I think you mentioned -- I'm sorry. You
19 mentioned earlier that there is a regulatory maximum
20 under Article 21 for a penalty?

21 A. Yes.

22 Q. And what is that again?

23 A. It's \$25,000 per day per violation.

24 Q. As you recall in my opening, I had mentioned
25

1 there were over 300 violations involved in this
2 penalty assessment?

3 A. Yes. It shows a lot of room for improvement.

4 Q. Right. Would you agree that at 300
5 violations, at \$25,000 per violation, that that would
6 have ended up being a \$7.5 million penalty?

7 A. Yes.

8 Q. Did we assess a \$7.5 million penalty?

9 A. No, we did not.

10 Q. So, under either policy, we did not approach
11 anywhere near the regulatory maximum?

12 A. No, we did not.

13 Q. Okay. And you also mentioned the emission
14 points, the 6,000-plus emission points --

15 A. Yes.

16 Q. -- on these batteries. What are they
17 emitting?

18 A. They're emitting visual emissions, SO₂, coke
19 oven gas. So, they're toxics and criteria pollutants,
20 what they're emitting.

21 Q. So, you would agree that that's 6,000
22 opportunities for the emission of BTEX --

23 A. Yes.

24 Q. -- and SO₂?

25 A. Yes.

1 Q. Okay. And I think you mentioned also that
2 there are zero violations with respect to the COMS as
3 we know presently?

4 A. Zero viola- -- I mean, --

5 Q. Under the 2016 Consent Agreement, that
6 involved COMS violations. Are you aware of any COM
7 violations presently?

8 A. Well, from what I understand of the 2016, it
9 was to show improvement. But there's still going to
10 be violations, especially the 20 percent standard.
11 And so, to say zero violations, that seems -- you
12 know?

13 Q. Incorrect?

14 A. Yes.

15 Q. Okay. And with respect to the remedy that's
16 imposed and the baseline that -- the first quarter of
17 2018 baseline, I think you said that half of that
18 metric is the COMS?

19 A. Yeah. I mean, you should be happy that the
20 COMS are in there, because it's going to greatly
21 influence -- I mean, it's going to bring your values
22 up quite a bit.

23 Q. And why is that?

24 A. Because, you know, the COMS are -- or because
25 of the order, the 2016 Order, you already see

1 improvements. So, if you're operating above 98
2 percent, but then the rest of your facility is
3 bouncing around between 50 or 60 or 70 or 80-some
4 percent, or sometimes 90 -- you know, you've already
5 got a solid part of that average that's going to bring
6 you up to begin with.

7 Q. And so, the other component of that penalty
8 of that particular metric were visible emissions
9 inspections?

10 A. Yes, inspections based on -- yeah, visual
11 emission inspections.

12 Q. And those visible emissions inspections will
13 be from both Karamida and ACHD?

14 A. Yes.

15 Q. So, realistically, the improvement is in the
16 visible emissions?

17 A. Yes.

18 Q. Okay.

19 A. I mean, it's -- when you look at improvement,
20 -- I mean, if you've got 300 violations, your
21 improvement is 299. I mean, why is that -- that's not
22 really a big hurdle, is it?

23 Q. Well, that's what I was going to ask. If you
24 have 300 violations, and you cut them in half, would
25 you consider that an improvement?

1 A. Well, yes. But the 300 is for two quarters.

2 Q. Understood. The corrective action measures
3 two quarters of performance?

4 A. Yes.

5 Q. So, if they were to cut their violations in
6 half, would that improve their --

7 A. That would be a very significant increase.

8 Q. And would that improve air quality?

9 A. We would hope so.

10 Q. And why would you believe that?

11 A. Well, I mean, you can look at what we're
12 seeing right now. Regional emissions are way down,
13 with the exception of 2017. But overall, -- well, you
14 know, the monitors and the inventories have been going
15 down. In 2017, the monitor values had gone up some,
16 and 2017 is probably a metrological consequence to
17 that going up.

18 But then here we're looking at the Clairton
19 Facility, and that monitor is starting to read higher
20 values. And what we're seeing is degrading
21 compliance, and the value is going up. And so, this
22 monitor is located in an area as such that
23 overwhelmingly measures the Clairton Facility.

24 Our modeling for PM has shown that
25 approximately -- that facility contributes almost

1 three micrograms. That's unheard of. I don't know of
2 any facility in the country where a single industrial
3 source to contribute that much.

4 There's a lot of sensitivity to that monitor.

5 And so, whatever -- it takes very small changes in a
6 facility to affect that value. You see. That is
7 really sensitive, so it doesn't take much.

8 So, if your compliance is sliding, and all of
9 your regional emissions are going down, with the
10 exception of 2017 because they all went up -- but this
11 trend has been going on since 2014. And so, that's
12 the eyeball test. I mean, that's one of the things
13 that you can look at. It's like, you've got degrading
14 compliance.

15 Q. That three micrograms -- realistically, I
16 think the public would probably raise an eyebrow and
17 say, "Is that really a lot?" How -- why is that --

18 A. The standard is 12. Background is eightish.

19 So, that's why that's so -- depending on where you are
20 in the country, where is that background going to be.
21 Six to eight. I know in the southeast, eight is
22 almost impossible to go below because that is what a
23 lot of your background is going to be.

24 Like, when we talked about that South Fayette
25 Monitor, and -- well, it went up a lot. Well, it's

1 the lowest monitor, so it's got, you know, the biggest
2 sensitivity of going up if there's a disturbance in
3 the background. But again, three micrograms, that's
4 pretty amazing.

5 I did a plan in Georgia where, you know, I
6 controlled 10 power plants at about half a microgram.
7 That's over 200,000 tons of SO2 and 200,000 tons of
8 NAAQS in half a microgram. And so, --

9 Q. And we're talking about three here?

10 A. And that was a lot. And so, we're talking
11 about three micrograms here. So, that shows you how
12 much this facility affects the local air quality.

13 Q. With respect to that Battery B Door Leak
14 requirement, counsel has noted correctly that it does
15 -- in the event of exceeding that 10 door leak limit,
16 that that would require an idling of the two worst
17 performing batteries. Why not idle Battery B?

18 A. Because we gave U.S. Steel a lot of
19 flexibility by requiring them -- you know, requiring
20 them to do their worst performing batteries. It seems
21 a little specific, I think, to say just Battery B or
22 just Battery something. It's performing. So, if
23 you're the worst performing, you're creating the most
24 emissions.

25 Q. So, it's conceivable that, let's say,

1 Batteries Two and Three can be the worst performing in
2 terms of emissions?

3 A. Yes.

4 Q. And it would be better to idle those
5 batteries as opposed to Battery B, which may actually
6 be performing better than Two and Three?

7 A. Yes. I mean, the whole idea is performing
8 your most -- to idle your most polluting batteries,
9 which would be the worst performing batteries.

10 Q. Is there any point before the second quarter
11 of 2019 in which you could determine what the two
12 worst performing batteries would be?

13 A. In -- could you repeat that again?

14 Q. Is there any point before the end of the
15 second quarter of 2019 in which you could determine
16 what the two worst performing batteries would be?

17 A. You would have to take both quarters into
18 consideration.

19 Q. And so, let's say that in February of next
20 year they exceed the 10-leak limit, you could not
21 establish what the two worst performing batteries
22 would be until the end of the two quarters?

23 A. You're correct, yes.

24 Q. And so, that particular penalty of the idling
25 of the two batteries would not occur until after the

1 first six months of 2019?

2 A. That is correct.

3 Q. So, theoretically, if they knew in February,
4 preparations could be made for a safe idling of that
5 battery by the end of the second quarter of 2019?

6 A. That is correct.

7 Q. Do you know whether or not U.S. Steel has
8 idled batteries in the past?

9 A. Yes, they have.

10 Q. Was that by order?

11 A. No.

12 Q. Do you remember when that was?

13 A. From what I understand, 2019, the economic
14 downturn, there was --

15 Q. You said 2019.

16 A. I'm sorry, 2009. So, 2009, I believe, there
17 were a number of batteries that were idled.

18 Q. Okay. Are you familiar with the coke
19 facility in Monessen?

20 A. I am very vaguely familiar with it.

21 Q. Are you aware as to whether or not that
22 battery has been idled before?

23 A. I couldn't tell you for sure if that battery
24 has been idled before.

25 Q. Okay.

1 A. I know that there are people on our staff
2 that are more familiar with that.

3 Q. Okay. The Source Testing Manual, we've
4 talked about that considerably. It's mentioned in
5 Article 21, but is that a regulation?

6 A. No, it is not. It's a procedures manual.

7 Q. Are we bound to follow it as a matter of law?

8 A. As long as it -- we follow -- not as a matter
9 of law, no.

10 Q. Okay. And so, we can deviate from the Source
11 Testing Manual?

12 A. It's a procedures manual. I mean, it's
13 guidance.

14 Q. It's guidance?

15 A. Well, it's pretty strong guidance. But
16 again, it's not a regulation.

17 Q. At one point there was a dispute, and correct
18 me if I'm wrong, between U.S. Steel and the Department
19 as to the application of the Source Testing Manual
20 versus the regulation with respect to, I believe, the
21 coke side of Battery B?

22 A. Can you read that again?

23 Q. Yeah, at one point in the recent past, do you
24 recall a dispute between the ACHD and U.S. Steel --

25 A. Yes.

1 Q. -- with respect to the application of the
2 Source Testing Manual?

3 A. Yes, I do, but I need to qualify my previous
4 answer. The procedures manual does have some Federal
5 Regulations -- I mean, some Federal Procedures in
6 there. They are in the Federal Register, and so
7 therefore, they are procedures that you have to
8 follow.

9 Q. Okay.

10 A. Any of our ACHD procedures, they don't have
11 the -- they don't have the ability to be enforced as a
12 regulation because they didn't go through that same
13 process, so there is a distinction. The procedures
14 manual does include procedures that are federally
15 promulgated.

16 Q. Okay. Well, with respect to those -- those

17 --

18 A. Yes. And I am familiar with -- there is a
19 contradiction between Article 21 in our procedures
20 manual, and U.S. Steel has been given the benefit of
21 the doubt to follow the procedures manual as opposed
22 to the regulation.

23 Q. And again, that's resulted in fewer
24 violations?

25 A. Yes.

1 Q. Which benefited U.S. Steel?

2 A. Yes, and I had stated that earlier. With B
3 Side Battery door leaks, U.S. Steel is not required to
4 -- and that's one of the things at the crux of this.
5 They -- if you don't have to follow a regulation, why
6 would you follow the regulation? And so, when you go
7 back to, you know -- this in Item Eight. You show --

8 Q. Item Eight of --

9 A. They're all over the place.

10 Q. I'm sorry. For the record, could you please
11 specify what you're pointing at?

12 A. So, when you go back to Exhibit Eight, this
13 is the, you know, coke oven door leaks. If this -- if
14 this -- if the B Side Battery -- I mean, if the B Side
15 Coke Battery Door -- if they were subject to the
16 regulation -- you wouldn't see these numbers
17 fluctuating like this if they were actually subject to
18 some type of violation. But they're not.

19 So, where is the -- you don't have the initiative
20 to maintain these doors because they're not subject to
21 Article 21 because of a provision of the Source
22 Testing Manual. Which we have argued about this in
23 the past, and we have given U.S. Steel the benefit of
24 the doubt that they don't have to comply with that.

25 Q. I understand. In looking at -- since you've

1 brought up Number Eight, if you would look to -- for
2 instance, July '16? Do you see the month/year where
3 it says July '16?

4 A. Yes.

5 Q. Yeah. How many coke side door leaks do you
6 see in that fourth column for July of '16?

7 A. Nine. For July of '16?

8 Q. For the column right before?

9 A. Oh, I'm sorry. I'm sorry, 114.

10 Q. Okay. And then right before that -- or right
11 after that you said, "Nine," and that column is --
12 represents the coke side yard equivalent for door
13 leaks?

14 A. Yes. And that's based on equivalent. It's
15 interesting -- since you brought that up, look at the
16 door leaks on the push side. Zero. There are lots of
17 zeros here.

18 Q. And why is that interesting?

19 A. Because it shows that they're maintaining the
20 doors that are subject to the regulation, and then
21 those are almost all single digits in the push side
22 leaks. And then when you look at the coke side leaks,
23 those are triple digits. It just basically shows why
24 -- I mean, I know that those are coke side and they're
25 subject to more thermal stress and so you would

1 typically have more leaks there. But when you go from
2 zero from July '16, to 114 leaks -- so, that's --

3 Q. And again, I think we've mentioned this
4 earlier. Leaks -- any leak is an opportunity for an
5 emission?

6 A. Yes, it is.

7 Q. BTEX?

8 A. Yes.

9 Q. And SO2?

10 A. Yes.

11 Q. And H2S?

12 A. Particulate matter and H2S.

13 Q. Particulate matter?

14 A. Yes, and raw coke oven gas.

15 MR. WILLIS: Those are my questions.

16 HEARING OFFICER SLATER: Any recross?

17 MR. DAUSCH: Yes, very briefly.

18 RECROSS-EXAMINATION

19 BY MR. DAUSCH:

20 Q. The baseline calculation, half of that is
21 COMS compliance?

22 A. Yes.

23 Q. And you said that U.S. Steel should be happy
24 about that?

25 A. Yes. So, you already have a very large

1 number that you can average in, and so -- does that
2 make -- basic math is going to tell you that if you're
3 over 98 percent, and you're averaging in something
4 else --

5 Q. For the baseline for the 2018 first quarter,
6 what was U.S. Steel's COM compliance?

7 A. For 2018?

8 Q. Yeah.

9 A. I couldn't tell you exactly what that number
10 was.

11 Q. Does 99.384 sound right?

12 A. Yes.

13 Q. Okay. So, that's the baseline, 99.384?

14 A. Yeah.

15 Q. And one of the reasons the COMS compliance --

16 A. No, that's half. That's half the baseline.

17 Q. Right. And one of the reasons COMS
18 compliance is as high as it is, is because there was a
19 2016 Consent Judgment, correct?

20 A. Yes, we'll go with that.

21 Q. And COMS has improved since 2016?

22 A. Yes, COMS has improved.

23 Q. Okay. It's improved to the point where it's
24 99.384 percent compliant for the baseline, correct?

25 A. Yes. So, I'm assuming your number is

1 correct.

2 Q. Okay. And so, now, for two quarters, U.S.
3 Steel has to improve again and improve again, correct?

4 A. Not just that number. So, you're -- we're
5 not improving just on the COMS. The area for
6 improvement is the other half, the inspections, the
7 lower number.

8 Q. Right. But 50 percent is the COMS that
9 raises the number, correct?

10 A. Yes.

11 Q. So, let's say we go through this baseline and
12 in the first quarter in 2019 U.S. Steel has 99.5
13 percent compliance overall?

14 A. Yes.

15 Q. It beats the baseline?

16 A. Yes.

17 Q. And then in the second quarter, it improves
18 again to 99.8 percent compliance?

19 A. Yes.

20 Q. But in the last month it has 11 coke side
21 door leaks on the B Battery, what happens?

22 A. Then you're going to idle two of your worst
23 performing batteries.

24 MR. DAUSCH: That's all I have.

25 REDIRECT-EXAMINATION

1 BY MR. WILLIS:

2 Q. Counsel mentioned that 99 percent is a pretty
3 high number. Let's do some math. If you have 10,000
4 inspections in any given month, and you have 900 of
5 those that are compliant, how many -- what is the
6 percentage rate of compliance?

7 A. Ten thousand -- wait. A thousand or ten
8 thousand?

9 Q. Ten thousand. So, if you have 10,000
10 inspections, and 900 are --

11 A. Nine thousand --

12 Q. Nine thousand of those --

13 A. Yes.

14 Q. Sorry, 9,000 of those --

15 A. So, you're going from 9 percent to 90, so --
16 okay.

17 Q. Understood. So, you're saying it would be 90
18 percent compliance?

19 A. Yes.

20 Q. Which would mean that there would be 1,000
21 non-compliant inspections?

22 A. Yes. It seems like a lot of opportunities
23 for improvement.

24 Q. And so, with -- bearing that in mind, to move
25 from 99.2 to 99.8 would represent hundreds of

1 inspections; would that be fair?

2 A. That would be fair.

3 MR. WILLIS: Okay. That's all I have.

4 MR. DAUSCH: And, Mr. Slater, we had used
5 Exhibit U.S. Steel 54 with this witness. And subject
6 to the objection, I'd move for that to be admitted.
7 And in that case, I think we now have -- every other
8 exhibit in U.S. Steel's binders have been stipulated
9 to, so that's the only one that there's no stipulation
10 on.

11 HEARING OFFICER SLATER: Mr. Willis, is it
12 your understanding that except for 54, all of the
13 other exhibits have been --

14 MR. DAUSCH: These are all from the last
15 time, and we can talk about it if you want.

16 MR. WILLIS: Well, I would like to reserve
17 the possibility that there would be any other document
18 that I have not come across yet that would be subject
19 to attorney-client privilege. I'm very, very adamant
20 about asserting that privilege when my clients are
21 attempting to reach out to me for input.

22 HEARING OFFICER SLATER: I understand your
23 objection, Mr. Willis. I will admit Exhibit 54. I
24 will hold off on the admission of the other ones for
25 now, until -- pending any further discussions relating

1 to attorney-client privilege.

2 MR. WILLIS: Okay.

3 HEARING OFFICER SLATER: All right. Any
4 other questions for Mr. Kelly?

5 MR. DAUSCH: Not for Mr. Kelly.

6 HEARING OFFICER SLATER: Mr. Willis, any --

7 MR. WILLIS: No, no further questions.

8 HEARING OFFICER SLATER: Well, with that,
9 let's take lunch, and we'll come back here at 1:30.

10 (The hearing recessed at 12:30 p.m. and
11 reconvened at 1:35 p.m.)

12 HEARING OFFICER SLATER: All right. We are
13 back on the record. Mr. Willis, you may call your
14 next witness.

15 MR. WILLIS: I would call Jayme Graham.

16 JAYME GRAHAM, called as a witness, being
17 duly sworn by the court reporter, testified as
18 follows:

19 DIRECT EXAMINATION

20 BY MR. WILLIS:

21 Q. Ms. Graham, could you state your full name
22 for the record?

23 A. It's Jayme Graham.

24 Q. How do you spell that?

25 A. J-A-Y-M-E G-R-A-H-A-M.

1 Q. Thank you. As with Mr. Kelly, I'm going to
2 presume that you've graduated from high school?

3 A. I did.

4 Q. And then where did you -- did you go to
5 college after that?

6 A. I did.

7 Q. Could you tell me where?

8 A. The University of Pittsburgh.

9 Q. What year did you graduate?

10 A. 1980.

11 Q. And with what?

12 A. A bachelor's of science in chemical
13 engineering with a specialty in environmental
14 engineering.

15 Q. Okay. Did you have any formal education
16 after that?

17 A. I've taken occasional courses when we have a
18 number of courses for pollution control and things
19 like that. They're specific classes with no
20 certification involved, other than a little piece of
21 paper that says, "Look. You took this course."

22 Q. And that's just to further your education?

23 A. Yes.

24 Q. Thank you. Could you explain the
25 organization of the Air Quality Program in Allegheny

1 County?

2 A. Sure. It's one of the departments of the
3 Health Department. We have four distinct sections and
4 then the special task force. We have the Enforcement
5 people, the -- well, actually, let me start with the
6 monitoring. The Monitoring Staff that measures the
7 air, and we have the Planning Staff that takes that
8 data and determines whether or not we have a problem
9 and what we're going to do about it.

10 The Permitting Section, that's engineering, and
11 they turn these into permits; and then Enforcement
12 that does the enforcement of the activity. We also
13 have an asbestos group, which is its own separate
14 because it does both enforcement and permitting.

15 Q. And with respect to asbestos, that's still
16 covered under Article 21, their activity?

17 A. Yes.

18 Q. Okay. I'm going to jump right into SIP
19 development. Is there modeling data concerning the
20 emissions at Clairton for use in this SIP development?

21 A. For SO2 and particulates because those are
22 the areas we're interested in in the southern area.
23 For Ozone SIP, the -- it would include Clairton
24 modeling. But it's a broader model, so it has a lot
25 more different sources.

1 Q. And when you say, "Broader modeling," what do
2 you mean?

3 A. Our ozone non-attainment area designated by
4 the EPA includes Allegheny County and the six counties
5 that surround Allegheny County. So, the State is
6 responsible for developing the plan for that that
7 includes all of the sources in that area, as well as
8 from emissions that come in from outside the area.

9 Q. Are you familiar with the -- with what's
10 called emissions inventory?

11 A. Yes. There are many emissions inventories,
12 but I know the term, yes.

13 Q. Could you explain to me what an emissions
14 inventory is?

15 A. It's a -- it's a tally. It's an estimate of
16 what is actually coming out of either a specific plant
17 or a group of plants or even mobile sources and area
18 sources. It's to try to get a good idea of what is --
19 of what the emissions are that are going into the air.

20 Q. Does it take into consideration fugitive
21 emissions?

22 A. Certainly.

23 Q. Does it calculate the quantity of fugitive
24 emissions?

25 A. Well, it's very difficult to calculate

1 fugitive emissions. When you have stack emissions,
2 they often can be measured through either direct
3 measurement -- either a monitor that's continuously
4 running or stack tests that periodically go in and
5 actually measure.

6 Fugitive emissions are harder to measure. In
7 fact, in many cases it's impossible to measure, so we
8 use what's called an emission factor. And that's
9 something that's set up by the EPA or someone else
10 that says here's the approximation of the emissions
11 that would be used, and we use it as a surrogate for
12 actually having real measured emissions.

13 Q. So, if the emissions inventory indicates a
14 certain quantity of a fugitive emissions, it's not an
15 accurate number necessarily?

16 A. It's not an accurate number. It's an
17 estimate. It an approximation. I could give you an
18 example.

19 An example would be -- the subject that we have
20 is the battery fugitives. For the risen emission
21 factor that the EPA used to have, we simply said that
22 if you produce this much tonnage of coke, you have
23 this much emission. It could be a well working
24 battery, or it could be a lousy operating battery, but
25 because you created this much, -- you know, that was a

1 very poor emission factor. It was a very poor one to
2 use.

3 The EPA has improved it somewhat to say now we
4 count how many batteries are leaking. If you have
5 four batteries leaking, you have this much tonnage.
6 If you have 10, you have more; or 8, you have twice as
7 much. It still doesn't take into account if it's just
8 a little whisp of smoke or if it's a barreling amount
9 of smoke. It's just because you have four battery
10 doors leaking, you have this much emission.

11 So, it's an approximate, but it doesn't really
12 take into account the quality of the emissions.

13 Q. If you had four -- I'm using your number. If
14 you had four door leaks versus four high opacity
15 leaks, would there be any way to make that distinction
16 within the emissions inventory?

17 A. There's not a practical way. Sometimes we
18 try to put some numbers in, but we generally don't
19 because we don't have any data to -- to come up with
20 any better numbers than that.

21 Q. Okay. So, it's fair to say that the
22 emissions inventory does not account for opacity or
23 duration of any particular leak or emission?

24 A. Again, we use emission factors, but they're
25 very, very rough numbers. And often times, we just

1 ignore that because we don't have any good data to
2 work with.

3 Q. Okay. But with respect to opacity and
4 duration of any particular leak, that is not --

5 A. Opacity itself would not be an emission
6 value, yes. We're trying to turn that into a
7 particulate level or some sort of gas level. So, we
8 would not have opacity numbers in an emission
9 inventory.

10 Q. Okay. Could you ex- -- I think you -- either
11 you or Mr. Kelly have indicated that VEs, or what we
12 call visible emissions, are a surrogate for the actual
13 emission of any fugitives, let's say?

14 A. Sure. That's true.

15 Q. Why is that?

16 A. It goes back to not being able to measure in
17 many cases. Even the visible emissions that come out
18 of a stack, it's -- it's measured by a Continuous
19 Opacity Monitor. And what it does is it sends a light
20 beam through and measures and sees how much the light
21 is scattered by how much particulates there are in
22 that gas that's coming up.

23 But it's not a direct measure of the
24 particulates. We know that if there's more light
25 scattering, there's more emissions than there was when

1 there were less. But how much? And there's a lot of
2 attempts to make relations between the opacity and
3 emissions, but it's very rough numbers.

4 Q. Okay. I'm going to switch gears to our new
5 policy -- penalty policy. Do you recall when that
6 went into effect?

7 A. January 10th of this year.

8 Q. Okay. Do you recall it going through Air
9 Advisory for consideration?

10 A. No. This is a policy. We don't take
11 policies to the advisory committee.

12 Q. Okay. Did it pass the Board of Health for
13 consideration?

14 A. It was presented to the Board of Health, but
15 it was not approved by the Board of Health though.

16 Q. Was it presented to the Board of Health prior
17 to it being effective or after?

18 A. I think it was presented after it was signed
19 as information.

20 Q. Okay. With respect to the Penalty Policy
21 that was in effect in 2017, do you recall the ability
22 to deviate from that policy?

23 A. Certainly. We have and we do deviate from
24 these policies from time to time.

25 Q. Okay. And do you know of any particular

1 conditions which would cause a deviation from a
2 Penalty Policy?

3 **A. Well, a consideration on the work that a
4 company is doing, or vice versa with some with more
5 difficulties that they're having that we may need to
6 be higher. But we have given consideration for work
7 that people have done.**

8 **Q. Okay. And I believe I've asked Mr. Kelly,
9 but I will ask you as well. What is the regulatory
10 limit for our penalties under Article 21?**

11 **A. It's \$25,000 a day per violation.**

12 **Q. Okay.**

13 **A. That's the State -- that's the State limit.**

14 **Q. That's the State limit. Is the State
15 considering changing that limit?**

16 **A. I don't believe so. I don't know.**

17 **Q. And would we change it unilaterally?**

18 **A. We would not exceed that. That's the State
19 limit, but we would consider it. If the State was
20 changing it, we would consider it.**

21 **Q. So, the best case scenario, you would not
22 even be able to exceed the limit that's established by
23 the State, so we, without the State, would not be able
24 to go beyond \$25,000 per violation?**

25 **A. I don't know that for a fact, but I don't**

1 **believe so. I think we would be bound by the \$25,000
2 per day per violation.**

3 **Q. Does the County enforce the NESHAP?**

4 **A. Yes, we do.**

5 **Q. Are you aware as to whether or not the
6 regulations under Article 21 constitute a more
7 stringent standard?**

8 **A. They do.**

9 **Q. Do you know why?**

10 **A. Most -- primarily, it's because of our stated
11 limitation plans for our attainment of the standards,
12 the SO2 standards and particulate standards in the
13 past.**

14 **Q. Okay. Now, you have some recollection of
15 these quarterly penalties. Do you know how long the
16 County has been issuing quarterly penalties against
17 U.S. Steel?**

18 **A. Well, we meet regularly with the company
19 whenever there's violations to make sure and see what
20 they're doing to repair those violations and what
21 they're doing. But for the past several decades,
22 we've -- by agreement, we've said we'll just gather up
23 the penalties, and we'll file them every three months.
24 I know it's been several decades. I don't know how
25 long it's been.**

1 **Q. Okay. Do you recall the third quarter of
2 2017 penalty -- quarterly penalty?**

3 **A. Yes, I do.**

4 **Q. Do you know whether or not U.S. Steel paid
5 that penalty?**

6 **A. They did, yes.**

7 **Q. Did they pay the full amount of that penalty?**

8 **A. They -- they did not pay the full amount of
9 the initial penalty. We had met with them to discuss,
10 again, what the issues were and what kind of controls
11 there would be. But as part of our discussion, I
12 allowed for a reduction of the penalty by 20 percent.
13 This is something that used to happen much more
14 frequently. We very, very rarely give a reduction in
15 penalties, but we still do that.**

16 **And the consideration was since this was the
17 first time the penalty was -- policy was being used
18 for such a large penalty, that we would give that
19 reduction. So, they did pay 20 percent -- or 80
20 percent of the original amount.**

21 **Q. Now, when you say that policy, you're
22 referring to the 2018 policy?**

23 **A. The 2018 policy.**

24 **Q. So, the first time that a quarterly penalty
25 was issued against U.S. Steel using the new Penalty**

1 **Policy was with respect to the third quarter of 2017?**

2 **A. Yes.**

3 **Q. And you indicated to them why we were
4 reducing the penalty amount?**

5 **A. Because it was the first time that it was in
6 use and just to understand how we were using this
7 penalty and -- and so we gave that -- allowed for a
8 reduction.**

9 **Q. So, this is actually the second penalty
10 against U.S. Steel using this new policy?**

11 **A. No, this would be the -- this one that we're
12 talking about, the fourth quarter and the first
13 quarter, would be the fifth time we've used the
14 penalty.**

15 **Q. Okay.**

16 **A. For U.S. Steel.**

17 **Q. For U.S. Steel.**

18 **A. We've used it for many other sources.**

19 **Q. I see. Are you considering -- in your
20 calculations, are you counting the asbestos violations
21 as well?**

22 **A. Yes. There was a -- an asbestos violation, a
23 significant one, and then there were three reporting
24 violations at three plants. They weren't all at
25 Clairton. The three reporting violations were at**

1 Clairton, Edgar Thompson, and Irvin Works.

2 Q. And the reporting violations, what were those
3 violations regarding in terms of --

4 A. These all four were asbestos. So, the main
5 violation was asbestos, and the reporting violations
6 were asbestos. In the asbestos rules, you're required
7 to submit a plan every time you remove asbestos.

8 Well, that becomes very cumbersome for a company
9 -- a large company or a large facility that is
10 regularly going to be removing asbestos from different
11 parts of the plant. So, there's a permit allowance
12 for something called, "Operation and maintenance," or
13 an O and M Permit, and you submit it yearly.

14 You submit the application yearly, and it says,
15 "This is what we think we're going to do this year."

16 And as long as it stays within some restrictions,
17 then they can -- then they submit quarterly reports
18 that says, "Okay. This is what we accomplished and
19 this is how we did it correctly. This is what we
20 accomplished, and this is how we did it correctly."

21 These reports have not been submitted for several
22 years, all the way back to 2015. And so, they
23 received penalties for all three plants for not
24 submitting their quarterly reports.

25 Q. And so, with respect to at least one of those

1 penalties against Clairton, we issued a penalty
2 against violations that occurred in 2015?

3 A. Yes. It was reporting violations in 2015.

4 Q. And we used the 2018 Penalty Policy for the
5 violation?

6 A. Well, certainly, yes.

7 Q. Okay. Why do you say certainly?

8 A. Because that was the Penalty Policy in place.

9 Q. You wouldn't use the 2015 Policy for a 2015
10 Violation in 2018?

11 A. No. This is the policy that's in place, so
12 this is the one that we use.

13 Q. Okay. And similarly, with respect to -- I
14 believe there was an asbestos violation for the actual
15 removal of asbestos?

16 A. Yes.

17 Q. Do you recall when that violation occurred?

18 A. It occurred sometime in 2016. I think it was
19 early 2016. We heard about it in 2017. We issued the
20 penalty in 2018 once we received all of the
21 information because it went through Federal
22 Enforcement as well.

23 Q. Okay. Now, do you recall whether or not U.S.
24 Steel appealed any of those Enforcement Orders?

25 A. They did not appeal the third quarter of

1 2017, the first one. They did appeal the asbestos --
2 all four of the asbestos actions, but they have
3 withdrawn -- they have since withdrawn their appeals.

4 Q. Okay. I'm not sure if I asked you, but I'll
5 ask you one more time for my own clarification. With
6 respect to the Source Testing Manual, is that a
7 regulation of ACHD?

8 A. No. It's a policy, just as the Enforcement
9 Policy is a policy.

10 Q. Could you explain the difference or how these
11 two documents relate to each other, namely the Source
12 Testing Manual on the one hand and Article 21 on the
13 other?

14 A. Well, Article 21 is our regulations. It has
15 gone through a full promulgation process, and it is
16 approved by a number of levels of government and this
17 is the regulation that we stand by.

18 And the Source Testing Manual is a manual. It is
19 an operations manual. It's how we do it, and we try
20 to -- you know, we -- it's sort of -- our operations
21 manual is sort of like a driver's manual.

22 The regulations would be just like your
23 regulations, your speed limits and your inspection
24 maintenance requirements. But your operations manual
25 is how you operate and how you do the stuff to

1 accomplish the others.

2 Q. Okay. There was an issue, I believe, last
3 year. And correct me on the timing of this, but there
4 was some discrepancy or some dispute as to the County
5 should adhere to the Source Testing Manual versus the
6 Article 21 Regulations? Do you recall that dispute?

7 A. Yes. I don't recall the date either.

8 Q. That's fine. Could you explain for the
9 benefit of Mr. Slater and the record what that dispute
10 involved?

11 A. This is the -- this is a rule that says --
12 that was written originally to stay that -- the intent
13 that you look at -- when you're looking at doors that
14 are leaking, there had been a rule -- a regulation
15 that said that you discount the last two doors that
16 were charged.

17 So, if the battery has been charged, the intent
18 is it takes -- it takes a few minutes for the build up
19 around the door, so you don't count them when you're
20 -- when you're doing your inspection. So, you
21 shouldn't count those two and give them a few minutes
22 for them to set up, essentially, so they won't leak.

23 HEARING OFFICER SLATER: So, not counting the
24 last two doors?

25 MS. GRAHAM: The last two doors that were

1 charged.

2 HEARING OFFICER SLATER: Okay.

3 MS. GRAHAM: So, you have to know which ovens
4 -- which was the last oven that was charged, and you
5 don't count those two doors. That's what the
6 regulation says.

7 The Source Testing Manual simplified that and
8 said when you -- after you do your inspection, you
9 subtract two doors. So, it wasn't the last two
10 charged. It was just simply subtracting two doors.

11 And it was for simplicity purposes because,
12 at least when it was written -- when the Source
13 Testing Manual was written, it was really difficult to
14 find out which door was charged. You had to get back
15 off the battery, you had to call somebody, and you had
16 to find out which was the last one charged. And so,
17 it was done for simplicity purposes.

18 The beginning of -- I don't want to say the
19 beginning of this year. The beginning of last year --
20 I think it was the beginning of last year, we realized
21 that we can find out which ones were the last charged.
22 And to properly follow Article 21, we need to be
23 discounting the last two doors that are charged.

24 Now, that makes it a tighter regulation.
25 Well, it makes -- well, the regulation is the

1 regulation, but it becomes -- you end up with higher
2 violations because if those last two doors were not
3 leaking, that means you're counting all of the leaking
4 doors, instead of subtracting two doors.

5 So, U.S. Steel asked for a meeting and we
6 discussed it and they were concerned and they said,
7 "Wait a second. You're changing what you're doing."

8 And we said, "Well, the Source Testing Manual
9 only says subtract two. The regulation says the last
10 two that were charged."

11 And we went back and forth. And since we
12 were in the process, unfortunately, for a long time
13 and in the process of rewriting the Source Testing
14 Manual, at the end of that meeting, we discussed and
15 we said, "For now, we will agree. We will go back to
16 the Source Testing Manual, even though we know that's
17 not what the regulation says, and we know that's less
18 than what the regulation says, but we will go back to
19 that process for now, until we change the Source
20 Testing Manual to match what the regulation is."

21 So, in this case, the Source Testing Manual
22 is actually weaker than the regulation, but we have
23 agreed to abide by that.

24 BY MR. WILLIS:

25 Q. And as a result of that, like I believe you

1 were saying, it's that U.S. Steel benefited from the
2 application of the Source Testing Manual versus the
3 regulation?

4 **A. Yes. It is a weaker -- it is a little bit
5 weaker because -- well, actually, in many cases, we've
6 counted -- and in some cases, it's significantly
7 weaker because we're just discounting two doors
8 instead of just the last two that were charged.**

9 Q. And that's not the only occasion in which the
10 County has deferred to the Source Testing Manual; am I
11 correct in that? I'm speaking with respect from
12 the -- from the distance from the -- from the battery
13 in terms of doing an opacity reading.

14 **A. You know, I'm not that familiar with the --
15 the yard equivalent calculations. I think you'll need
16 to ask Dean about that.**

17 Q. Okay. Has the Department issued a million-
18 dollar-plus penalty in the past?

19 **A. Certainly, yes. Not certainly, but yes.**

20 Q. Are you aware of any greater penalties
21 assessed against U.S. Steel itself for environmental
22 right violations?

23 **A. I'm aware of a penalty that happened around
24 1980. There was an extreme EPA -- it was against nine
25 plants at U.S. Steel in this area, in the Southwestern**

1 **Pennsylvania area. The final settlement was for \$400
2 thou- -- \$400 million worth of improvements, with a
3 penalty of \$18.3 million.**

4 Q. Okay. Are you aware of any potential
5 controls for -- for gases generally.

6 **A. Well, it depends on where the gas is and how
7 it's produced, but, yeah. There's a lot of possible
8 controls. There's bag house -- well, for particulate
9 -- are you asking just for gases?**

10 Q. For gases.

11 **A. For gases, there are scrubbers. There are
12 containment -- ways to contain the gas, so it doesn't
13 get out into the atmosphere to begin with. There are
14 filters. There are other processes that can be used
15 to contain the gas.**

16 Q. Can you describe what a scrubber is?

17 **A. It's -- it's like a washing machine. It's a
18 rain -- it's -- it would be water or some chemical.
19 It's usually water with a chemical, but it comes down
20 and the air -- the gas -- the dirty gas comes up and
21 it is attracted to the liquid that is coming down and
22 gets absorbed by it and then the clean gas then goes
23 out the top.**

24 Q. To your knowledge, is there a scrubber on
25 Battery B?

1 A. There is not.

2 Q. Is there any control device to capture and
3 control gaseous emissions from Battery B?

4 A. Not gaseous emissions, no.

5 Q. You sort of prefaced that. Is there another
6 control that you're aware of for Battery B?

7 A. Well, the -- the shed controls -- or captures
8 most of -- not all, but a significant -- some of the
9 particulate emissions, and it goes to a bag house.

10 Q. When you say some of, what is not being
11 captured?

12 A. Well, what we've -- our inspectors have come
13 back and said that there's a small space that has to
14 be between a shed -- a shed is just -- just what it
15 sounds like. It's like a cover or a canopy that --
16 that is near where the coke is pushed out, and this
17 goes the length of the battery. Its intent is to
18 capture those emissions when the -- when the coke is
19 being pushed out and take it to the bag house and have
20 it controlled.

21 But from what our inspectors have told us, is
22 there is -- there is a gap between the two, which is
23 necessary to some extent because of the -- the heating
24 and expansion. But quite often, emissions are coming
25 up there, as well as some emissions that actually

1 escape from the two ends of the shed and out the front
2 if there's been an overwhelming -- more often from a
3 bad push than leaking doors, but -- and so, it does
4 capture, but there are still significant emissions
5 that get released.

6 Q. And with respect to particulate matter, or PM
7 2.5, is that an emission that can make its way from
8 the sides of that shed?

9 A. Yes. That's what I said. Yeah. It can
10 escape from the out- -- from the sides, as well as the
11 front, and from the --

12 Q. Can you think of any controls that would keep
13 the emissions from escaping the shed from the sides?

14 A. Well, it would have to be designed, but if
15 there was more of a capture on the side to -- you
16 know, for the shed to come down. I don't really -- I
17 have not seen the shed in operation, so I'm not sure
18 what's available. But there may be some ways to put
19 some canopy or something on the side to keep those
20 emissions from getting out from the ends.

21 Q. Has there ever been any discussion about
22 capturing and controlling the PM from the sides or the
23 top of that shed?

24 A. I'm not sure specifically for that shed. I
25 mean, we're always talking to the company about better

1 controls on the plant.

2 Q. Okay. Have you -- you're aware of the
3 installation of Battery C? Were you an employee of
4 ACHD when that --

5 A. I was.

6 Q. -- battery -- were you an employee of ACHD at
7 the time that battery was proposed?

8 A. Yes.

9 Q. And was there a permit issued for the
10 installation of that?

11 A. There was.

12 Q. And was there contemplation of just that
13 battery, or were there intentions to do more in terms
14 of installation of batteries?

15 A. The intention at the time was to do Battery C
16 and D.

17 Q. Now, Battery C replaced certain batteries
18 that existed at the time. Which ones did that
19 replace?

20 A. It replaced Batteries 7, 8, and 9.

21 Q. And the proposed Battery D, what was that set
22 to replace?

23 A. It was intended to replace Batteries 1, 2,
24 and 3.

25 Q. And Batteries 1, 2, and 3, they are the

1 oldest batteries at that facility?

2 A. Yes.

3 Q. But that Battery D was never installed?

4 A. No. It was -- it was -- both Battery C and
5 Battery D were part of a SIP, a plan -- a control plan
6 for particulates. But right after the plan was
7 submitted to the EPA and went through the full
8 process, the approval process, and went to the EPA,
9 the company came and said, "We have changed our minds.
10 We're not going to build Battery D."

11 And so, we re-negotiated additional emission
12 controls that would still bring us to attainment of
13 that standard at the time, but did not include Battery
14 D.

15 Q. And following the installation of Battery C,
16 were there continued emission problems with respect to
17 that battery?

18 A. Yes. Battery C had some problems with some
19 equalization of the pressure, and that put out some
20 continued emissions. Not continuous, but pretty
21 regular emission problems, and it took quite a while
22 for the company to get it under control.

23 Q. How did they get it under control?

24 A. They installed a pressure valve that went
25 from one -- I don't have the real specifics, but a

1 u-tube valve that went from one oven to the next oven,
2 so they could equalize the pressure better.

3 Q. That sounds like a fairly complicated
4 installation. Is that u-tube that was installed --
5 did that go through the permit process?

6 A. Yes, it did.

7 Q. How long did that take to evaluate, to your
8 recollection?

9 A. Well, the company came and met with us quite
10 a few times while they were in the process of figuring
11 this out, so the -- I mean, the permitting process
12 went the same time line it normally does -- or did.

13 Q. Okay. Do sulfur compounds leaving the oven
14 -- these oven doors where we're experiencing the
15 leaks, do those get captured by the bag house, for
16 Battery B to be specific?

17 A. Well, most of -- the sulfur compounds are
18 mostly hydrogen sulfides. So, as a gas, they would
19 not get collected by -- if they get caught by the --
20 by the shed, they would not be captured by the bag
21 house. They would be passed through as a gas.

22 Q. Does BTEX -- I think we've mentioned what
23 BTEX actually are. Are those captured by bag houses?

24 A. No. Again, they're a gas. At least at that
25 point, they are a gases, so they would get through the

1 bag house.

2 Q. So, any visible emissions that we see coming
3 from those doors, would they contain BTEX or SO2 or
4 any other gaseous emissions?

5 A. They would contain -- they would contain all
6 of them. Would contain H2S. They would contain some
7 sulfur dioxide. But mostly, it would be H2S that's
8 going to convert into sulfur dioxide as it gets into
9 the atmosphere and the BTEX. It would still be a gas
10 as it's leaving -- as it's leaving the battery itself.

11 Q. Okay. The civil penalty that in the
12 Enforcement Order at issue, does that cover or
13 contemplate the same penalties that are stipulated in
14 the 2016 Consent Judgment?

15 A. No, none of our -- for our Enforcement
16 Orders, they do not include those stipulated
17 penalties. Stipulated penalties are treated
18 differently and separately.

19 Q. And has that always been the case?

20 A. Yes.

21 Q. Okay. So, the 20- -- the third quarter of
22 2016 Civil Penalty, the Quarterly Penalty Assessment,
23 that did not contemplate or penalize for any
24 violations that arose under the 2016 Consent
25 Judgment?

1 A. I have not read it, but it should not have.

2 No, it would not have. Stipulated penalties are
3 treated separately. We send -- sometimes in an order,
4 the company automatically sends a stipulated payment,
5 and sometimes we send a notification for them. But
6 that's always treated separately than the quarterly
7 violations.

8 Q. Okay. Are you familiar with the -- the
9 paragraph in the Total Penalty Assessment Section, not
10 the Enforcement Order, which relates to the two
11 successive quarters of continuing improvement?

12 A. Yes.

13 Q. Was the intent of that provision to reduce
14 stack and fugitive emissions?

15 A. Well, certainly. That's -- the whole intent
16 of the order is to show improvement and then continued
17 improvement into the second quarter.

18 Q. Have we ever modeled for emission reductions
19 following the shutdown of three batteries, in the
20 event of a three-battery shutdown?

21 A. I'm told we have. I don't know much about
22 it, but I think that we have looked at if Batteries 1,
23 2, and 3 were shut down, but I haven't seen those
24 results.

25 Q. Okay. Based on what you know about the

1 facility -- and it sounds as though you've been with
2 the Department, what, --

3 A. For 37 years.

4 Q. For 37 years. Would you anticipate a
5 reduction in the SO2 values, if -- in the event that
6 Batteries 1 through 3 were to be taken off line?

7 A. Well, certainly, yes. If the batteries were
8 to be taken down, that would be -- that would be a
9 significant improvement in sulfur dioxide emissions.

10 Q. Would you find a reduction in those values of
11 PM 2.5 and SO2 from the idling of two batteries?

12 A. Yes, yes. There's a lot of -- there's a lot
13 of sulfur dioxide that comes out of the stack, the
14 combustion stack, because you have to heat these
15 batteries continuously. You would still be heating
16 them if they were on idle. I mean, I'm assuming
17 you're talking about idling, and not shutting them
18 down completely, but idling them.

19 Q. Correct.

20 A. But it would not take the same amount of heat
21 or the same amount of fuel as it would be if you're
22 actually making coke in the process, so there would be
23 that decrease. And then the fact that there wouldn't
24 be leaks and -- you know, those kinds of emissions
25 would not exist at all.

1 Q. Circling back to the emissions inventory for
2 a quick second, do we enforce -- under 2109, do we
3 enforce any aspect of the emissions inventory? Do we
4 enforce off of that information?

5 A. Other than the actual reporting? They're
6 required to report their emission inventory, but we
7 don't enforce off of the emission inventory, no.

8 Q. And with respect to enforcement, what do we
9 enforce with respect to coke ovens?

10 A. Well, we enforce NESHAP, the NESHAP
11 requirements. We incorporate them by reference. And
12 our Regulation 2105, Section 21, contains all the
13 specific coke plant regulations. And there are
14 miscellaneous Article 21 Regulations that the plant is
15 subject to just because plants are subject to them.

16 Q. Now, 2105, is that an opacity standard?

17 A. Many of them are. There is the hydrogen
18 sulfide standard in coke oven gas that's being used as
19 fuel, but the majority of them are opacity standards.

20 Q. Okay. Are you aware of a program called
21 CITE, C-I-T-E?

22 A. I am.

23 Q. Could you explain to the best of your
24 recollection what that program is about?

25 A. When I started in 1980, there was a lot of

1 excitement about this program. It's called Continuous
2 Improvement to the Environment and it was a U.S. Steel
3 program and they were very proud of it and they shared
4 a great deal about it. Every employee -- what I was
5 told was every employee took 40 hours of training on
6 how their job specifically affected the environment
7 and how they could work to improve the environment.

8 And they had other projects as part of this
9 Continuous Improvement to the Environment Project.
10 One that came of most interest was -- I think it was
11 late 1980's where they had a team. We had -- the
12 company had a problem meeting their H2S in coke oven
13 gas, the regulation that we just talked about.

14 The limit is 40 grains of hydrogen sulfide per
15 100 cubic feet of gas, and grain is a weight for
16 loading. So, it's how much hydrogen sulfide that is
17 in the coke oven gas that's used as a fuel everywhere
18 at the three plants. And the standard at that time
19 was 40 grains, and they had trouble meeting that 40
20 grains.

21 And so, as part of this CITE Program, they put
22 together a task force, like a quality assurance group,
23 a quality improvement group, which is what people now
24 call it. People from the floor, people from the Gas
25 Dispatcher's Office, managers, or whatever got

1 together, and they looked at every -- all aspects to
2 see what they could do to lower that amount, so they
3 can come within the limit of 40 grains because they
4 kept on going above it.

5 The anecdote that I was told, and the numbers
6 that we saw, is that they were so successful that
7 within a few years they renamed the group the Under 20
8 Group to bring the grain loading below 20. So, this
9 was an example of the CITE Program and the
10 improvements of the CITE Program.

11 I don't know if it's in place at all. It would
12 be very useful if this would to be improved upon and
13 used again to involve all of the employees in
14 improving the environment.

15 Q. Staying with that notion, you've had an
16 opportunity to review the plan that U.S. Steel
17 submitted in terms of their compliance with that two
18 successful quarter requirement?

19 A. Right, the control plan.

20 Q. Do you recall the notation of the CITE
21 Program in that document?

22 A. I think there's some -- I don't know
23 specifically, but I know there's some reference to
24 increased training of the employees, and I think
25 that's where they refer to the CITE Program.

1 Q. Okay. And do you recall whether or not there
2 was any contemplation of additional personnel to bring
3 them into compliance?

4 A. Very specifically, there's discussion of
5 additional personnel, yes.

6 Q. So, ultimately, the issuance of this
7 Enforcement Order, rather than cause a decrease of
8 employment, has caused an increase of employment, at
9 least per the plan?

10 A. According to the plan, yes.

11 Q. Are you aware of the facility of Arsenal
12 Middle?

13 A. I know of it. You're talking about the plant
14 that's in Monessen. Arsenal Middle has several
15 plants, but you're talking about Monessen, right?

16 Q. I'm sorry, yes. To be precise, the plant
17 that's in Monessen?

18 A. Yeah.

19 Q. And by comparison, how big is that facility
20 to Clairton?

21 A. I believe it's only one battery, as opposed
22 to the 10 batteries in Clairton.

23 Q. So, substantially smaller?

24 A. Yes.

25 Q. Do you know if that facility has ever been in

1 hot idle?

2 A. Yes. I was told it was in hot idle for about
3 five years from 2008 or '09 to 2014.

4 Q. And it's currently in operation?

5 A. It's in operation.

6 Q. Would you know how many violations that --
7 well, let me back up. Are you aware of any
8 enforcement action involving the DEP versus Monessen,
9 that Monessen facility?

10 A. I don't know if it's DEP or EPA, but there
11 was a recent \$1.5 million penalty against the company.

12 Q. Do you know how many violations were
13 involved?

14 A. I believe it was about 300, but I'm not sure
15 exactly.

16 Q. Are you familiar with Eastman Chemicals?

17 A. Sure, that's one of our companies.

18 Q. Do you know if they've had a similar sized
19 penalty?

20 A. I'm told that they had a million-plus
21 penalty. Again, it was an EPA action, but yes.

22 Q. And with respect to Shenango, which was
23 another coke facility in the area, do you know if any
24 -- do you know what the highest penalty that they
25 received from the Health Department?

1 A. I don't know the highest. I know there was
2 one over a million dollars, and I know one that I was
3 involved in was a \$600,000 penalty.

4 MR. WILLIS: I want to go through some
5 documents at this point, and this -- they do not have
6 a copy of this, so I'm going to introduce this
7 separately.

8 HEARING OFFICER SLATER: Okay.

9 BY MR. WILLIS:

10 Q. But this -- could you take a look at that?
11 Do you know what this is?

12 A. Well, this is our Chapter Nine Enforcement,
13 but it is not complete. I believe that this is what
14 the EPA posts on their website, and that includes
15 whatever has been SIPed as a federal -- a federally
16 enforceable rule and they mark what -- and they
17 exclude things that were not SIP.

18 Not everything goes into a SIP. There are things
19 like odor regulations that the Federal Government does
20 not enforce. And so, they -- if we submit it to them,
21 they would just reject it. They're not part of the
22 SIP.

23 This is EPA's version of our Enforcement Chapter,
24 which includes everything that is federally SIPed,
25 everything that is federally enforceable.

1 Q. How can you tell that this is the EPA
2 version?

3 A. Because it has, "Not in SIP."

4 Q. Where are you looking at?

5 A. There's places, like, 2109.02, Remedies,
6 Section Seven, says, "Not in SIP."

7 I also know that -- I was verified by my engineer
8 because he pulls this down on a regular basis.
9 Enforcement Orders in general -- 2109.03 is
10 Enforcement Orders. A is SIPed, B is SIPed, but A One
11 through Three are not in SIP.

12 Q. I've got you. Could you read 2109.03A?

13 A. Certainly. "Whenever the Department finds,
14 on the basis of any information available to it, that
15 any source is being operated in violation of any
16 provision of this article, including any provision of
17 any permit or license issued pursuant to this article,
18 it may order the person responsible for the source to
19 comply with this article, or it may order the
20 immediate shutdown of the source or any part thereof.
21 The issuance of an order to address any violations,
22 including of permit conditions, need not be preceded
23 by the revocation of a permit."

24 Q. Okay. And similarly, could you read 2109.04?

25 A. Just A?

1 Q. Just A.

2 A. Okay. "2909.04, orders establishing an
3 additional or more restrictive standard. General.
4 Whenever the Department finds, on the basis of any
5 information available to it, that emissions of any
6 source are causing or significantly contributing to
7 the exceedances of any ambient air quality standard
8 established by Section 2101.10 of this article at any
9 location within the Commonwealth, that such emission
10 violates -- that at such emissions violate the
11 requirements of Article 2101.12 of this article
12 relating to interstate pollution, or that such
13 emissions may otherwise reasonably be anticipated to
14 endanger the public health, safety, or welfare, they
15 may order the person responsible for such source to
16 comply with an additional or more stringent emission
17 limitation than established by this article, or it may
18 order the immediate shutdown of this source or any
19 part thereof."

20 Q. Okay. Would you agree that those two
21 portions are part of the SIP?

22 A. Yes, according to this, they are.

23 Q. Okay. And is it your understanding, that
24 based on the reading of that, that there's a
25 requirement to consider all information in the

1 universe of information?

2 **A. It says, "Whenever the Department finds, on**
3 **the basis of any information available to it." So,**
4 **yes.**

5 Q. We were just talking about the emissions that
6 you anticipate from door leaks from, in particular,
7 Battery B, the BTEX and benzene. Is that a public
8 health hazard?

9 **A. Yes. They are cancer causing chemicals;**
10 **benzene, toluene, xylene, and ethylbenzene.**

11 Q. And those are not currently being controlled
12 by the bag house of Battery B?

13 **A. No.**

14 Q. Did we order, as a part of our Enforcement
15 Order, the immediate shutdown of any batteries?

16 **A. We did not.**

17 Q. Did we condition a shutdown on any batteries?

18 **A. We conditioned a possible shutdown -- or not**
19 **a shutdown, no. An idling of a battery if things do**
20 **not improve, yes.**

21 Q. So, you're making a distinction between a
22 shutdown and an idling?

23 **A. Certainly. A shutdown is that you completely**
24 **take this battery off line, and you take the gas off**
25 **of it. That will pretty much destroy a battery. It**

1 cannot come back on.

2 **Idling -- and idling has happened before. Idling**
3 **happened during the steel recession in 2009. Idling**
4 **just says you cannot produce coke. You still heat the**
5 **batteries, you keep them maintained, but you cannot**
6 **produce coke with them.**

7 MR. WILLIS: Okay. Thank you. I'm going to
8 offer this as an exhibit, ACHD Exhibit Four.

9 HEARING OFFICER SLATER: Okay. Any
10 objection, Mr. Dausch?

11 MR. DAUSCH: No.

12 HEARING OFFICER SLATER: All right. ACHD
13 Four is admitted.

14 MR. WILLIS: Okay. I'm going to move to what
15 will be ACHD Five, unless it's in here. I'm looking
16 at the November 17, 2016 NOV. Do you have that?

17 MR. DAUSCH: No.

18 BY MR. WILLIS:

19 Q. Does that look familiar?

20 **A. Let me make sure that I signed it. Yes, this**
21 **would be the second quarter of 2016, and we talked**
22 **about the quarterly emission penalties -- or**
23 **violations, and this would be for the second quarter**
24 **of 2016.**

25 Q. On the second page, the first full paragraph,

1 could you read that?

2 **A. Starting with, "By this letter"?**

3 Q. Yes.

4 **A. "By this letter, the Department is not taking**
5 **any actions specifically regarding any alleged**
6 **failures to meet any requirements regarding pushing or**
7 **combustion stacks as determined by a Continuous**
8 **Opacity Monitoring System or soaking on Batteries 1,**
9 **2, or 3. Such actions are taken separately and**
10 **through provisions of the March 24, 2016 Consent**
11 **Judgment."**

12 Q. So, this NOV specifically carves out
13 violations that are contemplated under the Consent
14 Judgment?

15 **A. Yes.**

16 Q. Okay. About five -- four sheets in -- on the
17 fifth sheet, it begins, "Notice of Violation
18 Settlement Offer, January 25, 2017." Are you familiar
19 with this one?

20 **A. Well, this would be the third quarter of 2016**
21 **penalty -- quarterly penalty assessment.**

22 Q. Okay. And similarly, this one carved out the
23 violations regarding the March 24, 2016 Consent
24 Judgment?

25 **A. Yes. It's on the second page of that.**

1 Q. Okay. At the bottom, there should be a Bates
2 Number 13954, and it begins, "Notice of Violation
3 Settlement Offer, June 12, 2017"?

4 **A. Yes.**

5 Q. Would you agree that this is attributable to
6 the fourth quarter of 2016?

7 **A. It is the fourth quarter penalty assessment.**

8 Q. Okay. And again, does this carve out any
9 penalties attributable to the 2016 Consent Judgment?

10 **A. It is the same paragraph, yes.**

11 Q. Okay. Bates 13960, "Notice of Violation
12 Settlement Offer, July 5, 2017"?

13 **A. This is the first quarter of 2017.**

14 Q. Okay. And similarly, does this carve out any
15 violations attributable to the 2016 Consent Judgment?

16 **A. The same paragraph is in this assessment.**

17 Q. Okay.

18 **A. And one more?**

19 Q. One second. Would you -- let's flip back to
20 13954 for a second. Would you agree that this was
21 issued in June of 2017?

22 **A. That's what it says, yes.**

23 Q. And this was attributable to the fourth
24 quarter of 2016?

25 **A. Yes.**

1 Q. And so, at the time this was calculated, it
2 was the subsequent year to the actual violation?

3 **A. Yes. It takes a while to accumulate, to**
4 **assess, to review, to process, and to put this thing**
5 **together. So, it does take quite a while to get from**
6 **the end of the quarter to when the assessment is put**
7 **together.**

8 Q. Okay. Now, we will move forward to 13967,
9 the October 30, 2017, Notice of Violation with
10 penalty. Is this also attributable to the second
11 quarter of 2017?

12 **A. Yes, it is.**

13 Q. And does it have the same language carving
14 out the penalties attributable to the 2016 Consent
15 Judgment?

16 **A. It does.**

17 MR. WILLIS: Okay. We're going offer this as
18 ACHD Six.

19 HEARING OFFICER SLATER: I had five.

20 MR. WILLIS: Five?

21 HEARING OFFICER SLATER: Yeah.

22 MR. WILLIS: Okay.

23 HEARING OFFICER SLATER: Any objection?

24 MR. DAUSCH: No, no objection.

25 HEARING OFFICER SLATER: Okay. ACHD Five is

1 admitted.

2 MR. WILLIS: Thank you. Do you guys have
3 this?

4 MR. DAUSCH: It's Number Two.

5 MR. WILLIS: I'm sorry?

6 MR. DAUSCH: It's Number Two in the binder.

7 MR. WILLIS: Oh, it's in here?

8 MR. DAUSCH: Yeah.

9 MR. WILLIS: Okay. So, 72?

10 MR. DAUSCH: No, Two.

11 MR. WILLIS: Oh, Number Two. Two is the --

12 HEARING OFFICER SLATER: So, Tab Two?

13 MR. WILLIS: It's Tab Three. Yeah. It's
14 already in there under Three.

15 HEARING OFFICER SLATER: Oh, Three.

16 BY MR. WILLIS:

17 Q. I believe we discussed this one earlier. You
18 indicated that this was the first one that we applied
19 the 2018 Civil Penalty Policy against U.S. Steel?

20 **A. The -- this is the third -- yes, it is.**

21 Q. How much was the penalty for in that?

22 **A. In this document, it's \$490,125.**

23 Q. So, almost a half million dollars?

24 **A. Yes.**

25 Q. Just for that one quarter, correct?

1 **A. Yes, that is correct. And this is the one we**
2 **reduced the penalty for.**

3 Q. I'm going to move to another document. Could
4 you take a look at that document please? Does that
5 document look familiar to you?

6 **A. Yes. This is the asbestos violation.**

7 Q. Okay.

8 **A. The non- -- the reporting violations for**
9 **three others -- this document -- unless you have those**
10 **included in here.**

11 HEARING OFFICER SLATER: Is this document in
12 one of the binders?

13 MR. WILLIS: No, it's not.

14 HEARING OFFICER SLATER: Okay.

15 MR. WILLIS: So, it's going to be an ACHD.

16 HEARING OFFICER SLATER: All right. I'll say
17 ACHD Six.

18 MR. WILLIS: Thank you.

19 BY MR. WILLIS:

20 Q. If you would look to Paragraph 12, do you see
21 that?

22 **A. Yes.**

23 Q. What's the date of the allegation in
24 Paragraph 12?

25 **A. That the actions were taken February 1st**

1 **through February 5th, 2016.**

2 Q. Okay. And yet, with respect to this order,
3 we used the 2018 Civil Penalty Policy?

4 **A. Yes.**

5 Q. And U.S. Steel appealed this order?

6 **A. They did, yes.**

7 Q. And U.S. Steel withdrew its appeal of that
8 order?

9 **A. They did.**

10 Q. So, this Civil Penalty Policy was paid?

11 **A. I believe that the penalty -- the final**
12 **penalty was different. There were some discrepancies**
13 **on some of the violations on this. I believe that it**
14 **was slightly different than this, but the penalty**
15 **itself was paid, yes.**

16 Q. Okay.

17 **A. Well, it was put into escrow during the**
18 **appeal, and now the appeal has been withdrawn.**

19 MR. WILLIS: Okay. I understand. I'm going
20 to apologize in advance because of the way we produced
21 our documents, they were -- I was trying to save a few
22 trees and did everything on -- you know, two sided.
23 The consequence is that there's a carryover from a
24 previous document that should not be included for the
25 next exhibit. This one starts, technically, at 14034,

1 but because it was double-sided, there is an
2 extraneous document that has no bearing on this
3 particular piece of evidence at 14033.

4 MR. DAUSCH: Can I see that?

5 MR. WILLIS: Yeah.

6 HEARING OFFICER SLATER: Do we need to cross
7 anything out, or should we just ignore it?

8 MR. WILLIS: I was going to ask to ignore it
9 because I have no use for that information. I don't
10 know if -- if they object, I have no problem, and then
11 we can copy -- get fresh copies of just that front
12 page.

13 MR. DAUSCH: My suggestion would be that we
14 continue right now, but at some break we correct the
15 exhibit to remove the page just so the record is
16 cleaner.

17 HEARING OFFICER SLATER: Sure. That's fine
18 with me.

19 MR. WILLIS: I agree.

20 HEARING OFFICER SLATER: So, let's mark this
21 as ACHD Seven.

22 MR. WILLIS: Seven, and note that we need to
23 correct it to remove --

24 HEARING OFFICER SLATER: Is there any
25 objection to the admission of ACHD Six?

1 MR. DAUSCH: Not -- no. Six, no.

2 HEARING OFFICER SLATER: Okay. ACHD Six is
3 admitted. What date is that Enforcement Letter?

4 MS. GRAHAM: It says the 13th of June.

5 HEARING OFFICER SLATER: Okay, thank you.

6 BY MR. WILLIS:

7 Q. If you turn to 14037, Paragraph 15, do you
8 see that?

9 A. Yes.

10 Q. Is it fair to say that this Enforcement Order
11 relates to violations which occurred in 2015?

12 A. Partially. It's beyond '15, but it includes
13 2015.

14 Q. Okay. And did we employ the 2018 Civil
15 Penalty Policy for that?

16 A. We did, yes.

17 Q. Okay. And again, this is one of the orders
18 that U.S. Steel has appealed this year?

19 A. They did appeal it. The money was put in
20 escrow. They have since withdrew their appeal.

21 MR. WILLIS: Okay. I don't know if we need
22 to make an exhibit out of something that's already
23 part of the record, but I would like to refer to it.
24 This is the County's Brief in Opposition to
25 Appellant's Position to Stay.

1 HEARING OFFICER SLATER: We can mark it as an
2 exhibit just to --

3 MR. WILLIS: Just for the sake of marking it
4 as an exhibit?

5 HEARING OFFICER SLATER: Yeah.

6 MR. WILLIS: Okay. There's nothing different
7 there.

8 HEARING OFFICER SLATER: Okay, so, ACHD
9 Eight.

10 MR. WILLIS: Eight, and there's this too.

11 HEARING OFFICER SLATER: And how is that
12 labeled again?

13 MR. WILLIS: I'm sorry?

14 HEARING OFFICER SLATER: What was the full
15 title of the brief?

16 MR. WILLIS: It's ACHD's Brief in Opposition
17 to Appeal's Petition to Stay.

18 HEARING OFFICER SLATER: Oh, okay. Thank
19 you.

20 BY MR. WILLIS:

21 Q. Are you familiar with that document?

22 A. I am familiar with it, yes.

23 Q. Okay. If you could turn to Page 14115?

24 A. Yes.

25 Q. Can you describe what that represents?

1 A. This was a letter from Coleen Davis of U.S.
2 Steel to Mr. James Thompson, who was the Head of the
3 Air Quality Program at the time, dated February 27,
4 2009. The subject is, "Intent, to shut down their
5 Batteries 13, 14, and 15 and change status to hot
6 idle."

7 Q. What's your understanding of what the intent
8 of that letter was?

9 A. There was a recession going on. There was
10 low production, and so the company had decided to --
11 or we were told that the company had decided to lower
12 production on some of the batteries and take others
13 down to a hot idle and take them off of the production
14 line. So, again, keep the batteries hot and keep some
15 fuel going to them, but not to produce.

16 Q. And on the page directly after that, could
17 you explain what that is?

18 A. This is March 13, 2009, a similar letter.
19 It's the same person's intent to shut down the B
20 Battery and change status to hot idle.

21 Q. To your understanding, were those batteries
22 ultimately put on hot idle?

23 A. I believe they were, yes.

24 Q. Okay. If you'd turn to 14119?

25 A. I'm there.

1 Q. What's the date of that document?

2 A. June 26, 2009.

3 Q. What's the intent of that document?

4 A. It's a letter with the same persons involved,
5 and the subject is, "Intent start up the B Battery
6 from hot idle status."

7 Q. Okay. And then the second paragraph, would
8 you read that please?

9 A. "B Battery was idled on April 6, 2009, due to
10 economic conditions of the United States Steel
11 Corporation. The first oven is scheduled to be
12 charged on June 29, 2009, at approximately 10:00 p.m.,
13 with the first coke scheduled to be pushed on July 1,
14 2009."

15 Q. Thank you. Would it be fair to say that
16 that's an approximately three-month gap in which that
17 battery was on hot idle?

18 A. Yes.

19 Q. And the subsequent document of 14121, could
20 you read that second paragraph in that document?

21 A. It's December 31, 2009, "Intend to start up
22 Batteries 13, 14, and 15 from hot idle status."

23 And which paragraph would you like me to read?

24 Q. The second paragraph, please.

25 A. "Batteries were idled on March 16, 2009, due

1 to economic conditions of United States Steel
2 Corporation. The first oven is scheduled to be
3 charged on January 11, 2009, starting with the 13
4 Battery."

5 Q. That's approximately nine months; is that
6 right?

7 A. Yes, slightly over.

8 Q. Okay. To your recollection, do you recall
9 hearing any reports of breakdowns with respect to
10 those batteries following their restart?

11 A. I don't recall any. You have to be very
12 careful when you're bringing them back up again, but I
13 don't recall any breakdowns because of them bringing
14 them back up.

15 Q. Okay. The next part of that of 14123, have
16 you seen that document before?

17 A. Yes, I have.

18 Q. What is that document?

19 A. That's a Safety Data Sheet. This one is for
20 clean coke oven gas.

21 Q. Okay. Could you -- all right. Could you
22 look to Page Four out of Eight of that, and
23 specifically 14126, Section 11?

24 A. Okay. Section 11 is the toxicological
25 information.

1 Q. Yes. And under the hazardous statement and
2 with respect to the clean coke oven gas, can you
3 identify what the hazards are as stated?

4 A. Acute hazard is harmful to swallow. A germ
5 cell mutagenicity may cause genetic defects.
6 Carcinogenicity may cause cancer, may damage the
7 fertility of the -- of the unborn child, may cause
8 drowsiness or dizziness, can cause -- causes damage to
9 the lungs, causes damage to blood and blood forming
10 systems through prolonged or repeated exposure, and
11 may displace oxygen and cause rapid suffocation.

12 Q. And on the following page, 14127,
13 specifically F, where it says, "Benzene"?

14 A. Benzene. You're going to make me say this
15 word again. No germ cell mutagenicity data available
16 for clean coke oven gas as a mixture. The following
17 germ cell mutagenicity information was found for the
18 component benzene. Chronic overexposure can cause
19 chromosomal aberrations in animals and humans, also
20 may induce a sister chromatid exchange and
21 micronucleate both in --

22 HEARING OFFICER SLATER: Ms. Graham, I'm
23 sorry. I'm just going to interrupt you for a second.

24 MS. GRAHAM: Yes.

25 HEARING OFFICER SLATER: I just want to

1 remind counsel and witnesses to speak more slowly,
2 just because I know there's a lot of technical
3 information and a lot of terms that we may not all be
4 familiar with, especially to ensure we have a clear
5 record.

6 MS. GRAHAM: Would you like me to start again
7 or just --

8 HEARING OFFICER SLATER: Yeah, start again.
9 I shouldn't have stopped you mid-sentence.

10 MS. GRAHAM: That's fine. I'll try that word
11 again. Okay. "Benzene. Chronic overexposure can
12 cause chromosomal aberrations in animals and humans,
13 also may induce sister chromatid exchange and
14 micronucleate both indevo (phonetic) and invitro.
15 Benzene overexposure has shown to induce -- I'm going
16 to spell this because I have no idea ---
17 A-N-E-U-P-L-I-D-Y in dividing cells, classified as a
18 potential germ cell mutagen."

19 BY MR. WILLIS:

20 Q. Okay. Thank you.

21 A. I should note that this is the clean coke
22 oven gas and not the raw coke oven gas. It's
23 significant.

24 Q. And this is a document that has U.S. Steel's
25 logo and name at the top of this document on 14123?

1 A. It does.

2 Q. Is that correct?

3 A. Yes.

4 Q. Okay. Moving to 14131, could you explain
5 what this document is?

6 A. This one is the raw coke oven gas, again U.S.
7 Steel Corporation.

8 Q. Okay. Could you read the hazard statement?

9 A. "Extremely flammable gas. May displace
10 oxygen and cause rapid suffocation. May cause genetic
11 defects. May cause cancer. May damage fertility of
12 the unborn child. Toxic if inhaled. Causes skin
13 irritation. Causes severe eye irritation. Causes
14 central nervous system depression, respiratory
15 irritation, drowsiness, or dizziness, and damage to
16 lungs, liver, and blood cells.

17 Causes damage to the heart through prolonged or
18 repeated exposures. Causes damage to blood forming
19 tissues and central nervous system through prolonged
20 or repeated exposure."

21 Q. Thank you. If you could turn the page to
22 14132? What are we looking at here, if you know?

23 A. This is the emission inventory report of U.S.
24 Steel into the Pennsylvania System, Emission Inventory
25 System.

1 Q. Who puts this data into the State Inventory
2 System?

3 A. The company themselves.

4 Q. Okay. Is coke oven emission a part of that
5 inventory?

6 A. Yes.

7 Q. Chromium, is that a part of the inventory?

8 A. It is.

9 Q. Ethylbenzene?

10 A. It is.

11 Q. Ammonia?

12 A. Yes.

13 Q. Methochloride chlormethine -- chlormethine?

14 A. Let me look for it. Yes.

15 Q. Methacrylates?

16 A. Yes.

17 Q. That's M-E-T-H-A-C-R-Y-L-A-T-E. Naphthalene?

18 A. Yes.

19 Q. Toluene?

20 A. Yes.

21 Q. Xylenes?

22 A. Yes.

23 Q. And that's X-Y-L-E-N-E-S. Okay. I'm moving
24 to the documents that are listed as Exhibit D,
25 starting on 14134, and they go to 14147. Do you know

1 what these are?

2 A. These are complaints. Citizens can call in a
3 complaint or file a complaint online, and these are a
4 selection of the complaints that we've received.

5 Q. Okay. Could you turn to 14139, and could you
6 read that first complaint into the record? You can
7 start where it says, "Complaint," where it's bolded.

8 A. "Complaint. Subject, Air pollution in South
9 Park, 12/2/2017 at 10:30 a.m. Comment, extreme air
10 pollution from Clairton Works (smell like coke ovens)
11 in South Park Township at 1114 -- oh, this is an
12 address -- at 10:30 a.m.

13 I used to work in a steel plant and know the coke
14 oven smell. Gas is in the lower areas this morning,
15 and it's being pushed down by the air probably because
16 there is little westerly wind, so the Clairton
17 pollution is just hanging around the area and not
18 being dispersed. U.S. Steel needs to improve the
19 pollution control on the new C Battery and should be
20 shutting down all the old batteries."

21 MR. WILLIS: Thank you. I'm going to show
22 you another document, and I have passed this along to
23 you, but I don't know where it is. This is that --

24 HEARING OFFICER SLATER: Is there any
25 objection to Exhibits ACHD Seven and ACHD Eight.

1 MR. DAUSCH: He introduced the brief, and I
2 have no objection.

3 HEARING OFFICER SLATER: And Seven is the
4 June 13, 2018 Enforcement Order.

5 MR. DAUSCH: No objection.

6 HEARING OFFICER SLATER: All right. ACHD
7 Seven and Eight are admitted.

8 BY MR. WILLIS:

9 Q. We are going to move to what will be ACHD
10 Nine. Is this document -- is this document familiar
11 to you?

12 A. Yes, it is.

13 Q. Do you know what it is, or could you tell us
14 what it is?

15 A. This was a -- a -- I don't know if you'd call
16 it a promotional brochure or a manual report of the
17 CITE Program at U.S. Steel, and it's -- the first
18 sentence says it's the 1994 U.S. Steel Clairton Works
19 Environmental Report. And so, that's what it is.

20 Q. So, this is coming from 1994, and you've
21 already described your familiarity with the program.
22 Is there anything -- take a minute, if you would, just
23 to satisfy yourself if your understanding of the CITE
24 Program is in line with what is in this publication?

25 A. This is as I remember it, yes.

1 Q. Okay. And if you could turn to 14631? If
2 you could read the portion to yourself regarding the
3 sulfur dioxide reduction? There's a segment there,
4 and it goes onto the subsequent page. Just to the
5 bottom paragraph there.

6 A. Okay.

7 Q. Based on that paragraph on Page 14632, is it
8 fair to say that U.S. Steel, on this publication,
9 acknowledged that the Liberty Borough Monitor -- that
10 Clairton had an impact on that monitor with respect to
11 SO2?

12 A. Yes, it is clear. They were taking pride in
13 the decrease, the work that they've been doing and how
14 it affected the Liberty Monitor.

15 MR. WILLIS: Okay. Thank you. I would move
16 for the admission of that. Where are we, Nine?

17 HEARING OFFICER SLATER: Yeah, ACHD Nine.
18 Any objection?

19 MR. DAUSCH: No objection.

20 HEARING OFFICER SLATER: All right. ACHD
21 Nine is admitted.

22 MR. WILLIS: Again, the same situation with
23 the next one, which would be ACHD 10. Unfortunately,
24 there's an extraneous email that forms the cover of
25 it, but it actually begins on 13498. So, this will be

1 another one that, if we get it through, will require a
2 little cleaning up.

3 HEARING OFFICER SLATER: Yeah. We can take
4 care of that either, you know, after the hearing
5 today, or before we start tomorrow we can do that.

6 MR. WILLIS: Okay.

7 HEARING OFFICER SLATER: Or during a break
8 tomorrow.

9 MR. WILLIS: Is this, what, Number 10?

10 MR. DAUSCH: Yes.

11 HEARING OFFICER SLATER: Yes.

12 BY MR. WILLIS:

13 Q. Does that look familiar?

14 A. Yes, it does.

15 Q. Could you tell me what that is?

16 A. We occasionally have interns that come in
17 during the summer to do specific research or to assist
18 us in different things. This summer, we had a woman.
19 She's Chinese, but she goes by the name of Julie, so
20 for now, I'll call her Julie. Her name is
21 J-I-N-G-H-U-I and her last name is J-U, but she went
22 by Julie.

23 And so we asked her -- just handed her a bunch of
24 sulfur -- hydrogen sulfide data and said, "See what
25 you -- what are your observations? Look at the data,

1 look at the wind conditions, and see what you can make
2 from this."

3 Q. Okay.

4 A. This was her final report. It wasn't a
5 complete study. Tony Sadar (phonetic), her
6 supervisor, is still finishing and putting some
7 polishing on this and making some final changes and
8 adding data to it, but it was what she provided at the
9 end her internship.

10 Q. I'm going to ask you just generally, because
11 it's a lot of charts and it's a lot of data -- I'm
12 assuming, and correct me if I'm wrong, that you have
13 had an opportunity to read this data or this proposal
14 or this project when she completed it?

15 A. Yes. She gave a presentation and, plus, we
16 had the project itself.

17 Q. Did you attend that presentation?

18 A. I did.

19 Q. So, you understand the contents.

20 A. Yes.

21 Q. Okay. What can --

22 A. Not every detail, but I do understand the
23 contents.

24 Q. With respect to SO2 at the Liberty Monitor,
25 what was your take-away from this study, for the lack

1 of a better word?

2 A. Well, she was studying hydrogen sulfide, not
3 SO2.

4 Q. Okay.

5 A. So, this would not be a sulfur dioxide study.
6 This was a hydrogen sulfide study.

7 Q. I see.

8 A. This was looking at -- because of the odor
9 issues and our concerns with the -- exceeding the
10 State standard, we were looking at hydrogen sulfide in
11 this study.

12 Q. There's a lot of SO2 data in here, was that
13 reviewed at all? And there's PM2.5 was well. Was any
14 of this reviewed by you?

15 A. It was not reviewed by me. Again, Tony Sadar
16 was the supervisor, so he would have reviewed the data
17 on the particulate matter and sulfur dioxide parts.

18 Q. Okay.

19 A. Okay. The primary purpose of this was a
20 hydrogen sulfide study, so what she was looking at was
21 hydrogen -- sulfur dioxide versus hydrogen sulfide in
22 some of these and looking at the same -- is she
23 getting the same wind direction over time from sulfur
24 dioxide as well as H2S, and then later also benzene
25 and H2S. Although she only got a year into looking at

1 benzene -- but that's the part that Tony was finishing
2 up.

3 Q. Okay. Could you turn to 13529?

4 MR. DAUSCH: Mr. Slater, at this point, I'm
5 going to object to this exhibit, just given the
6 testimony we have thus far of this witness that -- she
7 wasn't involved in reviewing any of the underlying
8 data, and it appears that we're talking about an
9 incomplete study that hasn't been finished by a
10 graduate intern student from a witness who wasn't
11 involved in this. So, at this point, I think there's
12 no foundation and there's no -- it's complete hearsay.

13 HEARING OFFICER SLATER: Mr. Willis?

14 MR. WILLIS: Well, I would say it's -- the
15 foundation is kind of irrelevant at this point. This
16 is -- this is relevant information concerning SO2.
17 And in particular, I was going to focus the Wind Rows
18 Diagrams that are included in here that would pinpoint
19 the location and source of SO2 hitting that Liberty
20 Monitor.

21 If they're willing to concede that the
22 Liberty Monitor is impacted by Clairton Coke Works,
23 that's fine. I could live without this exhibit.

24 HEARING OFFICER SLATER: Would you be willing
25 to make that concession, Mr. Dausch?

1 MR. DAUSCH: No. We're not stipulating to
2 any of the facts. All I'm doing at this point is
3 objecting to an exhibit that has zero foundation, it's
4 hearsay, it's incomplete, and the witness who is
5 talking about it had no involvement in it.

6 HEARING OFFICER SLATER: I'm going to
7 overrule Mr. Dausch's objection, but I will take it as
8 to the weight. So, I'll allow it to come in, but I'll
9 consider your -- the objections you've made as to how
10 -- as to the weight that the document carries. So,
11 ACHD 10 is admitted.

12 MR. WILLIS: I have no more evidence. Thank
13 you.

14 HEARING OFFICER SLATER: Any more questions
15 on direct for --

16 MR. WILLIS: No more questions on direct.
17 Are we going to take our afternoon break?

18 HEARING OFFICER SLATER: Yeah, we can take a
19 quick break.

20 (The hearing recessed at 2:58 p.m. and
21 reconvened at 3:10 p.m.)

22 HEARING OFFICER SLATER: Let's go back on the
23 record. Mr. Dausch, did you want to -- did you have
24 some questions for Ms. Graham?

25 MR. DAUSCH: Yes.

CROSS-EXAMINATION

1 BY MR. DAUSCH:

2 Q. Ms. Graham, I want to take a step back. When
3 we're talking about the Federal Regulations that apply
4 to Clairton, sometimes we call those NESHAP
5 Regulations?
6

7 A. Yes.

8 Q. And when we talk about the County's
9 Regulations, sometimes we call them Article 21
10 Regulations?
11

12 A. Yes.

13 Q. And other times we refer to them as SIP
14 Regulations?
15

16 A. Most are SIP Regulations, but Article 21 is
17 more accurate.

18 Q. Okay. And the County enforces the Federal
19 Requirements and the Article 21 Requirements, correct?
20

21 A. We do, yes.

22 Q. There are a lot of emission sources at
23 Clairton, other than the batteries, correct?
24

25 A. There are.

1 Q. And Mr. Kelly testified a little bit about
2 the operating permit that exists at Clairton. Were
3 you here for that?
4

5 A. No.

1 Q. Okay. Are you aware of the Title Five
2 Operating Permit for Clairton?
3

4 A. Yes.

5 Q. Okay. Could you look at Exhibit 30? And,
6 Ms. Graham, would this be -- Exhibit 30 would be the
7 Title Five Operating Permit at Clairton?
8

9 A. It is.

10 Q. And this is just issued by the County Health
11 Department?
12

13 A. It is.

14 Q. And this is a comprehensive document that's
15 supposed to include both the Federal and the County
16 Regulations that apply at Clairton?
17

18 A. Yes.

19 Q. But it puts them all in one spot?
20

21 A. Yes.

22 Q. In this document, Page Five there's a table.
23 Let me know when you see that table?
24

25 A. Okay.

1 Q. Do you see that?
2

3 A. Yes.

4 Q. And this table lists different sources that
5 are at Clairton, correct?
6

7 A. Yes.

8 Q. And all of these sources aren't subject to

1 the Enforcement Order; is that fair?

2 **A. No, they are not.**

3 Q. Right. The Enforcement Order relates to the
4 batteries?

5 **A. Correct.**

6 Q. And the batteries are the first several
7 sources that are listed on this table that starts on
8 Page Five; is that fair?

9 **A. That is fair.**

10 Q. Okay. The other sources are not at issue in
11 this Enforcement Order?

12 **A. Not in this Enforcement Order, yes.**

13 Q. And in the Enforcement Order, it's not every
14 emissions point at the batteries that's at issue? Let
15 me ask it this way.

16 **A. It might be most of them. I'm not sure
17 which.**

18 Q. The Enforcement Order only contains alleged
19 violations for certain of the emission points at the
20 batteries?

21 **A. Yes.**

22 Q. It doesn't include all of them?

23 **A. It includes all -- I believe it includes all
24 violations, except for those that are already in
25 Enforcement Orders.**

1 Q. The Enforcement Order that we're talking
2 about that's the subject of this appeal, doesn't deal
3 with pushing emissions from the batteries?

4 **A. I don't think so, no.**

5 Q. And it doesn't deal with soaking emissions
6 from Batteries 1, 2, and 3?

7 **A. No.**

8 Q. And it doesn't deal with the battery stack
9 emissions, correct?

10 **A. The battery stack emissions are included in
11 this enforcement.**

12 Q. They are?

13 **A. The battery stack emissions, yes.**

14 Q. The COMS?

15 **A. The -- I mean in the evaluation of if the
16 batteries are improving.**

17 Q. I'm talking about violations.

18 **A. Oh, no. No, they are not.**

19 Q. Okay. There's no asbestos violations in the
20 Enforcement Order?

21 **A. No asbestos violations.**

22 Q. Has the County ever shut down a plant that
23 was 98.152 percent compliant?

24 **A. No. The County has only shut down one plant.**

25 Q. You had mentioned in your direct testimony --

1 there was testimony about different administrative
2 orders that were issued over different quarters?

3 **A. Yes.**

4 Q. One of those that you testified about was
5 Exhibit Three. Would you look at that please?

6 **A. Okay.**

7 Q. Are you familiar with this document?

8 **A. I am.**

9 Q. This is an administrative order that relates
10 to the third quarter of 2017?

11 **A. Yes.**

12 Q. On the second page of this exhibit, there's a
13 paragraph. It's the third full paragraph down.

14 It says, "By this order, the Department is not
15 taking any actions specifically regarding any alleged
16 failures to meet any requirements regarding pushing or
17 combustion stacks as determined by a Continuous
18 Opacity Monitoring System or soaking on Batteries 1,
19 2, and 3. Such actions are taken separately through
20 provisions of the March 24, 2016 Consent Judgment."

21 Do you see that?

22 **A. Yes.**

23 Q. And so I understand your testimony earlier,
24 the reason that this is put in is to make clear that
25 the subject matter of this administrative order is to

1 cover the other fugitive emissions points that aren't
2 covered by the 2016 Consent Judgment?

3 **A. Yes.**

4 Q. Two criteria pollutants are identified in the
5 Enforcement Order, SO2 and PM 2.5, correct?

6 **A. Correct.**

7 Q. For SO2, the County recently finished a State
8 Implementation Plan; is that correct?

9 **A. Yes.**

10 Q. And you're familiar with that document?

11 **A. I am.**

12 Q. I want to direct your attention to U.S. Steel
13 Exhibit 17. Are you familiar with this document?

14 **A. I am.**

15 Q. Is this the State Implementation Plan for SO2
16 that was submitted by the County on September 14,
17 2017?

18 **A. It certainly looks like it, yes.**

19 Q. Okay. And this relates specifically to SO2,
20 correct?

21 **A. It does.**

22 Q. In this document, on Page 12, there are some
23 tables. At the top left, it says, "Table 3-3." Are
24 you there?

25 **A. Yes, I am.**

1 Q. Okay. When the County is preparing this SIP,
2 you want to make sure that the information that's
3 ultimately being submitted to the EPA is as good and
4 accurate as it can be; is that fair?

5 **A. Yes.**

6 Q. And you want to be extra diligent when you're
7 reviewing emissions data before you prepare this plan?

8 **A. We do the best we can, yes.**

9 Q. Okay. With respect to Table 3-3, that table
10 includes every SO2 emission source at Clairton,
11 correct?

12 **A. As far as we can tell, yes.**

13 Q. Okay. Emission points at Clairton that are
14 not contributors of SO2 don't show up?

15 **A. Are unlikely to show up, yes.**

16 Q. Okay. There's no battery door leaks
17 identified in this table, correct?

18 **A. There are none specifically listed.**

19 Q. Okay. When the County develops a SIP, they
20 discuss the different requirements with the source to
21 make sure they're achievable, correct?

22 **A. Yes.**

23 Q. You want to make sure that whatever
24 requirements are in the SIP are achievable if you're
25 going to submit it to EPA?

1 **A. It goes through our Planning, yes.**

2 Q. All right. You wouldn't put things that are
3 unreachable in a SIP; is that fair?

4 **A. That's fair.**

5 Q. With respect to the B Battery Door Leak
6 Standard, the Department never discussed that with
7 U.S. Steel before putting it in the Enforcement Order?

8 **A. No.**

9 Q. The SIP sometimes includes adjusted
10 regulations; is that correct?

11 **A. Yes.**

12 Q. What's the process to enact a regulation with
13 the County?

14 **A. A regulation goes through -- it sometimes
15 goes through a subcommittee where we meet with both
16 the company and with citizens to discuss the need for
17 a regulation change and the -- where we plan to go
18 with it. And then we -- you know, the advisory
19 committee goes to the Board of Health to ask for
20 permission to go out to public comment with this
21 regulation. We receive public comment over 30 days
22 and a public hearing.**

23 **And then the results -- we respond to all
24 comments, and we take them back to the subcommittee,
25 the Air Advisory Committee, and Board of Health for**

1 **final approval. If it's a regulation change, then it
2 also goes through County Council for their approval
3 and the County Executive's signature.**

4 Q. So, can we agree that enacting a regulation
5 involves a thoughtful and careful process?

6 **A. Certainly.**

7 Q. And that same process wasn't gone through for
8 the B Battery Door Leak Standard; is that fair?

9 **A. Yes. That was not a regulation, so we did
10 not go through a regulation process.**

11 Q. You mentioned in addition to SO2, the other
12 criteria pollutant identified in the Enforcement Order
13 would be PM or PM 2.5, correct?

14 **A. Yes.**

15 Q. There's been no study to determine U.S.
16 Steel's emissions have caused the Liberty Monitor to
17 increase for PM 2.5 since 2015; is that fair?

18 **A. A definite study, no. But there's been a lot
19 of evidence, that -- yes, that it has influenced.**

20 Q. I'm asking about studies.

21 **A. Well, it depends on what you call a study. I
22 mean, we -- we are in the process of putting together
23 a fine particulate SIP, and that is essentially a
24 study of what is affecting that monitor and the area
25 around it and what is the best controls for it. So, I**

1 **would say yes, that there is a study because that's
2 what the SIP is, a plan based on our analysis.**

3 Q. Do you remember a few weeks ago you had your
4 deposition taken in this case?

5 **A. Yes.**

6 Q. Do you remember you were in my conference
7 room downtown?

8 **A. Yup.**

9 Q. And you were under oath then, just like
10 you're under oath now?

11 **A. Yup.**

12 Q. All right. You had to tell the truth, the
13 whole truth, and nothing but the truth; do you
14 remember that?

15 **A. Yes.**

16 Q. Okay. I have your deposition. It's in the
17 binder, Tab Two. I'll point you to Page 43, please.

18 **A. Okay. Is this the right tab?**

19 Q. It's Tab Two. It's in front of you.

20 MR. WILLIS: Do you have another copy? Page?

21 MR. DAUSCH: Forty-three.

22 BY MR. DAUSCH:

23 Q. On Line 16, I asked you a question, and it
24 says, "I understand that. I think my question was has
25 there been any specific study on the emissions at U.S.

1 Steel Clairton to determine definitively that those
2 emissions have been the cause of the Liberty Monitor
3 increasing for PM 2.5 since 2015?"

4 Your answer, "I'm not aware of any study that --
5 specifically, as you're asking, no."

6 Did I read that correctly?

7 **A. Yes.**

8 Q. Can we agree that the air is getting better,
9 the air quality?

10 **A. Over -- over time we've had some decreases in
11 the past several years, so degradation in the past
12 several years.**

13 Q. And you're involved, on occasion, when there
14 are media requests about air and different pollutants
15 to the County, correct?

16 **A. Yes.**

17 Q. Can you look at Exhibit 29 please? One of
18 those requests came earlier this year from a Public
19 Source Interview, do you recall that?

20 **A. I've had several requests from Public Source.
21 I'm not sure which one you're talking to.**

22 Q. Okay. Well, I want to talk about the one
23 that's referred to in the email that's Exhibit 29.
24 You're familiar with Mr. Scarpino, correct?

25 **A. Yes.**

1 Q. And there are occasions where Mr. Scarpino
2 will ask you or your colleagues about air emissions
3 information that's distributed to the public to make
4 sure it's accurate, correct?

5 **A. Certainly, yes.**

6 Q. I want to talk about the email that he sent
7 to you about an interview that was given by the
8 County. Do you remember this email?

9 **A. No, I don't.**

10 Q. Okay. One of this things that was discussed
11 in this email to you is H2S, and you talked a little
12 bit about H2S in your direct, correct?

13 **A. Yes.**

14 Q. And it says -- for H2S, it says -- and it's
15 the first sub-bullet point that's hollow. Do you see
16 that?

17 It says, "State Standard, not Federal
18 Odor/Nuisance Standard"? Do you see that?

19 **A. Yes.**

20 Q. The next bullet point, "H2S is not tied to
21 public health." Do you agree with that?

22 **A. At the levels we measure, it is not connected
23 to public health, yes. It is a nuisance.**

24 Q. Yeah. And the third indented bullet point
25 says, "Multiple sources, water treatment facilities,

1 landfills, etcetera can emit H2S." Do you agree with
2 that statement?

3 **A. I do.**

4 Q. A few bullet points down, there's another
5 indent. It's a full filled in square. Do you see
6 that?

7 **A. Yes.**

8 Q. In Mr. Scarpino's interview with Public
9 Source, "Remember, there were discussions about
10 extensive repairs to the batteries at Clairton.
11 Explain the Consent Agreement."

12 That would have been the 2016 Consent Judgment,
13 fair?

14 **A. Right.**

15 Q. And there were extensive repairs to the
16 batteries at Clairton following that 2016 Consent
17 Judgment, correct?

18 **A. I believe so.**

19 Q. Okay. The next bullet point, "Will
20 absolutely have an impact on H2S at Clairton." Do you
21 see that?

22 **A. Yes.**

23 Q. And what he's referring to is the extensive
24 repairs at the batteries at Clairton will have -- will
25 absolutely have an impact on H2S; is that right?

1 **A. Yes.**

2 Q. And you agree with that statement?

3 **A. Yes. Although the 2016 action was because we
4 were seeing visible emissions coming out of the
5 stacks, and that means the walls are breaking through.
6 There's problems at the walls, so the Consent
7 Agreement was to repair those walls. And so, that
8 should increase -- decrease the amount of H2S in the
9 stacks themselves.**

10 Q. Right. And there's been an aggressive plan
11 to repair those walls at the ovens; is that correct?

12 **A. As part of the agreement, yes.**

13 Q. Still with respect to H2S, if you move down
14 to the next bullet point that's the hollow circle,
15 "Uncertainty, though, of where the smells are coming
16 from. Could be from multiple sources."

17 Do you remember discussing that with
18 Mr. Scarpino?

19 **A. Not specifically, though we have complaints
20 throughout the county for H2S.**

21 Q. Right.

22 **A. That was probably part of that.**

23 Q. And there's no H2S modeling that the County's
24 done to date?

25 **A. Correct.**

1 Q. And at the very bottom, the second hollowed
2 out circle, "Air quality gets better every year. It
3 continues to improve. Still have a problem, but data
4 shows how far we've come in 10 years."

5 Do you agree with that statement?

6 **A. Yes, certainly.**

7 Q. I want to switch gears and talk a little bit
8 about the Federal NESHAP Regulations. Those were
9 developed to address hazardous air pollutants,
10 correct?

11 **A. That is correct.**

12 Q. Hazardous air pollutants is in the NESHAP
13 name, right?

14 **A. Correct.**

15 Q. And hazardous air pollutants would be things
16 like the coke oven, the benzene, or the BTEX that you
17 mentioned earlier, correct?

18 **A. Yes.**

19 Q. And the Department enforces these
20 regulations?

21 **A. Correct.**

22 Q. NESHAPs were developed through work groups
23 that included the County?

24 **A. Indeed.**

25 Q. Were you part of the NESHAP developments?

1 **A. I was not.**

2 Q. There are inspectors at the Clairton Plant
3 every day throughout the year inspecting for the
4 NESHAP Requirements, correct?

5 **A. That is correct.**

6 Q. And they're from a company called Karamida?

7 **A. Yes.**

8 Q. And these inspectors follow a method called
9 303?

10 **A. Yes.**

11 Q. And that's a Federal Inspection Method,
12 correct?

13 **A. Correct.**

14 Q. The County uses the Karamida Inspections not
15 just for Federal Requirements, but also for its State
16 Article 21 Requirements?

17 **A. To some extent, yes.**

18 Q. To what extent does it not?

19 **A. I'm not sure exactly, but there -- where we
20 differ, we ask them to keep records for -- and we use
21 their data to compare against our regulation.**

22 Q. And when we say hazardous air pollutants,
23 that's the same things as when somebody would say an
24 air toxic?

25 **A. Yes.**

1 Q. Okay. So, air toxic is the same thing as a
2 hazardous air pollutant?

3 **A. Correct.**

4 Q. There was no analysis of what effect there
5 would be on hazardous air pollutants as a result of
6 compliance with the Enforcement Order, correct?

7 **A. There was not a measured analysis, no.**

8 Q. You, with your counsel, talked about smell
9 complaints that came from Clairton. Do you recall
10 that?

11 **A. Yes.**

12 Q. And you're aware that the County has an odor
13 regulation in Article 21?

14 **A. We do.**

15 Q. As part of that odor regulation, when there
16 are compliants like the ones that we looked at, the
17 County goes out and does an investigation, correct?

18 **A. We try to do whatever's practical. We don't
19 always go out, but, yes, we try to.**

20 Q. Does the County take those complaints
21 seriously?

22 **A. We do.**

23 Q. Okay. And when it received those complaints,
24 did it do investigations?

25 **A. We have when we can. Again, odor is very**

1 **fleeting. Often times, by the time we get there,
2 especially someplace that's an hour's drive away -- by
3 the we get there, the odor is gone. But we've done
4 investigations, you know, at times for different
5 plants or different odors trying to identify where
6 they come from and what we can do to resolve them.**

7 Q. And all of the investigations that the County
8 did, none of those ever resulted in any type of
9 violation alleged against U.S. Steel Clairton; is that
10 fair?

11 **A. There's no recorded violations. Our
12 inspectors have noticed odor issues, but we have not
13 recorded a violation.**

14 Q. And there are no alleged odor violations in
15 the Enforcement Order that's the subject in this
16 appeal?

17 **A. There are not.**

18 Q. The baseline calculation -- I'm going to
19 switch topics and talk about the baseline.

20 **A. Well, before I go there, let me just talk a
21 little bit about the odor enforcement. Because of the
22 way we enforce the odor regulation, we require three
23 non-related persons to complain and our inspector to
24 read it at the same time. So, it is a very difficult
25 -- odor is a very difficult regulation for us to go**

1 through enforcement too. So, that's why quite often
2 we don't enforce the odor regulation, but we do try to
3 investigate and resolve it in other means.

4 Q. I want to talk about the baseline calculation
5 that's in the Enforcement Order. You're familiar with
6 that, correct?

7 A. I'm familiar with it.

8 Q. And in very general terms, what the
9 Department says is that we have to look at U.S.
10 Steel's baseline calculation of compliance percentages
11 for the first quarter of 2018 for the batteries,
12 correct?

13 A. Correct.

14 Q. And that would include both fugitive
15 emissions points and battery stack compliance,
16 correct?

17 A. Yes.

18 Q. Half would be battery stack compliance, and
19 half would be fugitive emissions points, correct?

20 A. That's correct.

21 Q. And it would include fugitive emissions
22 points where there were no violations in the
23 Enforcement Order?

24 A. Yes.

25 Q. And can we agree that not all exceedances or

1 alleged violations would have the same impact to the
2 ambient air?

3 A. That would be fair.

4 Q. Okay. And we saw that, for example, when we
5 looked at the table in the SIP, and you could see
6 different sources have different impacts on ambient
7 air; is that fair?

8 A. Well, what we looked at was the emission
9 inventory -- not necessarily the impact, but that
10 would be a fair statement.

11 Q. And different sources have different
12 standards, correct?

13 A. Yes.

14 Q. And not all of the batteries have the same
15 standards on them for fugitives, correct?

16 A. No, they do not.

17 Q. For example, --

18 A. Newer batteries do have tighter limits than
19 the older batteries.

20 Q. Correct. And so, newer batteries, like the C
21 Battery, would have tighter, more stringent limits
22 than the older batteries at Clairton?

23 A. Yes.

24 Q. Okay. So, a newer battery could have a lower
25 compliance percentage. But because the limit is

1 lower, it's actually impacting the ambient air less?

2 A. Could you ask that again? I'm not sure I'm
3 getting it. Ask it again please.

4 Q. Okay. A newer battery could have a lower
5 compliance percentage, but actually have less impact
6 to the ambient air because its compliance percentage
7 -- or because its limits are more stringent?

8 A. I'm not sure. I would have to do the math.
9 Compliance percentage -- you said if it has a lower
10 compliance limit, it would be -- I'm not sure I'm
11 getting where you want me to go.

12 Q. Okay. Because the corrective action is based
13 on compliance percentages and not overall impact to
14 the ambient air, it's possible that U.S. Steel could
15 emit less overall emissions, and still be required to
16 hot idle?

17 A. Well, they have to show improvement overall,
18 so there would be improvement. But you're saying
19 improvement means more in one battery than another
20 battery? Possibly, but overall, there needs to be
21 improvement to the operations.

22 Q. Right. So, there's a potential scenario here
23 where you see improvement with compliance percentages,
24 but the impact to the ambient air is actually more
25 pollution?

1 A. I don't see how you would go there. No, I
2 wouldn't think so.

3 Q. You're telling me that that's impossible?

4 A. I'm not sure how you're getting to that
5 conclusion, so I would say no.

6 Q. The penalty if U.S. Steel doesn't meet the
7 baseline compliance for two successive quarters is to
8 hot idle two batteries, correct?

9 A. Yes.

10 Q. That's a severe penalty?

11 A. It is. It is a severe penalty, yes.

12 Q. It's a significant penalty?

13 A. Mhmm (affirmative).

14 Q. You have to say yes or no. You said,
15 "Mhmm."

16 A. I said yes. It is a significant penalty.

17 Q. And it's severe?

18 A. Well, they've idled before, so it's -- it's a
19 significant penalty.

20 Q. Would you disagree with it being a severe
21 penalty?

22 A. That's a judgment call, I would say. I'm not
23 sure that I would call it severe. It's significant
24 though.

25 Q. Did you call it severe when you were deposed

1 a few weeks ago?

2 **A. I have no idea what I said two weeks ago when**
3 **I was deposed.**

4 **Q. Is it possible that you did?**

5 **A. It's possible that I said anything.**

6 **Q. Is it possible that you said, "Do you believe**
7 **that that was a severe sanction? Yes"?**

8 **A. If it's in there, then I said it, yes.**

9 **Q. The B Battery Door Leak Standard -- the**
10 **intent of that standard was to regulate HAPs,**
11 **Hazardous Air Pollutants, correct?**

12 **A. HAPs and H2S, yes. It was the gaseous**
13 **emissions.**

14 **Q. And that's because the B Battery has the coke**
15 **side shed for PM 2.5 controls, correct?**

16 **A. That, and the fact that that was -- we were**
17 **seeing a lot more doors leaking there.**

18 **Q. And the shed that the coke side of Battery B**
19 **has, is one of the best emissions controls that exists**
20 **for capturing PM 2.5, correct?**

21 **A. It is one of the better ones, yes.**

22 **Q. When you -- when the Enforcement Order was**
23 **issued, what was your position?**

24 **A. I was the Head of the Air Quality Program.**
25 **I'm not sure what the question is.**

1 **Q. You were the Head of the Air Quality Program**
2 **in June when the Enforcement Order was issued?**

3 **A. When the Enforcement Order -- when the 2016**
4 **Order was issued?**

5 **Q. The order that's on appeal?**

6 **A. Yes.**

7 **Q. You were the head of the Air Quality?**

8 **A. I was the Head of the Air Quality Program,**
9 **yeah.**

10 **Q. Okay. Is it fair to say that you reviewed it**
11 **and approved it before it was sent to U.S. Steel?**

12 **A. I did review it. I was not the final**
13 **approval, but I did review it.**

14 **Q. When you reviewed it and approved it, you**
15 **didn't know how the Door Leak Standard was derived; is**
16 **that fair?**

17 **A. I'm pausing because I'm trying to remember**
18 **how the discussions went. I mean, I did not derive**
19 **them.**

20 **Q. And you didn't know how the standard was**
21 **derived when you approved it?**

22 **A. I would say probably not, but I did look at**
23 **the actual scan.**

24 **Q. You didn't know what data was used to derive**
25 **the standard before you approved it?**

1 **A. Well, we had looked at some data that showed**
2 **that -- we are looking at compliance data and used**
3 **compliance data to show, but I can't -- I can't recall**
4 **what we were using.**

5 **Q. When you approved the Enforcement Order, you**
6 **didn't know if anything was done to figure out whether**
7 **U.S. Steel could feasibly meet that standard?**

8 **A. We looked at compliance data to see if they**
9 **could meet it, yes.**

10 **Q. So, you're saying that you looked at that**
11 **before approving it?**

12 **A. I'd say we, as a group, looked at it.**

13 **Q. Did you? Did you look at it and approve it?**

14 **A. I'm trying to look and trying to remember --**
15 **I'm confusing which data was which, but, yeah. I**
16 **would have looked at it. I would not have**
17 **specifically approved any point of data, but I would**
18 **have look at the data.**

19 **Q. When you approved the Enforcement Order, you**
20 **didn't know if there was any technological -- or any**
21 **analysis that was technologically feasible?**

22 **A. Once again, I did not approve it, but I did**
23 **review it, and I felt that it was technologically**
24 **feasible.**

25 **Q. You felt it was when you approved it?**

1 **A. When I reviewed it.**

2 **Q. Do you remember just a few weeks ago, you had**
3 **your deposition taken in my office, right?**

4 **A. Yes.**

5 **Q. And you were under oath?**

6 **A. Yes.**

7 **Q. Can you look at your deposition, it's Tab**
8 **Two, on Page 125? This was only a few weeks ago,**
9 **right?**

10 **A. Yes.**

11 **Q. All right. I want to start on Line Three on**
12 **125. My question to you was, "Do you know how the 10**
13 **door leak per month standard compares to the Federal**
14 **NESHAP Standard?"**

15 **Your answer, "No."**

16 **"Do you know how it compares to any existing SIP**
17 **Standard?"**

18 **Your answer, "No."**

19 **"Do you know how it compares to any existing**
20 **State Standard for door leaks?"**

21 **Your answer was, "No."**

22 **"Do you know if this 10 door leak per month**
23 **standard was generated based on any risk assessment?"**

24 **"I don't believe so."**

25 **"Do you know if this standard of 10 door leaks**

1 per month was based on any analysis of technological
2 feasibility?"

3 "That, I don't know."

4 "Do you know if there was any empirical analysis
5 done to create the 10 door leak per month B Battery
6 Door Standard in the enforcement?"

7 "That I don't know."

8 Can you look back on page -- was that all
9 correct?

10 **A. I believe so, yes.**

11 Q. Would you look back on Page 118? Do you see
12 Line 11?

13 **A. Yes.**

14 Q. My question to you, "Was it the Department's
15 intent that if U.S. Steel does not meet this B Battery
16 Door Standard, that that would trigger the
17 requirements to hot idle two batteries?"

18 Your answer, "That is the intent."

19 Question, "Why?"

20 "As with the other ones, it's an indication of
21 improvement or not improvement."

22 Question, "How was this standard derived?"

23 Your answer, "I don't know that I can say. I
24 don't know."

25 Did I read that correctly?

1 **A. Yes.**

2 Q. You do know that there was no risk assessment
3 done before the B Battery Door Leak Standard was
4 derived?

5 **A. No risk assessment. We are decreasing toxic
6 emissions.**

7 Q. So, you're saying there was a risk assessment
8 done?

9 **A. There was not a risk assessment. There is a
10 knowledge that will -- the intent is to decrease toxic
11 emissions, and this would decrease toxic emissions.**

12 Q. You know that there was no analysis done to
13 estimate the effect on ambient air as a result of this
14 new B Battery Door Leak Standard, correct?

15 **A. There was no ambient analysis done.**

16 Q. And no ambient analysis would include no
17 analysis of hazardous air pollutants, correct?

18 **A. Correct.**

19 Q. Okay. The Department didn't model any
20 emissions from decreasing door leaks at B Battery; is
21 that correct?

22 **A. As far as I know.**

23 Q. I want to switch gears and talk about the
24 2016 Consent Judgment. You were involved in that,
25 correct?

1 **A. I was involved, yes.**

2 Q. You were involved in the negotiations that
3 led to the 2016 Consent Judgment?

4 **A. I was part of the group, yes.**

5 Q. And the 2016 Consent Judgment was entered by
6 the Allegheny County Court of Common Pleas, correct?

7 **A. Yes.**

8 Q. It was an agreement between the County and
9 U.S. Steel, correct?

10 **A. Correct.**

11 Q. And it was presented to Judge Ward, who is a
12 Judge in the Allegheny County Court of Common Pleas?

13 **A. That is correct.**

14 Q. And it was entered as an official order,
15 correct?

16 **A. Yes.**

17 Q. If you look at Exhibit One, the 2016 Consent
18 Judgment is actually listed as Exhibit B to Exhibit
19 One, so it's about a little more than halfway through
20 the documents. And just for the record, I'm talking
21 about the U.S. Steel One. Are you at the Consent
22 Judgment?

23 **A. I am.**

24 Q. And there's 24 pages of this Consent
25 Judgment; is that correct?

1 **A. I will agree. I do not have the numbers on
2 this.**

3 Q. And if you look at the next page --

4 **A. If we're not including appendices, yes.**

5 Q. And it says, "One of 24," at the bottom, just
6 for the record, correct?

7 **A. Yes.**

8 Q. And this is the Consent Judgment, correct?

9 **A. Yes.**

10 Q. And this was the one that you were involved
11 in?

12 **A. I believe so, yes.**

13 Q. I want to look at Paragraph 26, please.

14 **A. Okay.**

15 Q. And just so we're clear, this was a document
16 that was negotiated and agreed to between the County
17 and U.S. Steel, correct?

18 **A. It was.**

19 Q. Okay. Paragraph 26 says, "The parties have
20 agreed that the most effective surrogate for
21 environmental performance across the entire facility
22 is plume opacity from the battery combustion stacks."
23 Did I read that correctly?

24 **A. Yes.**

25 Q. And plume opacity from the battery combustion

1 stacks is measured by the COMS that we have talked
2 about in this case, correct?

3 **A. Yes.**

4 **Q.** And that's referring to the battery stacks,
5 which are the large chimney looking structures?

6 **A. It does, yes.**

7 **Q.** And there are no alleged violations in this
8 Enforcement Order that's the subject to the appeal
9 related to battery stacks, correct?

10 **A. I don't believe so, no.**

11 **Q.** And we can agree that stack emissions is the
12 most significant surrogate for environmental
13 performance site wide, correct?

14 **A. I would agree to that. I would like to talk**
15 **a little about what surrogate means. I mean, you're**
16 **talking about a substitute. This goes back to when I**
17 **was talking about emission factors. It's just**
18 **something to represent --**

19 **Q.** Just so we're clear, did you say you would
20 agree or you wouldn't agree to that?

21 **A. I would to that as part of this, yes. I**
22 **mean, that was a statement, and we did agree to it,**
23 **but as a surrogate. So, it's only representative of**
24 **what's happening in -- you know, plant wide. If**
25 **you're looking at one thing for the health of a**

1 **battery, this was the surrogate for the health of that**
2 **battery. It doesn't really cover the operation of**
3 **that battery.**

4 **Q.** And it's a good representation of the
5 condition and performance of the hundreds of coke
6 ovens that are at Clairton?

7 **A. Of the health of a battery itself, not the**
8 **operations around it, the operations of the doors, the**
9 **operations of the lids, the operations of the**
10 **charging. It's a -- it is a fair representation and a**
11 **good representation of the health of that battery,**
12 **yes.**

13 **Q.** Using the most significant surrogate for
14 environmental performance site wide, what was U.S.
15 Steel's compliance percentage at the beginning of
16 2018?

17 **A. I do not know.**

18 **Q.** Does 99.3 percent-plus ring a bell?

19 **A. That sounds familiar. I don't know the exact**
20 **number, but I will accept that.**

21 **Q.** And the County calculated it, correct?

22 **A. Yes.**

23 **Q.** And you recall it being above 99 percent?

24 **A. I recall it being very good, yes.**

25 **Q.** So, you recall that the most significant

1 surrogate for environmental performance site wide was
2 very good in the penalty period that we're talking
3 about for the Enforcement Order?

4 **A. For the health of the battery, yes.**

5 **Q.** And the 2016 Consent Judgment had a target of
6 98.5 percent battery stacks, correct?

7 **A. Yes.**

8 **Q.** And obviously, 99 percent compliant is better
9 than 98.5 percent, correct?

10 **A. Yes.**

11 **Q.** The baseline that U.S. Steel has to exceed
12 includes battery stack compliance, correct?

13 **A. It does.**

14 **Q.** And that baseline is not 98.5 percent, which
15 was the compliance target agreed to in the 2016
16 Consent Judgment, right?

17 **A. Could you ask that again?**

18 **Q.** Yeah. The COMS compliance percentage that
19 goes into the baseline, that number is above 99
20 percent, correct?

21 **A. Yes.**

22 **Q.** It's not the 98.5 percent that was agreed to
23 in the Consent Judgment?

24 **A. Yes.**

25 **Q.** Is U.S. Steel's performance, as a result of

1 the Consent Judgment actually making it harder now on
2 this baseline?

3 **A. No, I don't think so. But what it does**
4 **consider, and this is part of what we're doing is, is**
5 **making sure that the stacks don't deteriorate while**
6 **all of the work is being done on the outside of the**
7 **battery. So, often when we put together Enforcement**
8 **Orders, the work is dedicated -- like the 2016 action,**
9 **a great deal of work is done for the through walls and**
10 **improvement of the stacks and then everything else is**
11 **let go.**

12 **And so, the intent was -- of this action was to**
13 **say that we're going to encompass the entire battery,**
14 **so we're going to include the health and the quality**
15 **of the combustion stack, along with all of the**
16 **fugitive emissions. We don't want -- if we just**
17 **listed the fugitive emissions, then we'll watch stacks**
18 **deteriorate. If we only do pushing, we are going to**
19 **watch -- you know, see lids deteriorate.**

20 **So, we're saying we want compliance of the entire**
21 **battery. And so, that's why this Enforcement Order**
22 **included the entire battery.**

23 **Q.** And we could agree that 99.3 percent
24 compliance on COMS is significantly better than 98.5
25 percent, right?

1 A. Right. And as long as they keep it at that
2 level, and then bring up all of these fugitives and
3 improve those, then they will comply with the
4 requirements, or you will have complied with your
5 requirements. What we don't want to see is the stacks
6 deteriorate while the other ones are improving.

7 Q. In the 2016 Consent Judgment, when you
8 established the 98.5 percent compliance, there's not
9 much room to go above that, correct?

10 A. Correct.

11 Q. But we got above it. We got above 99
12 percent, correct?

13 A. It was very good, yes.

14 Q. And now that's the number that moves into the
15 baseline that can trigger hot idle?

16 A. Yes. As long as you keep that number while
17 all of the other things are improving, then you will
18 not go into hot idle.

19 MR. DAUSCH: That's all I have.

20 HEARING OFFICER SLATER: Any redirect,
21 Mr. Willis?

22 MR. WILLIS: Yes, just a little.

23 REDIRECT EXAMINATION

24 BY MR. WILLIS:

25 Q. Ms. Graham, has H2S been an issue with

1 respect to this appeal? Let me rephrase that.

2 A. Yes, please.

3 Q. Did we issue a penalty with respect to H2S?

4 A. We do not issue violations in regard H2S, but
5 H2S is a continuing problem. The odor limit is very
6 -- the odor perception is very small, and we've
7 exceeded that many, many times.

8 Q. Well, I'm talking specifically with respect
9 to the Enforcement Order that's on appeal. Is there
10 any provision in there that addresses H2S
11 specifically?

12 A. Not directly to H2S. Not directly the
13 pollutants. It the visual emissions.

14 Q. Okay. Would you agree that door leaks is a
15 primary or a principle issue that's of concern with
16 respect to the batteries?

17 A. Yes.

18 Q. And when there's a door leak, would you also
19 agree that one of the emissions is coke oven gas?

20 A. That is the primary issue, yes.

21 Q. Would that be raw or clean coke oven gas?

22 A. That would be raw coke oven gas.

23 Q. And could we also agree that when there are
24 more leaks, that there's going to be a correlating
25 emission of coke oven gas?

1 A. Yes. Yes, it would be.

2 Q. Would you need a study to figure that out?

3 A. No. I mean, raw coke oven gas contains such
4 a wide range of chemicals. We know that anytime
5 there's a door leak, you're going to have that wide
6 range of chemicals.

7 Q. Okay. And -- one second. With respect to
8 emission limits, is there a way to test for leaks,
9 door leaks?

10 A. There's really not a practical one. We've
11 discussed with the company at times to see if there is
12 a way, but there really isn't. Visible emissions is
13 really our best -- again, to use the word surrogate.
14 We look at visible emissions. If there's more -- if
15 there's more smoke coming out, we take that to mean
16 there's more tar, there is more light oils, there's
17 more benzene, toluene, and xylene. You know, this is
18 all -- but to actually measure it, there's not a
19 practical means to do so.

20 Q. Is that why there's no emission limits with
21 respect to those?

22 A. Yes. I mean, if we could measure it, then we
23 would have and then we would have better emission
24 factors and our emission inventory would probably
25 include that more in those areas.

1 Q. So, the emission inventory does not include
2 that sort of data?

3 A. It has very simplistic surrogates. It really
4 does not have any accurate data for emissions coming
5 from door leaks.

6 Q. Okay. And with respect to the SIP, does the
7 SIP presume or take into consideration violations?

8 A. No. The SIP is -- we -- what we are required
9 to demonstrate is if all of the sources in the
10 immediate area operate at their full operation at
11 their allowable -- their highest allowable limit --
12 that does not take into consideration -- we're
13 actually not allowed to take in consideration
14 violations -- or exceedances -- yeah, violations or
15 noncompliance. This is a compliance plan, so it has
16 to -- it assumes compliance.

17 Q. So, let me understand. If there is an SO2
18 SIP, which has been approved by the EPA -- we've
19 already submitted one, and we've indicated that. It's
20 proposed as of right now. We've submitted a proposal
21 to the EPA, and it's under review. If that is
22 approved, it will not take into consideration
23 violations that we are concerned about at this point
24 in time?

25 A. No. It assumes total compliance with the

1 regulations that are in our --

2 Q. Is it possible that for even -- for even a
3 moment in time that Allegheny County can come into
4 compliance or reach attainment with respect to the
5 limits for SO2 and PM 2.5? Is that --

6 A. I believe -- yes. That's the plan. I'm not
7 sure I understand the question.

8 Q. No, that's what I asked.

9 A. The plan is to demonstrate that if the source
10 stays within the emission limits that are within the
11 permit or in the SIP or the regulations in the books,
12 that we would be in compliance.

13 Q. And with respect to attainment, is it a
14 situation of once in, always in; so once we get it,
15 we're locked into attainment?

16 A. No, we can fall out of attainment with -- if
17 the air quality stays poorly. And there's actually a
18 five-step process to become attain- -- to be
19 designated attainment. One of those -- one of those
20 is measuring air quality, but there's a number of
21 steps to get into attainment. But we can fall out of
22 attainment by simply having -- continuing to have
23 violations of the standard at the monitors.

24 Q. Notwithstanding the proposed SIP, which we all
25 believe will be adopted by the EPA, there's a

1 potential for backsliding and a potential to fall back
2 out of attainment?

3 A. Certainly, or not even reach attainment
4 because attainment has to be designated.

5 Q. And what sort of -- this might be too broad
6 of a question, but I'm trying to understand what data
7 set -- like, what time frame's worth of data would be
8 of concern for the attainment? Would it be one year's
9 worth of data, two years, three years, five?

10 A. The attainment demonstration is measured on
11 three years' worth of data.

12 Q. Okay. And so, even one year of increasing
13 violations could knock us out of attainment --

14 A. Certainly.

15 Q. -- and prevent us from reaching attainment?

16 A. Certainly.

17 Q. Is that a concern with respect to this
18 Enforcement Order?

19 A. Yes. We need to start the measure of
20 attainment immediately. The clock has started.

21 Q. The clock has started?

22 A. Yes.

23 Q. When did the clock start?

24 A. Well, the controls that we put in the plan
25 went into to place in the beginning of October, and so

1 we need to be demonstrating -- first, we need to
2 demonstrate one year's worth of attainment; the next
3 year, two years; and then three years. The third year
4 will be our final demonstration, with all of our other
5 documents to say we can -- we will be -- we can -- the
6 EPA can say that we're measuring attainment, but we
7 will not be designated attainment until we meet the
8 other items, but we'll need the three years to improve
9 air quality.

10 Q. And with the remedies that we have in place
11 within the Enforcement Order, will this help maintain?

12 A. I think it would, yes. For both the SO2 and
13 the particulates, yes.

14 Q. For both of them?

15 A. Yes.

16 Q. Is a shutdown more severe than hot idle?

17 A. Certainly. A shutdown of a battery is
18 essentially destroying the battery. If it goes to a
19 cold -- from what I understand, the bricks cannot
20 withstand going cold. So, if they go cold, you pretty
21 much have to rebuild your battery from scratch.

22 Hot idle -- as U.S. Steel has demonstrated in the
23 past when they went to hot idle, a source can go to
24 hot idle for a period of time and then bring the unit
25 -- carefully, they can bring it back into operation.

1 Q. So, we have information available to us that
2 would demonstrate that it's possible to recover from a
3 hot idle?

4 A. It happened in 2009.

5 Q. And as you've already read from 2109, the
6 Enforcement Section, what we have done is not a
7 shutdown in part or in whole of the facility?

8 A. No, it is not.

9 Q. We have not, in fact, even ordered a hot
10 idle?

11 A. No. It's a condition.

12 Q. It's a condition. It's a condition that
13 occurs upon failure of their own activity to correct
14 the -- their exceedances?

15 A. Yes.

16 Q. You mentioned earlier that you thought that
17 there -- there has been improvement in the air quality
18 over the past 10 years. Would you agree with that
19 statement?

20 A. Yes. There's been improvement over the past
21 20 years. There continues to be a general
22 improvement. Although, in the last few years there
23 has been an upturn, and we've had some deterioration.

24 Q. So, there's basically been a little bit of a
25 backslide with respect to the air quality in at least

1 the last two years?

2 A. Yeah. I would have to look at the air
3 quality data to see how far back it went, but it is --
4 there's been -- there was a -- you can have one year
5 that goes out because of meteorology and such. And I
6 think, as it was demonstrated during the earlier
7 testimony, that 2017 did show some uptick. But the
8 Liberty Monitor has been going up for several -- for
9 several years now --

10 Q. Okay.

11 A. -- for particulates.

12 Q. With respect to the COMS, is that the only
13 way to measure the performance of a battery?

14 A. No. We do visible emissions. We do
15 inspections.

16 Q. Do we do stack tests?

17 A. There are stack tests.

18 Q. And so, that's a measure of how the battery
19 is performing?

20 A. Correct.

21 Q. With respect to the visible emission
22 inspections, would that be a surrogate for the
23 operation and maintenance of a facility to determine
24 the performance of the operation of a facility?

25 A. I think most certainly, yes.

1 Q. I'm going to direct you to the permit, the
2 Title Five Permit for U.S. Steel. It's tabbed under
3 Section 30. If you would go to -- go to Page 59 just
4 as an example of what's in this document. If you look
5 at Number Six, what section is that?

6 A. It's called, "Work Practice Standards."

7 Q. And Letter A, could you read that for me?

8 A. I think this is a section for Batteries 1, 2,
9 and 3 because it says -- A says, "Coke oven Batteries
10 1, 2, and 3 shall be properly maintained and operated
11 at all times according to good engineering and air
12 pollution control practices."

13 Q. Okay.

14 A. I believe there is a similar section in all
15 of the batteries.

16 Q. That's what I was going to ask you, if there
17 was a -- because if you look to Page 77, it looks as
18 though there's a similar provision for Number Six on
19 Page 77. Do you see that? In this case, it would be
20 B.

21 A. Yes. Six B says, "As required by Section
22 63," which is the Federal Requirements, "63.6 E1I, the
23 permittee shall operate and maintain each coke -- coke
24 battery, including air pollution controls and
25 monitoring equipment in a manner consistent with good

1 air pollution control practices for minimizing
2 emissions at least to the levels required by," and
3 then there's a Federal quote.

4 Q. Okay. If the source, in this case U.S.
5 Steel, fails to maintain and operate at all times
6 according to good engineering and air pollution
7 control practices, would that be a violation of this
8 permit?

9 A. It would be.

10 Q. Would it be a violation of Article 21?

11 A. It would be, since Article 21 references the
12 Federal Standards.

13 Q. And does Article 21 have an operation and
14 maintenance provision as well?

15 A. It does.

16 Q. Okay. So, there would be an expressed
17 provision of Article 21 with respect to its operation
18 that would be violated?

19 A. Yes.

20 Q. Does the SIP, to your understanding, make use
21 of the emissions inventory that we discussed earlier?

22 A. It uses several emissions inventories.

23 Q. Several?

24 A. Yes.

25 Q. Could you describe the emissions -- the,

1 plural, emissions inventories that are used by the
2 SIP?

3 A. Well, the -- there is an inventory that's
4 called the Base Year Inventory, and that's used to
5 validate or assure that the model is the appropriate
6 model, and it uses actual emissions, or the best
7 estimate of actual emissions. As I said before, it's
8 very hard to estimate emission for things like battery
9 fugitives or things like that. We're using what we
10 can use. We use it, and we try to validate the model
11 itself.

12 The compliance run -- the compliance inventory,
13 is everything operating in compliance, but at its
14 maximum allowable. So, those are the two emission
15 inventories.

16 Q. Because of that -- that -- that sort of
17 ambiguity with respect to quantifying the fugitive
18 emissions and making use of that in the emissions
19 inventory, what's the concessions that are made, if
20 any, for quantifying those emissions in the emissions
21 inventory? Say, for example, SO2 from a door leak, is
22 it --

23 A. Well, in that case, we don't have numbers, so
24 we don't include it. If we had some numbers, we would
25 include it. So, unfortunately, we can't -- you know,

1 we don't put something in. But if we really think
2 that the emission factor is very poor or it's
3 non-existent -- there are sulfur dioxide emissions
4 coming -- well, actually it's H2S becoming sulfur
5 dioxide almost immediately, but we don't have values
6 for that.

7 So, we work with what we have, and we try to do
8 the best analysis we have. That would not be included
9 in the SIP because we would not have anything that we
10 could justify or verify.

11 Q. And what you have are generally other
12 surrogates, which would assist in understanding the
13 emission profile with respect to SO2?

14 A. As best we can, yeah. Where we have measured
15 data, we use measured data. Where we have surrogates,
16 we have surrogates. So, we do -- we do the best we
17 can.

18 Q. Are visible emission readings or inspections
19 surrogates?

20 A. Yes.

21 Q. What are they surrogates for?

22 A. Well, they can be a surrogate for -- they're
23 surrogates for all of the emissions that we wouldn't
24 normally measure. Depending on the source, if it's --
25 if it's -- it could be -- it's definitely

1 particulates. It could be sulfur dioxide, it could be
2 hydrogen sulfide, it can be BTEX, and all of the
3 chemicals that we're seeing.

4 If it's something like a battery fugitive -- and
5 we know what a battery fugitive is. It's coke oven
6 gas, raw coke oven gas, and we know what that
7 contains. We know from books what that contains. So,
8 the -- the visible emissions is a surrogate for all of
9 those chemicals.

10 MR. WILLIS: Okay. I have no further
11 questions.

12 HEARING OFFICER SLATER: All right.

13 Mr. Dausch, do you have some recross?

14 MR. DAUSCH: I do.

15 HEARING OFFICER SLATER: Okay.

16 RECROSS-EXAMINATION

17 BY MR. DAUSCH:

18 Q. The SO2 SIP that you had mentioned, it
19 includes emissions estimates?

20 A. Mhmm (affirmative).

21 Q. Say yes or no.

22 A. Yes.

23 Q. And you said that the emissions estimates are
24 a model assuming compliance, correct?

25 A. Correct.

1 Q. That compliance is assuming compliance with
2 the Federal NESHAP Standard, correct?

3 A. As well as with the county limits, yes. We
4 don't really model for the NESHAPs, but because
5 NESHAPs are air toxics emission limits, we are --
6 we're going against Article 21 sulfur dioxide limits.

7 Q. So, your testimony is that the NESHAP
8 compliance is not what's used for the model?

9 A. No, it would not be, not for a sulfur dioxide
10 model.

11 Q. The coke oven gas that you mentioned earlier
12 is a hazardous air pollutant, correct?

13 A. Yes.

14 Q. And there are National Emissions Standards
15 for hazardous air pollutants like coke oven gas?

16 A. Yes.

17 Q. And the County enforces these standards?

18 A. Yes.

19 Q. There's a standard for door leaks?

20 A. Yes.

21 Q. There are inspectors at every battery every
22 day inspecting for these standards on door leaks,
23 correct?

24 A. I'm not sure if they're there every day, but
25 they are very frequent, yes.

1 Q. And U.S. Steel is 100 percent compliant with
2 those standards?

3 A. Yes.

4 MR. DAUSCH: That's all I have.

5 HEARING OFFICER SLATER: Any --

6 MR. WILLIS: Just one clarifying question.

7 HEARING OFFICER SLATER: Yeah.

8 REDIRECT EXAMINATION

9 BY MR. WILLIS:

10 Q. You just mentioned U.S. Steel is compliant
11 with all of those standards. What standards
12 specifically are you referring to?

13 A. The Federal -- the NESHAP Standards. And I
14 don't know specifically what they are, but the NESHAP
15 standards allow for, like, 30-day rolling averages and
16 some of those are above average. So, the Karamida --
17 we refer to them as the Karamida Inspectors. They
18 inspect against the -- those Federal Regulations.

19 Q. Okay.

20 A. They do not enforce against our regulations.

21 Q. That's kind of where I was going. You
22 weren't specifically referring to Article 21
23 violations?

24 A. No, I was specific with those. Those are
25 hazardous air pollutant standards, and they're Federal

1 Standards. The SO2 plan is against the Article 21
2 Regulations.

3 MR. WILLIS: Okay. Thank you.

4 HEARING OFFICER SLATER: Mr. Dausch, any
5 further questions?

6 MR. DAUSCH: Nothing further, Mr. Slater.
7 And if we're going to conclude for today, --

8 HEARING OFFICER SLATER: Yeah.

9 MR. DAUSCH: -- maybe we can hang out and
10 talk about our plan for tomorrow off the record, if
11 that make sense.

12 HEARING OFFICER SLATER: Yeah, we can do
13 that.

14 MR. DAUSCH: All right.

15 HEARING OFFICER SLATER: Let's go off the
16 record.

17 (The hearing recessed at 4:07 p.m.)
18
19
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23
24
25

1 CERTIFICATE OF REPORTER

2 COMMONWEALTH OF PENNSYLVANIA :

3 :

4 COUNTY OF ALLEGHENY :

5

6 I, Aimee E. Davis, a Notary Public duly
7 commissioned and qualified in and for the said
8 Commonwealth and County, do hereby certify that
9 pursuant to the notice, the within named persons were
10 sworn by me to testify to the truth and nothing but
11 the truth; that the testimony was reduced to writing
12 under my supervision; that this transcript is a true
13 record of the testimony given by the witnesses.

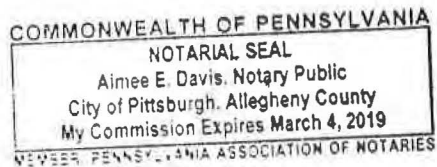
14 I further certify that I am neither attorney nor
15 counsel for, nor related to or employed by any of the
16 parties to the action in which this hearing was taken;
17 and further, that I am not a relative or employee of
18 any attorney or counsel employed by the parties or
19 financially interested in this action.

20 In testimony whereof, I have hereunto subscribed
21 my hand and affixed my seal of office this Saturday,
22 December 22, 2018
23
24
25

My Commission Expires:
March 3, 2019

Aimee E. Davis

Notary Public



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<p>wide (37:7) (47:13) (47:14) (103:9) (103:10) (265:13) (265:24) (266:14) (267:1) (271:4) (271:5) willing (233:21) (233:24) willis (2:2) (3:3) (3:4) (3:5) (3:7) (3:8) (3:9) (5:8) (5:21) (5:23) (8:22) (13:13) (13:24) (14:4) (40:19) (44:19) (56:1) (56:10) (59:15) (61:24) (62:4) (62:11) (62:14) (69:16) (78:10) (78:13) (78:16) (78:25) (84:16) (84:18) (90:3) (104:1) (111:21) (112:4) (112:8) (112:12) (112:25) (113:7) (113:17) (114:1) (116:14) (129:17) (135:1) (141:17) (141:22) (141:25) (154:24) (154:25) (155:2) (168:15) (171:1) (172:3) (172:11) (172:16) (172:23) (173:2) (173:6) (173:7) (173:13) (173:15) (173:20) (190:24) (206:4) (206:9) (210:7) (210:14) (210:18) (213:17) (213:20) (213:22) (214:2) (214:5) (214:7) (214:9) (214:11) (214:13) (214:16) (215:13) (215:15) (215:18) (215:19) (216:19) (217:5) (217:8) (217:19) (217:22) (218:6) (218:21) (219:3) (219:6) (219:10) (219:13) (219:16) (219:20) (224:19) (227:21) (228:8) (229:15) (229:22) (230:6) (230:9) (230:12) (233:13) (233:14) (234:12) (234:16) (244:20) (269:21) (269:22) (269:24) (282:10) (284:6) (284:9) (285:3) willis' (113:22) wind (35:9) (227:16) (231:1) (232:23) (233:17) winds (142:14) winek (2:6) (5:13) withdraw (38:8) withdrawn (38:2) (187:3) (216:18) withdrew (216:7) (218:20) within (7:24) (22:11) (27:24) (124:18) (178:16) (185:16)</p>	<p>(203:3) (203:7) (208:9) (273:10) (275:11) (286:7) without (6:16) (6:17) (6:18) (50:23) (61:22) (87:2) (129:7) (147:11) (181:23) (233:23) withstand (275:20) withstanding (16:13) witness (3:2) (5:16) (13:14) (14:1) (56:3) (172:5) (173:14) (173:16) (233:6) (233:10) (234:4) witness' (56:7) witnesses (3:1) (5:16) (5:19) (224:1) (286:9) woman (230:18) won't (22:25) (38:20) (188:22) word (85:5) (147:14) (223:15) (224:10) (232:1) (271:13) words (151:10) work (14:22) (16:6) (110:15) (179:2) (181:3) (181:6) (202:7) (227:13) (229:13) (249:22) (268:6) (268:8) (268:9) (278:6) (281:7) worked (9:4) (14:23) (30:12) (66:1) (86:15) working (33:4) (82:15) (101:21) (177:23) works (16:3) (28:17) (39:9) (73:6) (74:14) (75:23) (75:24) (77:10) (79:24) (84:22) (87:7) (106:24) (108:19) (110:16) (185:1) (227:10) (228:18) (233:22) worse (11:10) (49:8) worst (11:13) (82:22) (85:11) (134:9) (134:13) (161:16) (161:20) (161:23) (162:1) (162:9) (162:12) (162:16) (162:21) (170:22) worth (192:2) (274:7) (274:9) (274:11) (275:2) writing (286:8) written (69:24) (70:9) (148:14) (188:12) (189:12) (189:13) wrong (46:13) (71:25) (76:22) (164:18) (231:12)</p>	<p style="text-align: center;">Y</p> <p>yard (63:8) (64:17) (167:12) (191:15) yearly (185:13) (185:14) years (12:5) (14:21) (15:1) (17:11) (19:5) (29:20) (55:21) (64:2) (64:14) (83:7) (86:15) (185:22) (200:3) (200:4) (203:7) (205:3) (245:11) (245:12) (249:4) (274:9) (275:3) (275:8) (276:18) (276:21) (276:22) (277:1) (277:9) year's (274:8) (275:2) years' (96:5) (274:11) yet (6:22) (81:7) (172:18) (216:2) you'd (6:19) (43:7) (68:23) (138:23) (220:24) (228:15) yup (244:8) (244:11)</p> <p style="text-align: center;">Z</p> <p>zero (33:13) (75:10) (108:7) (157:2) (157:4) (157:11) (167:16) (168:2) (234:3) zeros (167:17)</p>	
	<p style="text-align: center;">X</p> <p>xylene (40:10) (44:24) (209:10) (271:17) xylenes (226:21) x-y-l-e-n-e-s</p>		