

ALLEGHENY COUNTY HEALTH DEPARTMENT

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

* * * * *

Verbatim hearing transcript of hearing held at
 At Clack Health Center,
 Building 7, 301 39th Street,
 Pittsburgh, Pennsylvania, on
 December 4, 2018
 at 9:00 a.m.

BEFORE: MAX SLATER, ESQUIRE, Hearing Officer

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1 PROCEEDINGS OF DECEMBER 4, 2018

2 HEARING OFFICER SLATER: Let's go on the record.

3 It is Tuesday, December 4th, 2018. This is day two of
4 the hearing, United States Steel Corporation versus
5 Allegheny County Health Department.

6 For the record, could counsel identify themselves
7 again?

8 MR. WILLIS: Jason Willis for Allegheny County
9 Health Department.

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

11 HEARING OFFICER SLATER: Will any witness who is
12 testifying today, please raise their right hand to be
13 sworn in.

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

16 HEARING OFFICER SLATER: Mr. Willis, you may
17 proceed with your first witness today.

18 MR. WILLIS: I will call Dean DeLuca.

19 DEAN DELUCA, called as a witness, being
20 previously sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. WILLIS:

23 Q. Hello, Mr. DeLuca. Could you state your full
24 name for the record, please?

25 A. Dean DeLuca.

1 Development Construction.

2 Q. How long did you have that position?

3 A. A total of about two and a half years between the
4 two companies.

5 Q. And prior to that, what did you do?

6 A. That's when I graduated college from Bucknell.

7 Q. What did you graduate from Bucknell, what was
8 your degree?

9 A. Civil environmental engineering.

10 Q. Okay. When did you graduate?

11 A. 2006.

12 Q. And have you had any formal education beyond
13 Bucknell?

14 A. Yes.

15 Q. What would that be?

16 A. I got an MBA.

17 Q. From?

18 A. Argosy University.

19 Q. Okay. When did you get that degree?

20 A. I graduated about 2012 --

21 Q. 2012, okay.

22 A. -- to get the exact year.

23 Q. Beyond your formal education, have you had any
24 experience or training with respect to steelmaking or
25 coke oven operation?

1 Q. Can you tell me what your current occupation is?

2 A. Air pollution control manager, enforcement chief.

3 Q. Of what division?

4 A. Allegheny County Health Department.

5 Q. Are you a part of the Air Quality Program?

6 A. Yes.

7 Q. How long have you had that position?

8 A. About five years.

9 Q. And prior to that, what was your job?

10 A. I was an Air Quality Engineer III.

11 Q. Also with Allegheny County Health Department?

12 A. Also with the Allegheny County Health Department.

13 Q. And prior to that, what was your position?

14 A. I was an Engineer II and I was a trainee also
15 with Health Department.

16 Q. And when did you begin that?

17 A. I started December of '08.

18 Q. And that's your begin date for your employment
19 with the county?

20 A. Yes.

21 Q. Okay. And prior to your employment with the
22 county, what did you do?

23 A. I worked in construction management.

24 Q. For?

25 A. Declava (phonetic) and RDC, Residential

1 A. Through the Allegheny County Health Department, I
2 went up to Canada for a week-long training on blast
3 furnaces one year and coke ovens --

4 COURT REPORTER: Sir, you are going to have to
5 speak up because the air is blasting.

6 BY MR. WILLIS:

7 Q. Could you repeat your answer? You were talking
8 about Canada training.

9 A. Yeah. Through the Allegheny County Health
10 Department, there was a week-long training at McMaster
11 University, one year was for blast furnaces and there
12 were coke ovens the following year. That was in 2014 or
13 '15.

14 Q. How long were each of those trainings?

15 A. A week long. It was a full day every day for the
16 five days and some stuff in the evening also.

17 Q. And what was the nature of that training? What
18 was the subject matter?

19 A. The first class was about blast furnaces and the
20 second day was about coke ovens, and people came from
21 various countries to it.

22 Q. Was anybody from the industry involved in that
23 training?

24 A. Yes.

25 Q. Do you remember who or what companies or

1 organizations?

2 A. Vasco, ArcelorMittal, SunCoke, a couple names
3 that I won't be able to remember from Australia, I
4 believe DTE Energy. I forget all the companies, maybe
5 60 or 70.

6 Q. For each of the companies?

7 A. Each of the trainings.

8 Q. Oh, each of the trainings, okay. And with
9 respect to those trainings, did you -- were you trained
10 with respect to the operation and maintenance of the
11 coke oven?

12 A. That was part of it. It covered how to operate
13 them, which wasn't directly related to the position for
14 me at the time. It was about the inner workings of the
15 blast furnaces and coke ovens, environmental
16 performance, different technologies that some people
17 around the world were using.

18 Q. Was there any discussion about the chemistry of
19 the coke-making process?

20 A. A little bit of it. Unfortunately, because I
21 never took organic chemistry, some of it did go over my
22 head. You know, there was a lot of chemistry involved
23 in it.

24 Q. That's fair enough. I'm going to switch gears a
25 little bit, and I'm going to be switching gears quite a

1 at 10 p.m. The morning after, we will look at the
2 complaints that occurred off-shift and they will look at
3 the urgency of them.

4 If we receive multiple complaints from an area
5 about a specific odor, an issue like that, and it seems
6 like it might be continuing at that point, they would go
7 out first thing in the morning, maybe even go there
8 before they come into the office, see if the episode is
9 still occurring, and then respond accordingly to that
10 one.

11 If it is something that is a short-term episode
12 that is more of a filing saying, "Okay, we got more
13 complaints in this area," for the future, in case more
14 things come up in the same area, to try and see and
15 respond to them, it is difficult to respond to a
16 short-term episode that happens off-shift.

17 Q. Why is that?

18 A. Because the inspectors aren't going to find out
19 about it immediately. They are not going to be able to
20 respond immediately. If it's an episode that will last,
21 we'll say, five to 10 minutes, they are not going to get
22 there.

23 On top of that, even if it's during the shift, it
24 may be difficult for them to even get to that area or
25 vicinity while the complaint is still occurring.

1 bit through your testimony, so be prepared to pivot a
2 little bit, if you would.

3 Could you explain to us and to the Hearing
4 Officer the complaint system that the Allegheny County
5 Health Department has for the reception of the
6 complaints?

7 A. Yes. We have -- it's an Oracle program and then
8 people can enter complaints either through the phone or
9 through the website now. That gets put into our
10 centralized complaint system.

11 If we receive complaints from the Pennsylvania
12 Department of Environmental Protection, the
13 Environmental Protection Agency, EPA or PA DEP, we
14 manually input them into that same system, and then the
15 inspectors or the enforcement engineers who are related
16 to it can get into that system and review the
17 information in there and respond to the complaints
18 accordingly.

19 Q. Now, you mentioned the inspectors and their
20 response to complaints. Do we have overnight
21 inspectors?

22 A. No.

23 Q. So what happens if there is a complaint at 10
24 p.m.?

25 A. Well, we probably won't be able to get out there

1 Q. I see. Again, shifting gears little bit, we --
2 the Allegheny County Health Department has a civil
3 penalty policy. Are you familiar with that policy?

4 A. Yes.

5 Q. Are you familiar with the policy which existed
6 prior to 2018?

7 A. Yes.

8 Q. Could you explain the difference between the
9 prior policy and the current policy? What --

10 A. The current --

11 Q. I'm sorry. Sorry, go ahead.

12 A. The current is policy much more formalized. It
13 is a public document that has -- goes into a
14 description, a lot of it about what can be done, all the
15 different factors of Article 21 that go into that
16 penalty calculation.

17 The older policy was more of a short guidance.
18 It was the penalty calculation factors that were used.
19 It incorporated a lot of the factors of Article 21 into
20 that also. That was used for years, we'll say -- I
21 don't know how many. And then --

22 But the newer one does incorporate the affect on
23 the environment more so. It affects all the Air Quality
24 Program, both -- there were two guidances, one for coke
25 ovens and one for other sources previously. Now it is

1 all in one policy. And that policy -- it goes through
2 all the factors. It is more of a descriptor too for the
3 person who is doing the calculation. Anybody in the Air
4 Quality Program can do it. They can use that policy and
5 go through and come up with an amount at the bottom of
6 it.

7 Q. Okay. With respect to the policy that existed
8 prior to 2018, you mentioned that it was a guidance.
9 Why do you think that is?

10 A. There was never -- as far as I saw, there was no
11 formal long-duration policy. It was a one page or two
12 page, if it was referred to as a "policy," -- I don't
13 know the terminology of it -- but it was only one or two
14 pages. The new policy is maybe 15 or so. So it is much
15 more descriptive than the previous policy was.

16 Q. So the current policy is more comprehensive than
17 the prior policy?

18 A. Yes.

19 Q. Okay. With respect to the prior policy or
20 guidance, was it ever formalized in terms of a
21 calculation spreadsheet or anything that could be used
22 to describe how that process operated from the back end?

23 A. Yeah, that's what it was -- it was a calculation
24 spreadsheet and it had two separate -- it is an Excel
25 file with two separate tabs: one had the description of

1 whenever I was an air quality trainee, he was the
2 enforcement chief/program manager. So at that time, he
3 was my boss. And we used that penalty calculation
4 spreadsheet at that time.

5 Q. Okay. Were you ever allowed to deviate from that
6 guideline or policy in the past?

7 A. Yeah, we could.

8 Q. Were there occasions in which you did?

9 A. Yes. Because that policy did not account for the
10 EPA BEN model, the economic benefit model, so anything
11 that came up using that BEN model would have been a
12 deviation from that guidance policy.

13 Q. Could you explain what a BEN model is?

14 A. I'm sorry. It's an EPA model that is used to
15 determine economic benefit from companies.

16 The way that the previous guidance was, it was
17 one of the factors in it. And the current -- the
18 current policy has it being one of the factors and the
19 additional potential addition for economic benefit if
20 that's not enough.

21 So the economic benefit model is something that
22 the EPA or somebody that worked for the EPA created this
23 system a while ago. You input the information relating
24 to that violation and then that system will output an
25 economic benefit, and that's what the EPA uses for

1 it and one had the calculation of it. So that was the
2 policy previously.

3 Q. Oh, so the policy was actually just a spreadsheet
4 with --

5 A. It was a spreadsheet and then guidance factors,
6 yeah.

7 Q. And the factors were the same. Are those the
8 same factors that would be found in Article 21?

9 A. A lot of them are, yes. It just doesn't
10 incorporate all of them.

11 Q. It does not incorporate all of them?

12 A. It incorporated the majority of them. I can't
13 remember if it was all of them or not, because I haven't
14 used it in a while.

15 Q. Before you were the chief of enforcement, who was
16 your predecessor?

17 A. Ed Peresie.

18 Q. And do you know who preceded Ed Peresie?

19 A. Jim Thompson.

20 Q. And to your recollection, did Jim Thompson become
21 deputy director sometime after?

22 A. Yes.

23 Q. Okay. Do you know how Jim Thompson operated with
24 respect to enforcing the penalty policy?

25 A. I can speak to my time here because he was my --

1 economic benefit for violations.

2 Q. And when you say "economic benefit," what do you
3 mean by economic benefit?

4 A. The amount that the company benefitted or an
5 individual benefitted from that violation.

6 Q. Okay.

7 A. So, for example, if you were supposed to install
8 control equipment and you didn't install control
9 equipment, that program would input the amount of the --
10 the cost of the system, how long you were in
11 noncompliance, and then it would come out with an amount
12 of different factors that go into the back end, but...

13 Q. Does that model take into consideration the
14 assets or net worth of a violator?

15 A. That one does not, but another EPA program does.

16 Q. What is that?

17 A. It is ABLE, ability to pay. And then it has one
18 for individuals called INDIPAY. So those all take into
19 -- the initial BEN model is just this is what the
20 penalty should be, and then the second step is do they
21 have the ability to pay if the company brings up that
22 objection, and that would be the INDIPAY or the ABLE
23 models.

24 Q. I see. You're familiar with Article 21
25 regulations with respect to coke ovens, correct?

1 A. Yes.

2 Q. And with respect to our penalty assessment, do we

3 base those penalty assessments on visible emissions?

4 A. That is definitely one of the factors used. It

5 is a frequent one. For coke ovens, visible emissions

6 are a big part of it.

7 If you are talking specifically about Method 9,

8 not all violations are Method 9; because if we are just

9 counting leaks, it wouldn't be Method 9. But it is

10 emissions which are visible.

11 Q. Okay. Do you have another method in mind that

12 would take that into consideration?

13 A. Well, if you are looking at the percent leaking

14 standards for the doors, lids and offtakes, those ones

15 don't read opacity, just is there a leak there. Method

16 22 is one of the ones that they do use for is there a

17 leak or not.

18 Q. Do we -- does the -- does Article 21 contemplate

19 opacity standards at all?

20 A. Yes.

21 Q. Does it do that with respect to coke ovens?

22 A. Yes.

23 Q. What are those standards?

24 A. Pushing. Pushing and travel for pushing both

25 have opacity standards, has a high-opacity standard for

1 door leaks. Charging doesn't have opacity. Lids and

2 offtakes do not have opacity, and then soaking has

3 opacity.

4 Q. Do you know why opacity would be used as a metric

5 for determining compliance?

6 A. It's a surrogate for emissions coming out of the

7 source, whether -- if it is soaking emissions, it would

8 be the emissions coming out. You use what you can see

9 as a surrogate for what you can't see.

10 So if there's an opening and emissions are coming

11 out and they are visible, you use that as a surrogate

12 for both visible and non-visible emissions.

13 Q. And how do we get the data with respect to

14 visible emissions? How do we know when there has been a

15 visible emissions event that would cause a penalty?

16 A. Inspection data.

17 Q. Who is doing the inspections?

18 A. It could be ACHD, the county inspectors, coke

19 oven inspectors. It could be -- Keramida is the Method

20 303 contractor.

21 And then U.S. Steel also employs somebody to do

22 readings per the 2016 Consent Judgment for pushing and

23 soaking.

24 Q. Okay. Now, let's back up a little bit. ACHD has

25 inspectors that do inspections of the coke ovens at U.S.

1 Steel Clairton?

2 A. Yes, there are currently two full-time coke oven

3 inspectors.

4 Q. When are they there? What are their work hours?

5 A. Normal working hours, seven to three.

6 Q. Seven days a week?

7 A. Five days a week.

8 Q. Both of them, five days a week?

9 A. Correct, yes.

10 Q. With respect to Keramida, what's their purpose?

11 A. They do the EPA-required Method 303 inspections.

12 They -- every battery in the country -- every coke oven

13 battery in the country has to be inspected on a daily

14 basis, and then Method 303 is the way to do that.

15 And Keramida is the ACHD contractor that

16 completes those inspections. They do those inspections

17 seven days a week, all the types they have to do, at

18 each of the 10 batteries at Clairton.

19 Q. I see. Do we pay Keramida? Are they one of our

20 contractors or are they a contractor of U.S. Steel?

21 A. They are contracted by Allegheny County, and U.S.

22 Steel pays Allegheny County who pays Keramida.

23 Q. So we are reimbursed by U.S. Steel for the

24 activity of Keramida?

25 A. Yes.

1 Q. Okay. With respect to the observations that are

2 made for visible emissions by ACHD employees, how does

3 that -- what do they do in terms of getting the -- well,

4 let me ask you: do they report back to you?

5 A. Yes.

6 Q. Daily?

7 A. No.

8 Q. Weekly?

9 A. Every payday, they would come and enter all the

10 inspection data into the system, and then that gets

11 updated every -- so every two weeks, generally speaking.

12 Q. Every two weeks?

13 A. Yeah.

14 Q. Do they both come in every two weeks to --

15 A. No, they would alternate. So one person would

16 come at one time and then the other one, and then they

17 would alternate back and forth.

18 Q. With respect to the inspection reports that they

19 generate, -- they do generate inspection reports?

20 A. Correct, yes.

21 Q. -- do they bring those reports in for just

22 themselves? How does that work? So it's once a month

23 they bring in their reports for --

24 A. Well, then bring in each other's reports. Every

25 two weeks, we would get those reports. And then the

1 document manager scans them into the system as time
2 allows, and then we will have access to them once they
3 are scanned into the system.

4 Q. So if I'm understanding this correctly, every two
5 weeks, one of the two inspectors will come in and drop
6 off the reports for both of them?

7 A. Yes.

8 Q. To the document control manager?

9 A. Yeah. It would be nice if we had the electronic
10 system to do it, but that's what we have.

11 Q. Okay. With respect to Keramida, how do we get
12 information from Keramida regarding their inspections?

13 A. Keramida submits daily Excel sheets that are -- I
14 don't know if they are audited, and I don't believe they
15 are audited, but daily Excel sheets to U.S. Steel and
16 ACHD with the inspection data for that day, and then we
17 get a monthly summary report of all of that from
18 Keramida.

19 Q. To your knowledge, do you know whether or not
20 either ACHD inspectors or Keramida inspectors provide
21 daily information to U.S. Steel?

22 A. Yeah. The ACHD inspectors give U.S. Steel their
23 sheets at the end of the day. They copy them, from what
24 I'm told, and then I know that Keramida's sheets are
25 also sent over to U.S. Steel at the same time that ACHD

1 against U.S. Steel?

2 A. As far as I'm aware, they were; and in the
3 records I saw, it said that.

4 Q. Okay. How long does it take you -- and I mean by
5 "you," your group, the enforcement group -- to develop a
6 quarterly penalty assessment for U.S. Steel in any given
7 quarter, roughly?

8 A. It depends on the number of violations how long
9 it takes, really. If there are one dozen violations,
10 it's going to take a lot less time than it does if
11 there's 150 of them.

12 But if you are looking at the duration on a
13 calendar-wide -- the first quarter, we will just use as
14 an example, ends the end of March. We would get the
15 data mid-April, end of April would be the latest we
16 would get all of that data, and then it takes time to
17 analyze that. So the earliest we could would be maybe a
18 month and a half after the end of a calendar quarter.

19 Q. I see.

20 A. In that range.

21 Q. So for -- and let's be specific. For the fourth
22 quarter of 2017, to have a full data set for purposes of
23 computing a penalty, you wouldn't have that data until
24 January?

25 A. Yeah, maybe -- yeah, I don't know what time in

1 gets them.

2 And then something happened with -- I forget -- I
3 don't know the details of the agreement, but U.S. Steel
4 and Keramida have an agreement also where U.S. Steel
5 will get the Keramida data earlier than the next day
6 after it's QC'd so that the non-quality assured quality
7 control data at the end of the shift, generally maybe an
8 hour after the shift instead of after it's been quality
9 controlled, so they can get the information sooner.

10 Q. Okay. So in both cases, inspectors are providing
11 U.S. Steel with data with respect to their inspections
12 the same day?

13 A. Yeah. The only exception to the same day would
14 be if Keramida finishes their shift at, like, 11 or 12
15 p.m. and then it takes them an hour, so they have to do
16 it the following morning; but that would be the latest,
17 yes.

18 Q. Okay. Now, you said you've been in this position
19 as enforcement chief for how long now?

20 A. About five years.

21 Q. And during those five years, have you issued
22 quarterly penalties against U.S. Steel?

23 A. Yes.

24 Q. Before you were the chief of enforcement, do you
25 recall whether or not quarterly penalties were issued

1 January, mid to late January.

2 Q. So your actual enforcement exercise for the prior
3 quarter would generally begin in the month subsequent to
4 that quarter?

5 A. Yeah.

6 Q. Okay.

7 A. Maybe two months after, but yeah.

8 Q. So there would really be no way for you to
9 calculate a full quarter in that quarter?

10 A. Oh, no.

11 Q. So -- and let me finish my thought here.

12 A. I'm sorry.

13 Q. But if we are talking about the fourth quarter of
14 2017, there's no way you could generate a penalty for
15 the full quarter of 2017 until January of 2018?

16 A. Correct.

17 Q. Okay. Have you issued penalty assessments
18 against U.S. Steel since the 2016 Consent Judgment?

19 A. Yes.

20 Q. Are you aware of the 2016 Consent Judgment?

21 A. Yes.

22 Q. Have you reviewed the 2016 Consent Judgment?

23 A. Yes.

24 Q. Have you ever been asked to ascertain whether or
25 not they are, U.S. Steel, is in compliance with that

1 judgment?

2 A. Yes.

3 Q. And to the best of your knowledge, U.S. Steel has
4 been in compliance with that 2016 Consent Judgment?

5 A. Correct.

6 Q. Okay. And I'm sorry, I have to apologize for
7 bouncing all over the place, but I want to get all of
8 this in the record.

9 Are you aware of what the Allegheny County Health
10 Department's statute of limitations is with respect to
11 the penalty assessment?

12 A. Seven years.

13 Q. Which is to mean we could look back seven years
14 to assess a penalty?

15 A. That's the way I've been told, yeah, it can go
16 back seven years from the date of the violation to the
17 current date.

18 Q. So if we observed -- if we became aware of a
19 violation which occurred in 2012, we would be able to
20 assess a penalty against that violation?

21 A. Yes.

22 Q. And if we were to do so, would we use the penalty
23 policy in place in 2012 or would we use the current
24 penalty policy?

25 A. The current penalty policy.

1 self-directed on where to go beyond those.

2 Q. Okay. Have there been more inspections since
3 you've become enforcement chief?

4 A. Yes.

5 Q. Could you give me a sense of the scale in terms
6 of what it was like before versus now?

7 A. Looking at some of the historical data, it looked
8 like there was maybe 10 times as much, something in that
9 range. I have to look at the numbers specifically, but
10 there is a big difference between before and after.

11 Q. Okay. I may have asked you this, but every
12 single quarter since you've been employed by the
13 Allegheny County Health Department, there has been a
14 penalty assessed against U.S. Steel?

15 A. Yeah, yes.

16 Q. Okay. And over the past two years since you've
17 been reviewing the performance in terms of compliance,
18 have you noticed an increase in visible emission
19 observations?

20 A. Violations, yes. I'm not sure about the actual
21 number of inspections, if that's changed in the last
22 year or two.

23 Q. But you've noticed an increase in violations?

24 A. Yeah.

25 Q. Okay. Any way you can quantify that? Did it go

1 Q. Why would we do that?

2 A. I don't even know if we would be able to find the
3 penalty policy from 2012, but it is the policy effected
4 at the time of the calculation that you use.

5 Q. Okay. During your tenure with the county, you've
6 been privy to the inspection regime, how inspections
7 were done by ACHD inspectors from the time that you
8 started until now.

9 Have you instituted or are you aware of any
10 changes in how inspections are done?

11 A. Is this specific to coke ovens?

12 Q. Yes, specifically with respect to coke ovens.

13 A. Yeah. Whenever I had started off, there were a
14 lot of inspections that would be more visual and not
15 actually recorded. It was seeing the state of the
16 battery, is what I was told.

17 From the hillside, you can see a lot of the plant
18 and, I guess, they would somehow coordinate with the
19 plant to say, "Okay, I see emissions on Battery 3," and
20 that type of direction.

21 And then I looked at it more and said, "Well, we
22 need to have at least one inspection of every -- for
23 every type of battery a month." So there are those
24 inspection types. Ten batteries each month at least get
25 one inspection. And then beyond that, it's

1 from two to 10, 10 to 1,000?

2 A. It would be hard to just because of the
3 inspection types. On a quarterly summation -- I know
4 like the non-stipulated penalties, which is what we
5 write the orders up for, the non-stipulated penalties
6 maybe three or four years ago had 10 or 20 violations
7 and now it's at 150 or so.

8 Q. You mentioned penalty types. How many penalty
9 types are there? Or inspection types are there, sorry.
10 Not penalty types but inspection types?

11 A. I mean, just going through, there's charging.
12 There's pushing, and travel is a part of pushing.
13 There's doors. There's high-opacity doors. There's
14 lids. There's offtakes. There's soaking. And then
15 non-inspection would be COMS, Continuous Opacity
16 Monitors.

17 Q. And you mentioned that U.S. Steel has their own
18 inspectors for compliance with the 2016 Consent Order?

19 A. Yes.

20 Q. And you mentioned that -- what are they
21 reviewing? What are they inspecting for?

22 A. They are doing pushing and soaking on Batteries
23 1, 2 and 3.

24 Q. And why aren't we making those inspections?

25 A. That was part of the 2016 agreement, the

1 judgment.

2 Q. Okay. Did we make use of that data beyond the
3 stipulated penalties that were contemplated in the 2016
4 Judgment, Consent Judgment?

5 A. Not as far as I'm aware.

6 Q. Okay. You mentioned that we increased our number
7 of inspections. Can you detail the manner in which
8 those inspections are done? It sounds as though that
9 has been changed somewhat?

10 A. Any given day, the ACHD inspectors would complete
11 a full set of inspections, soaking, all the sheets. So
12 each sheet has a set of inspections on it. Pushing will
13 have pushes on it. Soaking has three ovens with a push
14 side and coke side. They would do a complete sheet
15 every day.

16 Q. Now, when you say --

17 A. In --

18 Q. I'm sorry, just to clarify, when you say
19 "complete set," are we talking about each inspection
20 type?

21 A. Yes.

22 Q. Okay. So they are supposed to do one of each
23 type of inspections a day?

24 A. One sheet of each type, yeah.

25 Q. I'm sorry, go ahead.

1 requirements -- are there requirements? Let me ask you
2 that, first of all.

3 A. It is not a regulation. It is only a manual.

4 Q. So we could deviate from that as well?

5 A. As far as I know, yes. It's not a regulatory
6 requirement.

7 Q. The source testing manual is not a regulatory
8 requirement?

9 A. No.

10 Q. Is it a regulation?

11 A. No.

12 Q. I don't know if I asked you that directly,
13 but who adheres to the source testing manual, Keramida?

14 A. Keramida does not.

15 Q. Do our inspectors?

16 A. Our inspectors use the source testing manual,
17 yes.

18 Q. Is that one of the distinctions between our
19 inspectors and the Keramida inspectors?

20 A. One of many, yeah.

21 Q. Okay. Are there any limitations in the source
22 testing manual that Keramida inspectors do not have in
23 terms of our inspections?

24 A. Any limits in the -- sorry, can you say that
25 again?

1 A. Yeah. So it's, like I said, the pushing and the
2 soaking; and then the topsides, which are lids and
3 offtakes and doors.

4 Q. You're aware the EPA limits the NESHAPs as they
5 are used by the Keramida inspectors?

6 A. Yeah, correct.

7 Q. Would you say that our inspections are more or
8 less stringent than theirs in terms of --

9 A. Our inspections are the Article 21 regs versus
10 Method 303 regs.

11 Q. Okay. So let me ask you this then: in terms of
12 the Article 21 regulations versus federal requirements,
13 are ours more stringent than federal requirements?

14 A. In nearly every case, yes.

15 Q. Okay. Are aware of the source testing manual?

16 A. Yes.

17 Q. Could you describe that for me?

18 A. It is a manual used by the Allegheny County
19 Health Department to describe different ways to conduct
20 inspections or tests.

21 Q. Is that used with respect to the Clairton Coke
22 Works?

23 A. Yes, there is a coke oven section in the source
24 testing manual.

25 Q. Okay. And how do those inspections and

1 Q. Are there any limitations in the manner of our
2 inspections under the source testing manual that
3 Keramida is not subject to?

4 A. Are you saying do we have restrictions or
5 anything listed in the source testing manual that they
6 don't have?

7 Q. Yeah.

8 A. Yes, they don't have to follow the manual. So
9 yes, they have -- they can do things that the manual
10 would not allow, I guess, is one way to put it.

11 Q. Okay. What would that be?

12 A. Walking within 25 feet of the doors is one, the
13 most obvious one.

14 Q. Of the doors? What doors?

15 A. The source testing manual has a condition in
16 there of 25 feet, at least, from the doors to read doors
17 that are leaking.

18 The Method 303 does not have that because they
19 have to read every side of every battery. So what they
20 have for the shedded side is a coke-side yard
21 equivalency. That's calculated if they are reading from
22 the bench, which is only a few feet from the doors as
23 opposed to 25 feet.

24 Q. Okay. Well, let's take a step back. We are
25 talking specifically about Battery B now. Battery B has

1 the shed on the coke side, correct?

2 A. Yes.

3 Q. And that shed is closer than 25 feet from the
4 door of the coke side of the battery?

5 A. Yeah, it may even extend beyond 25 feet. But the
6 shed is only six inches or a foot from the battery and
7 extends over the hot car area.

8 Q. Is there any reason why we would not be able to
9 get any closer to make those observations?

10 A. Well, ACHD inspectors, you can get to the bench
11 and read from the bench; but beyond the bench and meet
12 that 25-foot requirement, it would be unsafe.

13 Q. It would be unsafe?

14 A. With the hot car movement, yeah. If the hot car
15 was to completely stop, I'm sure there's a way, but...

16 Q. So because of the source testing manual's 25-foot
17 minimum distance requirement, we do not do those
18 inspections on that side, on coke side of Battery B?

19 A. Correct.

20 Q. Because there's a limitation, a physical
21 limitation, at the plant that prevents us from doing so?

22 A. Beyond 25 feet, yes.

23 Q. But the Method 303 inspectors, the Keramida
24 inspectors, can make some readings from that coke side
25 of Battery B?

1 A. The 2018 one?

2 Q. Yes.

3 A. Yes.

4 Q. The one that is on appeal currently.

5 A. Correct.

6 Q. And we said in that order -- and correct me if
7 I'm wrong -- we have a condition for a maximum of 10
8 door leaks. Using the coke-side yard equivalence
9 standard, we aren't talking about strictly 10 door
10 leaks?

11 A. No, it's not strictly 10 door leaks.

12 Q. It could be subsequently more than 10 door leaks?

13 A. Correct.

14 Q. Okay. Did you give any consideration -- let me
15 ask -- let's back this up a little bit.

16 You helped in the development of the enforcement
17 order currently under appeal?

18 A. Correct.

19 Q. Did you give consideration to the standard by
20 which we would apply to the coke-side battery doors?

21 A. Yes.

22 Q. Okay. During that assessment, did you look at
23 the number of leaks that were on that side of the doors?

24 A. Historically, yeah.

25 Q. On that side of the battery?

1 A. Yeah, they have to.

2 Q. They have to. And they report those to us?

3 A. Correct.

4 Q. Okay. You mentioned something about the coke
5 side or the yard equivalency. Could you explain that?

6 A. I think it's called coke-side yard equivalent. I
7 may be slightly off in the name. But what that does is
8 it allows for a six-percent reduction in the number of
9 leaks observed when observed underneath a shed or from
10 the bench.

11 So in Battery B at Clairton's case, they have 75
12 coke-side doors. So the six percent is a reduction of
13 four and a half doors from the number of observed leaks.

14 Q. So 10 leaks is not necessarily 10 leaks?

15 A. Correct.

16 Q. Could that number be reduced to zero at any
17 point?

18 A. On a daily basis -- well, if you are subtracting
19 off four and a half every inspection that's completed,
20 if you have four or less leaks, that becomes zero.

21 Q. Oh, okay. So you could have four leaks and then
22 that gets reduced to zero?

23 A. Yeah.

24 Q. Okay. So in our enforcement order -- you're
25 familiar with our enforcement order, aren't you?

1 A. Yeah, and the coke side of Battery B, the number
2 of door leaks historically, yes.

3 Q. Okay. What did you see with respect to Battery
4 B's coke-side doors and their emissions?

5 A. The number of leaks increased a lot in 2017, in
6 that range. I don't know exact months when they started
7 going up. But 2016 or '17, the number of leaks on a
8 monthly basis increased a good bit from the past years.

9 Q. And by "a good bit," are we talking percentages
10 or are we talking...

11 A. If you're looking at the monthly total of the
12 daily coke-side yard equivalencies, they increase from
13 the range of 10 or so to -- it varied, but maybe 50.

14 Q. Fifty?

15 A. Yeah. I mean, it varies month to month, but
16 yeah.

17 Q. Were the numbers on the coke side subsequently
18 greater than the number on the push side?

19 A. The number of leaks, yes.

20 Q. And were the number of leaks from the coke side
21 subsequently greater than the number of coke-side leaks
22 with respect to the other batteries?

23 A. Yes, I didn't specifically look at that. But
24 because the other batteries aren't under a shed, they
25 wouldn't have the coke-side yard equivalency. So I

1 would have to do a more thorough analysis on that one.

2 But there was Battery B — yeah, there would have
3 to be a lot more leaks on that side, but I can't confirm
4 that with any numbers. I'd have to look at that.

5 Q. We do inspections with respect to the coke side
6 on all of the other batteries with the exception of
7 Battery B?

8 A. Correct, yes, 'cause that's the only one with the
9 shed.

10 Q. That's the only one with the shed. And based on
11 your reading of those exceedances on those sides, can
12 you say whether or not there are more than the rest of
13 the facility on the coke side versus Battery B?

14 A. Well, any leaks on that scale would potentially
15 lead to violations on other inspections on the other
16 batteries.

17 So if you are having — I don't know the exact
18 numbers, but we'll say, like, 200 leaks on the coke side
19 one month and like 15 or 20 on the push side, this is
20 for Battery B, so those 200 leaks over the monthly basis
21 would likely lead to a lot more violations on the other
22 batteries than it would on Battery B because we don't
23 count those. We don't count any leaks on the Battery B
24 side shed for our enforcement.

25 Q. Why is that?

1 Q. Okay. So there is visible emissions that are
2 accounted for in the 2016 judgment?

3 A. Yes.

4 Q. But it is strictly limited to what again?

5 A. Pushing and soaking of 1, 2, 3.

6 Q. Just those batteries for just those portions of
7 the process?

8 A. Correct.

9 Q. Okay. And have you -- in the penalties that were
10 assessed between -- or following the 2016 Consent
11 Judgment and the order that's currently on appeal, have
12 you made efforts to ensure that there isn't any overlap
13 between the penalties?

14 A. Yeah, and I've already reviewed the engineer's
15 data for the quarterly summaries. I checked to make
16 sure there's not soaking of 1, 2, 3 or pushing in that
17 quarterly enforcement.

18 Q. Thus far, have we penalized for any of those
19 violations that were contemplated under the 2016 Consent
20 Judgment?

21 A. Not that I recall, no.

22 Q. Okay. You're aware that as a part of the 2016
23 Consent Judgment, U.S. Steel was to make certain repairs
24 to oven walls and its batteries?

25 A. Yeah, to do inspections and then repair as the

1 A. Because we are using the source testing manual on
2 this one.

3 Q. But the regulations would basically require us to
4 make that observation?

5 A. Correct. We are more lenient on this one. We
6 don't enforce -- we choose not to write violations for
7 those, when in reality, they are.

8 Q. So technically, there are several unaccounted for
9 violations with respect to the coke side of Battery B?

10 A. Yes, for the doors.

11 Q. You've reviewed the 2016 Consent Judgment and you
12 reviewed our enforcement order that's on appeal before
13 it went out. Did you check to make sure that there
14 wasn't going to be any conflict with respect to the
15 penalties that were imposed in the consent judgment
16 versus the enforcement order?

17 A. Yeah, because the 2016 Consent Judgment focused
18 on the CCMS and the 2018 order was on the actual
19 inspection data.

20 Q. So the stipulated penalties were strictly for the
21 CCMS in the consent judgment?

22 A. And the pushing on all of the batteries and
23 soaking of 1, 2, 3, and CCMS. And I think there is a
24 CCMS under availability also in there, but that's for
25 the 2016 judgment.

1 inspection is noted.

2 Q. And to your understanding, has that been done?

3 A. As far as I know.

4 Q. Is there a completion date for that project?

5 A. Not definitively, but the stipulated penalties
6 start kicking in. So the assumption would be --
7 actually, I don't know the specific date.

8 Q. Okay. In your review of the CCMS data that has
9 come in over that period of time, have you noticed any
10 improvement?

11 A. Yeah, there's noticeable improvement.

12 Q. And during that same period of time, have you
13 noticed any decrease of compliance with respect to
14 visible emission observations?

15 A. It seems so, yeah. There has definitely been an
16 increased number of violations since that 2016 Consent
17 Judgment of visible emissions.

18 Q. So it's fair to say that on one hand, the CCM
19 performance is going up but the visible emission
20 performance is going down?

21 A. It seems so, yeah.

22 Q. Are you aware of any larger coke oven facility in
23 the world?

24 A. I've been told there's a big one in Italy and I'm
25 sure there are some in China now.

1 Q. You're sure there are some in China?

2 A. I don't know that for certain, but because of how
3 much steel China is producing, I'm sure they have big
4 coke plants over there. I don't know.

5 Q. Okay. So you're just speculating on China?

6 A. Yeah. I've heard about another large one in
7 Italy. I don't know the exact size of it.

8 Q. Let's see. And you've mentioned the Veolia
9 inspection. We don't enforce off of the Veolia
10 inspections?

11 A. Veolia, that's the inspections that do the
12 pushing and soaking on 1, 2, 3. Those ones go to the
13 stipulated penalties for the 2016 Consent Judgment.

14 Q. But we don't make sure of that data for any other
15 purpose?

16 A. We don't enforce on it separately, no.

17 Q. Was the intent of the order to address any sulfur
18 compounds beyond sulfur oxide?

19 A. The 2018 order?

20 Q. Yes.

21 A. It would be for visible emissions and sulfur
22 oxides. Stuff comes out of it, out of the coke battery,
23 out of the leaks and whatever, of other sulfur
24 compounds. H2S is the one that I know of and then that
25 converts to SO2.

1 that enclosed at all?

2 A. Not entirely. I mean, there's openings
3 throughout it. There are openings on both ends. There
4 are access doors, maybe some cracks in the roof and
5 whatnot. It's not fully enclosed.

6 Q. Can you imagine a system or a manner in which you
7 could enclose at least the sides of the battery for that
8 shed -- not battery, the shed?

9 A. There would be ways to enclose it, but it would
10 have to allow for the movement of the hot car to go
11 through the one side particularly.

12 So is there something that could be put on the
13 outsides that would create a better capture? Yes, there
14 is.

15 I'm just picturing those things that are always
16 on garage doors or large doors, like the clear plastic
17 things that go down. Even something like that would
18 contain a lot more of the emissions.

19 Q. An air carrier?

20 A. If there is a better draw on the air, that would
21 also capture more of the emissions, the top of it.

22 Q. If there was an enclosure in the manner of an air
23 curtain, let's say, would that help with the collection
24 of particulate matter?

25 A. Any way you are increasing capture, you are going

1 Q. I understand. Can you think of a -- currently,
2 there is no control device for the Battery B with
3 respect to gaseous emissions; is that correct?

4 A. No, there's not.

5 Q. There's a bag house for Battery B; is that
6 correct?

7 A. Correct, yes.

8 Q. And that bag house is picking up what?

9 A. Particulate matter and controls that.

10 Q. SO2 is not a particulate matter?

11 A. It is not.

12 Q. So it does not control for SO2?

13 A. No.

14 Q. Do you know of any control for SO2 or gaseous
15 emissions?

16 A. The scrub is the most common one.

17 Q. Can you describe a scrubber?

18 A. Bubbler, basically. You got liquid coming down,
19 mostly water with something else in it, and dirty -- we
20 will call it dirty gas going up, and then it bubbles
21 through and scrubs it clean; and then on the way out, it
22 is clean gas going out the top, cleaner gas.

23 Q. But there isn't one for Battery B?

24 A. There is not one there.

25 Q. With respect to the shed that's on Battery B, is

1 to decrease the emissions coming out. Anything you
2 capture is going to go through that bag house. So if
3 you increase the capture percentage, you are going to
4 decrease the amount of emissions.

5 Q. Are you familiar with operation of the bag house
6 for Battery B in terms of its capacity or its design?

7 A. None of the details on it.

8 Q. But you would expect that, under normal
9 operations, that it would collect the particulate matter
10 that's being emitted from the battery on the coke side?

11 A. Yeah. They do stack testings required to meet a
12 certain efficiency, typically in the high 90s, and to
13 meet that efficiency every two years probably for a
14 major source test. So it should be collecting at a high
15 efficiency. Well, the capture rate is different from
16 collection. The collection rate is going to be fairly
17 high for that bag house.

18 Q. If there was an exceedance of door leaks or
19 excessive door leaks, would it capture all excessive
20 door leaks?

21 A. The shed?

22 Q. In terms of the emissions, yeah, the shed.

23 A. The shed -- well, it would capture whatever
24 emissions are captured by that shed. If you have an
25 excessive amount of emissions, it can go out the

1 outside, go through the cracks, go into the open side
2 away from the hot car. It can find openings if it
3 overwhelms the shed.

4 So if the shed capture of airflow, if isn't
5 enough, any of those excesses would go beyond it and
6 they would not be captured. I think that's what you're
7 asking.

8 Q. Yes, that's what I'm trying to figure out. And
9 you kind of touched on this earlier. Could you explain
10 a NESHAP inspection versus a SIP inspection and who does
11 it?

12 A. ACHD does Article 21's inspections,
13 Method 303 (sic) does Method 303 inspections, and then
14 we take those Method 303 inspections and compare them to
15 the Article 21 standards.

16 Q. We issue violations based on those observations?

17 A. If those exceedances are violations, yeah.

18 Q. Okay. We discussed earlier the fact that you
19 helped develop the enforcement order that's on appeal
20 currently.

21 One of the conditions is, again, no more than 10
22 door leaks on the Battery B coke side using the yard
23 equivalent; am I correct with that?

24 A. I believe the term is coke-side yard equivalent.

25 Q. Thank you. Had you looked at any data prior to

1 Q. Could you explain why they were missed in 2017,
2 the third quarter?

3 A. The engineer missed the column on the sheet when
4 they were doing it and then I think -- yeah, then there
5 was the issue with the Battery 15 doors from Keramida
6 that carried over also.

7 Q. Could you explain that Battery 15 problem?

8 A. As good as I can. In the middle of 2017 -- okay.
9 In the first half of 2017, ACHD was enforcing as per
10 Article 21 for door leaks, which says that you have to
11 exclude the door ovens from the last oven charged,
12 anything obstructing from view.

13 And then after meeting with U.S. Steel, we
14 determined we want to go back to the source testing
15 manual until the source testing manual update was
16 finalized. The source testing manual says minus two,
17 not from the last oven charged.

18 So that would change -- if there were two leaks
19 from the last oven charged, it would be the same in the
20 manual and regulation; however, if it was zero or one
21 from the last oven charged, then it would not be the
22 same and we would be less stringent from the regulation,
23 and then that was changed in the middle of 2017.

24 On Keramida -- 'cause Keramida enters all their
25 data directly into a tablet which goes into their

1 that issuance to determine whether or not that is
2 something that U.S. Steel could conceivably achieve?

3 A. Yes.

4 Q. Okay. What kind of data did you look at?

5 A. I looked back at a few years of data from the
6 Method 303 reports and then summarized those to the
7 monthly coke yard equivalency number and then compared
8 it and came up with a number based on that, based on
9 what U.S. Steel had done in the past.

10 Q. Okay. So this is all historical data showing
11 that this was an achievable condition?

12 A. Yeah. I mean, it may have been historically to
13 even just the previous month to two or three years or so
14 back.

15 Q. Okay. I want to talk about the actual civil
16 penalty and what it covers. Do you recall the
17 inspection types that brought about the violations for
18 the order on appeal?

19 A. That would have been charging, doors, high-
20 capacity doors, lids, offtake and soaking on non-1, 2,
21 and 3.

22 Q. And for what quarters did that cover?

23 A. Fourth quarter of 2017, first quarter of 2018,
24 and then some that were missed from third quarter of
25 '17.

1 system. Their -- the calculations were incorrect for, I
2 believe, two of the batteries, 15 and 20, and then that
3 created -- 'cause they were subtracting as per Article
4 21, not as per the source testing manual.

5 So there were a couple violations that got --
6 they would put in there -- because there were violations
7 of Article 21, but they way we are enforcing it is by
8 the source testing manual currently. So those couple of
9 violations we took out.

10 And then, I can't remember the timeline of it,
11 but there was a discrepancy in their calculations on 15
12 versus source system manual Method 21. Unfortunately, I
13 can't remember all of the details on it.

14 Q. Okay. But basically, we decided to operate under
15 the paradigm established under the source testing manual
16 as opposed to Article 21?

17 A. For those door leaks, yes.

18 Q. For those doors, for those door leaks. Did we do
19 that unprompted?

20 A. Keramida brought it to our attention that there
21 was an issue.

22 Q. Well, I mean, the initial change, that decision
23 to adhere to the source testing manual versus Article
24 21?

25 A. Oh, no, sorry, that came from a U.S. Steel

1 meeting, a meeting with U.S. Steel.

2 Q. Who initiated that meeting?

3 A. I don't remember.

4 Q. Did we reach out to U.S. Steel and offer that?

5 A. I don't remember who actually set up the meeting.

6 I know it was a meeting between us and U.S. Steel to go
7 over the current issues at the time.

8 And then from that meeting, they, U.S. Steel,
9 brought up the source testing manual and then the
10 Pennsylvania DEP; and then from that meeting, we decided
11 we were going to go back to the minus two. I don't know
12 who asked for the meeting.

13 Q. Well, who asked for the minus two?

14 A. U.S. Steel.

15 Q. Okay. And that's under the source testing
16 manual, the minus two?

17 A. Correct.

18 Q. So they wanted us to adhere to the source testing
19 manual?

20 A. They also brought it to Pennsylvania DEP, which
21 is different than Article 21 or the source testing
22 manual. Pennsylvania DEP says minus two representing
23 the last oven charged.

24 So those two -- the source testing manual and the
25 PA DEP regulation was brought up by U.S. Steel, yes.

1 A. I don't know the exact quarter that it changed;
2 but in that range, yes, the violations increased.

3 Q. Okay. Could you say that since the 2016 Consent
4 Judgment, that the violations have gone up?

5 A. Yeah.

6 Q. That's what you testified to already, okay.

7 A. Yeah.

8 Q. I may have asked you this, but let me figure this
9 out. In your development of the -- or your
10 participation in the enforcement order that is currently
11 on appeal, had you discerned whether or not there was a
12 six-month period in which U.S. Steel had fewer than
13 10 -- 10 or fewer -- I will say 10 or fewer violations
14 using the coke-side yard equivalence?

15 A. Whenever I was going back through data, it was
16 2016, I believe, that had nine of the twelve months
17 where they were below the 10 or -- they met that
18 condition, they were at 10 or below for nine of those 12
19 months, and the other months were just slightly above
20 it.

21 Q. And following the issuance of that order, have
22 you found any additional information which would suggest
23 that they could have reached that six-month requirement
24 on the --

25 A. Yeah, I went back and did a couple more years,

1 Q. Well, the PA DEP is an actual regulation but the
2 source testing manual is not, correct?

3 A. Correct.

4 Q. Okay. And to the extent that U.S. Steel asked
5 for that accommodation, we gave them that accommodation?

6 A. Correct.

7 Q. And that accommodation benefitted U.S. Steel,
8 correct?

9 A. Correct.

10 Q. Okay. Was it safe to say for those three
11 quarters that are the subject of this enforcement order,
12 primarily the third quarter of 2017, fourth quarter of
13 2017 and first quarter of 2018, that there are
14 approximately 300 violations in that order?

15 A. Yeah, it was around 300.

16 Q. Okay. Is that typical for U.S. Steel?

17 A. Unfortunately, the last few quarters have been in
18 that range. Historically, it's not typical.

19 Q. And by "historically," what do you mean?

20 A. Going back a few years. Like, I would say -- I
21 mentioned earlier, maybe like in the range of 10 or 20
22 non-stipulated penalties per quarter, and now it's 150
23 in the last year or so per quarter.

24 Q. So again, prior to the 2016 Consent Judgment,
25 there were fewer violations?

1 going backwards to 2014 and '15, and the same trend from
2 2016 where there were low violations on a monthly basis,
3 low coke-side yard equivalency door leaks on a monthly
4 basis, yeah.

5 Q. Okay. Now, you're an engineer, correct?

6 A. Correct.

7 Q. And you said you weren't really up on your
8 organic chemistry, but maybe you could explain to me
9 something about the emissions coming out of those doors.
10 If there's a door leak, do you know what is coming out
11 of that door?

12 MR. DAUSCH: I will object to foundation just
13 because of his explanation that he didn't have an
14 organic chemistry background or understand this exact
15 topic.

16 MR. WILLIS: But he also said that he had
17 training in Canada with respect to the chemistry.

18 HEARING OFFICER SLATER: I'll overrule the
19 objection but take it as to weight.

20 MR. DELUCCA: Can you ask it again?

21 BY MR. WILLIS:

22 Q. Yeah. Do you know what is coming out of those
23 doors when there is an actual door leak?

24 A. Specifically, no. I think probably the best way
25 to just summarize it is some combination of hazardous

1 pollutants, whether it be hydrogen sulfide, SO2, BM,
2 BTEX, naphthalens. There's a whole bunch of different
3 chemicals that could be coming out of it. I don't know
4 the exact stipulation or the composition of all of it.

5 But coke oven emissions by itself is a hazardous
6 air pollutant and those other HAPs located in that.
7 Sorry, HAPs is hazardous air pollutants.

8 So there are other HAPs coming out of it,
9 basically just a toxic mix of emissions.

10 Q. Okay. Would it be fair to say that raw coke oven
11 gas would be coming out of a coke oven through a door
12 leak?

13 A. Yes.

14 Q. Okay. Could you -- is it safe to correlate the
15 amount of coke oven gas coming through a door leak with
16 the -- well, let me back up.

17 Say there's an increase of emissions coming from
18 door leaks. Could you say that there would be a
19 correlation between that and an increase of coke oven
20 gas coming through that door leak?

21 MR. DAUSCH: Can I have a continuing objection to
22 all of the questions on this topic or would you prefer
23 that I object to every question, because I would have
24 the same objection for the foundation?

25 HEARING OFFICER SLATER: Yeah, your continuous

1 Q. Okay. Now, when you developed the -- or worked
2 on the order that is currently under appeal, did you do
3 any analysis with respect to the baseline for the 2018
4 first quarter?

5 A. Analysis of the baseline?

6 Q. Yeah, did you determine what that baseline would
7 be prior to issuance of that order?

8 A. Oh, not prior to it.

9 Q. Did you do it afterwards?

10 A. Yes.

11 Q. Okay. Do you know what that number is?

12 A. 98.152, approximately.

13 Q. Okay. I'm going to move into the exhibits. We
14 have quite a few, so give me a second.

15 HEARING OFFICER SLATER: Sure.

16 BY MR. WILLIS:

17 Q. I will start with the one I just gave opposing
18 counsel this morning. This is going to be ACHD 11, I
19 believe. Do you recognize this document?

20 A. Yes.

21 Q. Did you create this document?

22 A. Yes.

23 Q. Do you remember when you created this document?

24 A. A couple months ago.

25 Q. Okay. So it was after the issuance of the

1 objection is noted, Mr. Dausch, but I have the same
2 ruling.

3 MR. DAUSCH: Thank you.

4 HEARING OFFICER SLATER: I will overrule it but
5 consider it as to the weight of what Mr. DeLuca is
6 saying.

7 MR. DAUSCH: Thank you.

8 MR. DELUCA: I'm sorry.

9 By MR. WILLIS:

10 Q. If there is an increase in door leaks, could you
11 correlate that to an increase in emissions of coke oven
12 gas?

13 A. Most likely, yes. If you have more leaks, the
14 assumption is you are going to have more emissions
15 coming out of those leaks, treating all leaks equally.

16 There's a lot of possibilities of what could
17 happen in reality. You could have one leak with just
18 billowing emissions coming out or you could have five
19 small leaks, and that one small leak could have more
20 emissions.

21 But without counting for the actual number of it,
22 it's just how many leaks are coming out. We assume more
23 leaks equal more emissions coming out. In this case
24 with the raw coke oven gas, there would be more raw coke
25 oven gas coming out and more leaks than less leaks.

1 enforcement order?

2 A. Yeah, it would have to be, because June '18 is
3 listed here and June '18 wasn't done by the time the
4 issue was order -- or the order was issued.

5 Q. Okay. Can you tell me what we're looking at?

6 A. This is the summation of Battery B coke-side door
7 leaks and pusher-side door leaks from the Method 303
8 monthly reports, along with the calculation of the coke-
9 side yard equivalent.

10 Q. Okay. And the coke-side yard equivalent is the
11 number that's used for compliance with respect to
12 Battery B and the enforcement order?

13 A. For this enforcement order, yes.

14 Q. Okay. And as you noted, the last one that's on
15 here is from June 2018; is that correct?

16 A. Correct.

17 Q. That number for the number of door leaks is 15.5?

18 A. For the yard equivalent, yes.

19 Q. Okay. In looking at this sheet, could you show
20 me any six-month stretch in which U.S. Steel was at or
21 under 10 door leaks on the coke side, or the coke-side
22 yard equivalent?

23 A. Yeah, towards the top, April 14th -- well, April
24 2014, May, June, July, August, September. So those six
25 consecutive months, they were at 10 or less of the coke-

1 side yard.

2 Q. Okay, so just based on this, it is achievable for
3 them to get 10 or fewer leaks on the coke-side doors?

4 A. I mean, I think it was achievable for the past
5 history showing the six consecutive months, but this
6 shows that it was done in the past.

7 Q. Okay. And in looking at that period of time, are
8 you aware of any order from the Allegheny County Health
9 Department which would require them to maintain that
10 door leak standard?

11 A. No.

12 Q. Okay. So this is all on their own operation
13 without any enforcement effort by us?

14 A. Correct, yes. It is the typical operation trying
15 to minimize leaks, I'm assuming.

16 Q. Okay. And in scanning this sheet, it looks as
17 though from 2014, with some notable exceptions in 2014,
18 that on the coke-side yard equivalent with the door
19 leaks, are there many of these that exceed that
20 standard?

21 A. For which time period?

22 Q. Just looking from 2014 through January of 2017.

23 A. The majority of them are definitely under 10.
24 Some of them are at zero.

25 Q. Well, from the period of January '14 to January

1 goes down to zero. So on a 30-day month, you can have
2 up to 120 leaks count as zero. It depends on how those
3 leaks occur.

4 So to get to two, there are a couple different
5 ways you can get there; but the easiest example would
6 be, there are five days -- or sorry, there are four days
7 where there are five leaks because each of those five
8 leaks count as a half.

9 So you have five leaks converted to a half, times
10 four days, that's two leaks. Then the rest of the days
11 of that month would have been at four or less leaks.

12 Q. Okay.

13 A. I think that explains it, but I'm not positive.

14 Q. And let's see. On the other end of the spectrum,
15 if you look down at October of 2017, there are 209
16 actual leaks and that jumps to 74.5 using the coke-side
17 yard equivalency door leak standard?

18 A. Correct.

19 Q. Okay. I apologize, Dean, we're going to have to
20 go through quite a number of documents here.

21 HEARING OFFICER SLATER: Any objection to the
22 admission of ACHD 11?

23 MR. DAUSCH: No objection.

24 HEARING OFFICER SLATER: ACHD 11 is admitted.

25 BY MR. WILLIS:

1 '17, could you count for me how many times they would
2 have exceeded that limit?

3 A. Yes. One, two -- there are 11 months in 2014,
4 2015, and 2016 that exceeded 10.

5 Q. How many?

6 A. Eleven out of those 36.

7 Q. Eleven out of those 36. And following January of
8 2017, it looks like it goes up; am I correct in that?

9 A. Yes.

10 Q. And, in fact, after November of 2016 -- no,
11 sorry, December of 2016, there is no other occasion in
12 which it would hit that standard again; is that correct?

13 A. Yeah, every month then from January of '17 'til
14 June of 2018 was greater than 10.

15 Q. Okay. Now, looking back at -- if you will take a
16 look at August of 2014, it says that there are 102 coke-
17 side door leaks. Yet, the coke-side yard equivalent
18 door leaks using the standard that we are using as a
19 metric for their compliance in the future is only two;
20 is that correct?

21 A. Correct, yes.

22 Q. Could you explain how you go from 102 actual door
23 leaks to two?

24 A. Well, because of the coke-side yard equivalency,
25 anything that has four or less leaks on a daily basis

1 Q. Okay. Dean, if you take a look at -- in the
2 binder, it's going to be under Exhibit Number 5.

3 A. Volume 1 or...

4 Q. Volume 1.

5 A. I'm assuming all the tabs are the exhibit
6 numbers?

7 Q. Yes.

8 A. Okay. USS Exhibit 5?

9 Q. Yes. What are we looking at here?

10 A. This is the calculation of the first quarter of
11 2018 compliance numbers, as an example, for the order
12 and as the baseline for the order.

13 Q. So this represents the measure, the metric by
14 which U.S. Steel must comply in order to avoid the hot
15 idling?

16 A. One of the metrics, yes.

17 Q. One of the metrics, okay. Can you explain --
18 well, first of all, when did you develop this document?
19 Is this before or after the enforcement order?

20 A. Oh, it would have been after the issuance.

21 Q. After the issuance?

22 A. Correct.

23 Q. Okay. Do you recall having any conversations
24 with U.S. Steel as to how we figured out these numbers?

25 A. I know that they had a request for us to show

1 then how the calculation was going to be completed for
2 each of the batteries that were performing and then also
3 to show what the baseline percentage was, and this is
4 the baseline percentage.

5 Q. So this was provided to U.S. Steel as a matter of
6 their request?

7 A. Yes. It was also needed to be done regardless in
8 the future because the order needed to have a baseline
9 calculation.

10 Q. I understand, okay. Could you walk us through
11 how you came to this 98.152?

12 A. Okay. I tried to be as descriptive as I could
13 with the steps being listed on here also for reference.
14 And, unfortunately, it's on two sides of the same sheet.

15 I can't read them both at once, but it would be
16 the summation of all of ACHD inspections. Then the
17 bottom lists the different types of inspections, and
18 then it would be the sum of the compliant inspections
19 from ACHD, so taking out those ones.

20 And then summing up the Method 303 inspections,
21 which if you're looking at Step 3 on the back, it has --
22 it ends up being 44 per day, and then the Method 303
23 compliant inspections from that summing up.

24 And then Step 5 is the actual calculation where
25 you are just summing up the compliant -- the ACHD

1 A. Yeah.

2 Q. That's a pretty good number, wouldn't you agree,
3 in terms of CCM compliance?

4 A. It's -- I mean, it's above 99-percent compliance;
5 however, in that same number, there are 130 or so
6 violations -- or excuse me, hourly exceedances.

7 Q. Okay. And with respect to the inspections, the
8 compliance percentage as of that first quarter was
9 96.920, and that is over how many inspections?

10 A. It looks like about 5,500.

11 Q. 5,500?

12 A. 5,500.

13 Q. So how many violations would that be across 5,500
14 inspections?

15 A. Let's see. There is -- maybe 160.

16 Q. 160, okay. So the inspection compliance
17 percentage is a good deal less than the compliance
18 percentage for the CCMs; is that fair?

19 A. Yeah, two and a half percent, whatever that is, a
20 percent less.

21 Q. And hypothetically, if the CCMs were to remain
22 the same and we were looking for improvement, the
23 improvement would come from the inspection compliance?

24 A. If the CCM stays at 99.384, in order to improve
25 compliance, yeah, the inspection compliance numbers

1 compliant inspections, plus the Method 303 compliant
2 inspections, and dividing that by the sum of ACHD
3 inspections, plus Method 303 total inspections. Then
4 that gives you the inspection compliance percentage
5 portion of the total compliance percentage.

6 And then the second portion of the calculation is
7 for the plant-wide continuous opacity monitors, which is
8 summing the number of clock hours, multiplying by ten --
9 or each battery has their own continuous opacity
10 monitor. There are 10 batteries, so the number of hours
11 times 10. Then the number of hours where they did not
12 meet -- "they" being U.S. Steel -- did not meet the
13 20-percent standard.

14 Just the total clock hours, minus those
15 exceedances, divided by the clock hours, and then that
16 gives you the CCM compliance percentage portion of the
17 total number, and then you combine those two by doing
18 the compliance percentage of the inspection compliance
19 numbers, plus the CCM compliance numbers, and then
20 divide that by two.

21 Q. Okay. In looking at the plant-wide continuous
22 opacity monitor section, it says that the CCM compliance
23 percentage is 98.384.

24 A. 99.384.

25 Q. Oh, I'm sorry, 99.384.

1 would have to increase.

2 Q. And the inspections are solely concerning visible
3 emissions?

4 A. Observed emissions, yeah.

5 Q. Okay. I have another document here. This is a
6 presentation. I don't think that's in the book. I will
7 give you guys a second to look through that. That
8 document begins on 13655.

9 MR. WILLIS: Again, we have the two-sided issue
10 that, hopefully, we can resolve in the final day.

11 MR. DAUSCH: Was this previously in discovery?

12 MR. WILLIS: Yes. I mean, the Bates number so
13 far -- I believe we have it in there somewhere. It
14 relates to questions about presentations. Do you have
15 it in the book?

16 MR. DAUSCH: We don't have it in the book. We
17 are trying to find it.

18 MR. WILLIS: Okay.

19 HEARING OFFICER SLATER: Do you want to take our
20 morning break now?

21 MR. DAUSCH: Yeah, we're trying to find the
22 document.

23 MR. WILLIS: Take the break now?

24 HEARING OFFICER SLATER: Does that work for you?

25 MR. WILLIS: That's fine.

1 HEARING OFFICER SLATER: Let's go off the record.

2 (The hearing recessed at 10:22 a.m. and
3 reconvened at 10:37 a.m.)

4 HEARING OFFICER SLATER: Let's go back on the
5 record then.

6 BY MR. WILLIS:

7 Q. Okay. Dean, if you would flip to the first --
8 inside of the first page of ACHD013655, do you know what
9 that document is?

10 HEARING OFFICER SLATER: Are we marking this as
11 ACHD 12?

12 MR. WILLIS: Yeah, 12, I believe we are at 12.

13 MR. DELUCA: A presentation done by Ed Peresie.

14 BY MR. WILLIS:

15 Q. Concerning?

16 A. Coke oven emission regulations.

17 Q. Okay. And I'm showing this to you for the
18 benefit of the record and for Mr. Slater. Visible
19 emissions are observed on a gradient of -- from zero to
20 100; is that correct?

21 A. Correct.

22 Q. And there's a difference between smoke and steam;
23 is that correct?

24 A. Correct.

25 Q. And could you describe what that difference is

1 between smoke and steam?

2 A. Whenever you are observing smoke, smoke can be of
3 any color, white, black, blue. It can be any color
4 there.

5 The white smoke is the one that's hardest to
6 discern the difference between the two. You have steam
7 coming out. Steam typically comes out at high opacity,
8 100 percent, not all the time.

9 What you look for is set demarcation after the
10 plume. So the plume comes out. If there is a set line
11 where it all stops, then that's the steam. Then if it
12 continues onward, then it's the smoke. It's one of the
13 ways to differentiate.

14 Q. Where's that demarcation?

15 A. It can be anywhere. There are different plume
16 types. Sometimes they -- they have detached plumes.
17 There have fanning plumes. There are all different
18 ones.

19 If it is a detached plume, that means it doesn't
20 actually condense until after the stack. The
21 demarcation just occurs where the steam ends and then
22 after that would be any emissions.

23 Q. Okay. In looking at that first page where it
24 says, "Evaluating visible emissions..." is this a
25 distinction that you would be looking for or your

1 inspectors would be looking for in terms of visible
2 emissions?

3 A. Yeah, 'cause if it's steam, it wouldn't be
4 opacity.

5 Q. Okay.

6 A. You wouldn't read the steam.

7 Q. And in looking at this document, is this document
8 based on any sort of EPA method or any methodology for
9 making that observation? You can take a look at the
10 document.

11 A. Yeah, I was going to say, I haven't really -- I
12 mean, I recognize that smokestack appears to be from our
13 EPA Smoke School for Method 9 certification.

14 Q. And you are referring to a page. What page are
15 you looking at?

16 A. A few of them, actually, but 013656 has two
17 separate stacks; one with white smoke and one with black
18 smoke.

19 Q. Okay.

20 A. But those appear to be the ones from the Smoke
21 School, which would make sense for Ed to get those ones.

22 Q. What is Smoke School?

23 A. Smoke School is Method 9 recertification, which
24 is done every six months to -- and then at that point,
25 you field certify it to ensure compliance with Method 9.

1 Q. Who in ACHD goes through that -- goes to Smoke
2 School?

3 A. All of the enforcement staff and then whoever
4 would like to from other sections.

5 Q. Oh, that would include permitting and planning?

6 A. Permitting and planning can if they want to. I
7 don't know the requirements.

8 Q. Okay. Has that happened in the past, where folks
9 from permitting and planning have gone to Smoke School?

10 A. Yes.

11 Q. Okay. But your employees are specifically
12 required to go?

13 A. Yeah, everybody from enforcement goes.
14 Obviously, if you are on vacation that week, it is a
15 different story; but everybody from enforcement goes.

16 Q. How often do they go?

17 A. It's every six months, typically April/October.

18 Q. So twice a year, they have to be certified?

19 A. Correct.

20 Q. For Method 9?

21 A. Recertified, yes.

22 Q. Okay, sorry. On the next page, which would be
23 13657, --

24 A. Okay.

25 Q. -- could you explain what we are looking at here?

1 It seems to be a picture, a cartoon even.

2 A. Yeah, it does look like a cartoon. This is
3 describing the sun angle, and the sun has to be in that
4 140-degree angle behind you.

5 So you can't be looking directly into the sun,
6 and it has to be in that line whenever you are doing
7 Method 9.

8 Q. Why is that?

9 A. Well, unless the sun is not out that day. But
10 whenever you look directly into the sun, I believe it's
11 because the -- the opacity changes, where it gets
12 stronger when you are looking into the sun, I believe.
13 I forget exactly which direction it goes.

14 I just remember that Method 9 requires it to be
15 in that 140-degree angle, unless it is completely
16 overcast, and then the sun wouldn't matter 'cause you
17 can't locate it.

18 Q. So if you were outside of that 140-degree angle,
19 you could get a misreading of the --

20 A. Yeah.

21 Q. -- of the plume?

22 A. Correct. And it wouldn't be following Method 9,
23 again, unless it's overcast.

24 Q. Okay. And on the next page, there seems to be
25 some distinction between two different stacks. Could

1 been seen at the Clairton Coke Works?

2 A. Yes.

3 Q. From the doors ever, the battery doors?

4 A. I didn't check the numbers. I don't know for
5 certain.

6 Q. You don't know?

7 A. I know that there have been high-opacity doors.
8 I don't know if specifically 100 percent has been
9 listed.

10 Q. What do you mean by "high-opacity doors"?

11 A. Sorry. High-opacity doors are opacity greater
12 than the standard, the 40 percent standard or the 30
13 percent standard for Battery C in Article 21. There
14 have been a lot of violations of that. I know that they
15 have been up to 80 and 90. I just don't know for
16 certain if any were 100. They have been close, at
17 least.

18 Q. Okay. For purposes of this --

19 MR. WILLIS: For introducing this document -- and
20 in all fairness to U.S. Steel, a lot of this document
21 does not pertain to their facility -- I would limit its
22 introduction solely to page 13717, which seems to be the
23 end of that generalized information regarding --

24 MR. DAUSCH: So which number?

25 MR. WILLIS: It is the page that says

1 you explain this?

2 A. Yeah. Those are images of a 20-percent opacity
3 plume and a 60-percent opacity plume.

4 Q. Do you have any idea why those particular numbers
5 were selected?

6 A. Probably because of Article 21 standards, which
7 are actually stated at the bottom, "For a period of
8 three or more minutes in any hour up to 20 percent or 60
9 percent at any time." That's the Article 21 standard.

10 Q. Is any part of U.S. Steel Clairton Coke Works
11 subject to that standard?

12 A. The continuous opacity monitors, the stacks.

13 Q. The stacks. And just so we can go through this
14 quickly, I'm looking on 13660. It's a little opaque and
15 you can't really read it, but it says, "25 percent."

16 A. Yes.

17 Q. The subsequent page says "50" and then "75" and
18 then "100." Can you explain what we are looking at
19 there?

20 A. This -- I mean, there are pictures of opacity
21 from a stack, like again probably during Smoke School,
22 showing what 25 percent opacity looks like and then 50
23 percent opacity and 75 percent opacity and then 100
24 percent opacity.

25 Q. To your knowledge, has 100 percent opacity ever

1 "Questions." It is 13717. So although it goes on to
2 13769, we're not going to consider those for purposes of
3 introduction into evidence.

4 MR. DAUSCH: Okay.

5 MR. WILLIS: This is Number 12, I believe.

6 HEARING OFFICER SLATER: Is this part of the same
7 document that Mr. DeLuca was just looking at?

8 MR. WILLIS: Yes. Oh, I'm sorry, yes, you
9 already designated this one.

10 HEARING OFFICER SLATER: Yeah.

11 MR. WILLIS: Thank you.

12 MR. DAUSCH: Just so I understand, you are
13 offering it just for the purposes of what he discussed
14 to demonstrate opacity concepts, not because it's
15 related to any specific U.S. Steel plant or issue?

16 MR. WILLIS: Correct.

17 MR. DAUSCH: Then no objection.

18 HEARING OFFICER SLATER: So ACHD 12 is admitted.

19 MR. WILLIS: Thank you.

20 BY MR. WILLIS:

21 Q. Okay. If you will turn to Exhibit 13, please?

22 A. This is Volume 1?

23 Q. Volume 1. Can you describe what we are looking
24 at here?

25 A. This is -- yeah, these are the penalty

1 calculations for this order.

2 Q. Is this penalty calculation using the 2018
3 penalty policy?

4 A. Yes.

5 Q. Okay. Could you describe what we are looking at
6 in some detail? I'm looking to understand exactly how,
7 for each of these violations, you calculated the
8 penalty.

9 And in looking at it -- and correct me if I'm
10 incorrect on this number -- but there are 18 different
11 violation types?

12 A. There are 18 columns.

13 Q. Eighteen columns. And each column represents a
14 type of violation?

15 A. Or a different severity for that specific
16 violation. For example, the first three columns are all
17 charging, so they're all going to have the same
18 standard. One of them is for major, moderate, and then
19 low.

20 Q. Can you explain major, moderate, and low?

21 A. Typically when I go through these, I have the
22 penalty policy also and look at them both concurrently.
23 I can do that, but with less detail I can do it without
24 that. I can explain what they are generally.

25 Q. We're going to get to the penalty policy, but if

1 Then those numbers carry back up to the subtotals
2 and the total civil penalty, and you make sure that the
3 total civil penalty amount is less than the maximum, the
4 25,000 per violation per day. If it's greater than that
5 number, you have to reduce it to 25,000 per violation
6 per day.

7 Q. Okay. And is this the spreadsheet that's used
8 for every penalty calculation out of your Department?

9 A. Yes.

10 Q. Okay. So irrespective of coke ovens or coke
11 facilities, this would be used for any facility that's
12 in violation of Article 21?

13 A. Yeah, this is for open burning, stack test, coke
14 ovens.

15 Q. Okay. Was this spreadsheet also used with
16 respect to the penalty policy which existed as of 2017?

17 A. The -- well, there was a spreadsheet. It was
18 different than this.

19 Q. Oh, there was a spreadsheet but different?

20 A. Yeah. Well, the 20 -- the 2018 penalty policy
21 has a spreadsheet that matches with the 2018 penalty
22 policy, and the previous spreadsheet was different than
23 this 'cause it predated the policy.

24 Q. I see. And in looking just at these
25 spreadsheets, it -- right above where it says "civil

1 you can just give me a general understanding as to what
2 we are seeing here. We will get to the details with how
3 you calculated each of these with respect to the penalty
4 policy, but I want an overview of what we're looking at.

5 A. Okay, yeah. What this would be, this is the
6 violations which are put into any order. There is a
7 calculation spreadsheet to determine the penalty amount
8 for those violations listed in that order. In this
9 case, like you said, there are 18 separate columns.
10 There are different inspection types with different
11 severities. The severity -- the major severity has a
12 higher penalty than moderate severity than a low
13 severity. So that increases the penalty.

14 The potential for harm is the other factor. So
15 the potential for harm number in the severity of
16 violation gives you a range of maximum/minimum penalty,
17 and then that's the subtotal prior to the adjustment.

18 And then beneath that, there are adjustment
19 tables specifically to the source or the situation at
20 hand for the order. You use those adjustment factors
21 based on the policy.

22 There is a separate one for high-opacity doors
23 because in the penalty policy, it's specifically listed
24 for being separate. And the rest -- the remainder of
25 them use the first table adjustment.

1 penalty" in the yellow box, there's an amount that says
2 "maximum penalty amount." What is that?

3 A. The first sheet has 350,000.

4 Q. Okay. And the second sheet?

5 A. 3,725,000.

6 Q. And the third sheet?

7 A. 3,975,000.

8 Q. Okay. What does that represent?

9 A. That is the statutory limit of the 25,000 per
10 violation per day. So if you have 100 violations, the
11 maximum would be 100 violations times the 25,000.

12 Q. I see. So basically, it is the regulatory
13 maximum by which we can impose a penalty?

14 A. Correct.

15 Q. Okay. And that would apply across the board
16 irrespective of the facility?

17 A. Yes.

18 Q. Okay. And you would agree that the actual civil
19 penalty is substantially less than the maximum
20 admissible regulation?

21 A. Correct.

22 Q. We're going to come back to that, so hold that to
23 the side.

24 If you would turn to Number 18 in the same
25 binder, can you tell me what we are looking at here?

1 A. This is a draft order for the fourth quarter of
2 2017 for the U.S. Steel Clairton violations.

3 Q. Am I correct this is dated May 10th, 2018?

4 A. Correct.

5 Q. And this is attributable to the fourth quarter of
6 2017?

7 A. Correct.

8 Q. You said "draft." Why do you say it's a draft?

9 A. 'Cause we didn't issue it.

10 Q. Do you know why we didn't issue it?

11 A. We were looking at issuing it and then determined
12 that the -- we needed something beyond just a penalty.
13 So we have a corrected action. So we looked at what the
14 corrected action would be, and that extended it beyond
15 this initial draft.

16 Q. Okay. And the corrective action that you are
17 referring to, is that found in the enforcement order?

18 A. Correct.

19 Q. And that's the June 28th, I believe, enforcement
20 order?

21 A. Yeah, definitely late June.

22 Q. Okay. And correct me if I'm wrong, but there is
23 a two-month gap between this draft and the actual
24 issuance of that enforcement order?

25 A. A month and a half, two months, yeah.

1 Q. Actually, take a look at this. This is going to
2 be ACHD 13. Can you describe what we are looking at
3 here?

4 A. Okay, let me just look at it real quick here.

5 Q. Sure.

6 A. Yeah, this was an e-mail I sent out to the
7 enforcement staff after we had the new penalty policy
8 finalized.

9 I wanted everybody to go through -- everybody in
10 the section to go through the actual policy and to see
11 what numbers they came up with individually, and then
12 with doing it consistently, seeing what the differences
13 were.

14 Q. Okay. And what's the date of this?

15 A. My e-mail was sent out February 8th.

16 Q. February 8th?

17 A. February 8th of 2018.

18 Q. Okay. You would agree that was before the
19 issuance of the third-quarter penalty?

20 A. Yeah, the third quarter for Clairton was at the
21 end of March sometime.

22 Q. So this work had already been done prior to the
23 issuance of the penalty attributable to the third
24 quarter of 2018?

25 A. Yes.

1 Q. Can you explain what went on during that time
2 period for that delay?

3 A. We've had analysis of what the corrective action
4 would be, determining what that correct action is.

5 And then by the time we finalized all that and
6 came into agreement with it, the first quarter of 2018,
7 we had all that information already there.

8 So we decided to put the fourth quarter of 2017
9 and the first quarter of 2018 into one order. So that
10 delayed it another, I don't know, duration, but it
11 delayed it further because we were waiting to put the
12 first quarter of '18 into it also.

13 Q. Okay. And by that time, had you noted that there
14 had been some sort of error with respect to the third
15 quarter penalty assessment?

16 A. Yeah, we would have had to note it before because
17 it went out as part of that order.

18 Q. Do you remember when that error came to light
19 with respect to the third quarter?

20 A. Other than prior to the order issuance, no.

21 Q. Okay.

22 MR. WILLIS: Do you have that?

23 MR. DAUSCH: No.

24 MR. WILLIS: That's for you.

25 BY MR. WILLIS:

1 Q. And the purpose of this was to ensure consistency
2 in application of the penalty policy?

3 A. Yeah, it was a penalty policy that the
4 enforcement engineers hadn't seen before. So before
5 using that, I wanted to make sure everybody was on the
6 same page with it in at least reading everything the
7 same way, seeing if someone had a different
8 interpretation for us to discuss before we started going
9 through with it.

10 Q. And could you read that last paragraph for me,
11 please?

12 A. The one that starts with, "Again...?"

13 Q. Yes, please.

14 A. "Again, please do this independently and send it
15 back to me by Monday afternoon. Not having discussions
16 with anyone about this calculation is important so I/we
17 can see the variation penalty amounts, especially
18 because this violation has more subjectivity than any
19 others will. All the relevant information is above."

20 Q. Okay. So again, this was -- the purpose of
21 the -- them doing it independently was to make sure that
22 they were doing it consistently with each other?

23 A. Yes, across the section.

24 Q. Okay.

25 A. Again, because there is some subjectivity, I

1 wasn't looking for identical amounts, just the same
2 procedure.

3 MR. WILLIS: I would introduce just this first
4 page. For whatever reason, there are just additional
5 documents that were attached to it that should not have
6 been.

7 HEARING OFFICER SLATER: The first page of A13?

8 MR. WILLIS: Yes.

9 HEARING OFFICER SLATER: Any objection, Mr.
10 Dausch?

11 MR. DAUSCH: Are the pages after it the
12 attachment to the e-mail?

13 MR. WILLIS: Oh.

14 BY MR. WILLIS:

15 Q. Answer that. I suppose that could be the case.
16 Are these the actual attachments? I hadn't realized
17 that.

18 A. I know the first one is not. Let me go through
19 the rest.

20 Q. Okay.

21 MR. PARKER: The following page, ACHD4905, has
22 some Excel spreadsheet attachments. So I believe those
23 are the attachments to the e-mail on the following page,
24 not the e-mail from --

25 MR. DAUSCH: No objection to just the e-mail

1 Q. Okay. Again, using 2016, because that's the
2 beginning of the consent judgment, and at least with
3 respect to Q1 of 2016, how many non-stipulated
4 violations were there?

5 A. Q1 of '16 is an interesting quarter. There are
6 only -- there are four listed there. That was because
7 the consent judgment affected anything of which the
8 Department would have been aware of as of the date of
9 the judgment, would not have been stipulated through the
10 quarterly enforcement.

11 Q. Okay. What effect did that have?

12 A. That decreased the number of violations. It
13 discounted anything from January and February and then
14 parts of May -- I'm sorry, parts of March.

15 Q. And is that because there was a penalty
16 contemplated to cover those?

17 A. I don't remember exactly. It had something to do
18 with the wording of the 2016 judgment.

19 Q. Okay, fair enough. I'm not going to press your
20 mind on that.

21 But you would agree that by the third quarter of
22 2017, which this order contemplates, that number had
23 substantially increased?

24 A. Yes.

25 Q. To 223 violations?

1 being Exhibit 13.

2 HEARING OFFICER SLATER: So A13 is admitted.

3 BY MR. WILLIS:

4 Q. Could you take a look at this packet that I'm
5 about to give to you, sir?

6 MR. WILLIS: What are we up to, 13?

7 COURT REPORTER: 14.

8 MR. WILLIS: 14.

9 BY MR. WILLIS:

10 Q. There's a lot in here, but I would like to sort
11 of go through it. What are we looking at on the first
12 page, if you could describe it for me, please? That
13 would be 13873.

14 A. Okay. This is a table and a graph of the number
15 of violations that were enforced through the quarterly
16 enforcement, so the non-stipulated violations at the
17 Clairton plant from first quarter of '13 until the first
18 quarter of '18.

19 Q. And what does it represent?

20 A. The number of violations which would have been
21 penalized into quarterly enforcement actions, and then
22 the right is simply a bar chart with the number of
23 violations with a trend line.

24 Q. And what is the trend?

25 A. Increasing number of violations.

1 A. In the third quarter of '17, correct.

2 Q. And those were not captured by the 2016 Consent
3 Judgment?

4 A. No, these are just the ones that are not
5 stipulated penalties going through the quarterly
6 enforcement.

7 Q. In terms of consistency, these are still the same
8 violations which you would have issued a penalty for
9 prior to the 2016 Consent Judgment?

10 A. Prior to 2016, yeah, those would be the same ones
11 as they would be in 2015, yeah.

12 Q. Okay. Now, flip the page. What are we looking
13 at here? This would be 13874.

14 A. This is the calculation of the quarterly
15 compliance at Clairton as per the 2018 penalty policy
16 going back until the first quarter of 2014.

17 Q. These are facility-wide compliance numbers?

18 A. Yeah, this is the compliance. The penalty policy
19 specifically states how to do the calculation. So this
20 is that calculation per the policy.

21 Q. Per the current policy?

22 A. Per the 2018 policy, yes. And it is backdated to
23 previous months, yes.

24 Q. So you applied the 2018 policy against 2015, 2016
25 violations and 2014 violations in this sheet?

1 A. In this sheet, yes. But those orders would have
2 already been sent out prior to the penalty policy.

3 Q. Okay. So this is an inaccurate representation of
4 the compliance percentages?

5 A. Did you say "inaccurate," or...

6 Q. Is it inaccurate because we are using a different
7 penalty policy for those years?

8 A. I'm not sure what you mean by that. I mean,
9 these numbers here are if 2014 had the 2018 penalty
10 policy -- I will just use an example.

11 The first quarter of 2014 has a compliance of
12 99.39 percent. That is the compliance if the 2018
13 penalty policy had been effective then, and it showed
14 that the plant exceeded that 99-percent threshold that's
15 listed in the penalty policy.

16 Q. So that's actually pretty good. I mean, we are
17 looking at 2014 Q1, and it looks as though they were at
18 99.39 percent and then 99 -- well, at least for 2014,
19 the high number is 99.39 percent?

20 A. Correct.

21 Q. Correct? That's employing the current policy?

22 A. Yeah, to the -- to the inspections that occurred
23 at that point if the 2018 policy had been there.

24 Q. All right. If you look to 13877 all the way
25 through 13882, could you describe what we are looking at

1 here?

2 A. Okay. These are the inspections for the fourth
3 quarter of 2017 that were violations at Clairton.

4 Q. By inspection type?

5 A. Correct, as inspection type, and then within each
6 inspection type by date. And these would just be the
7 violations that would have been put into the -- assuming
8 that they are the same version, these would be the same
9 ones put in the order.

10 Q. And at the top of 13882 it says, "Exhibit A." Is
11 this something that would have gone to U.S. Steel?

12 A. Yes.

13 Q. As a part of a penalty?

14 A. Yeah.

15 Q. Do we always give them a breakdown of the
16 penalties as we assess them?

17 A. Historically, yes. I believe this one may have
18 been missed with the orders. I think I sent it in
19 after, but I'm not positive.

20 Q. And at the bottom of 13882, it indicates that the
21 Department is not taking any action with respect to
22 soaking at batteries 1, 2 and 3?

23 A. Correct.

24 Q. Is that because of the 2016 Consent Judgment?

25 A. Yes.

1 MR. WILLIS: That's all I have on that one.

2 HEARING OFFICER SLATER: Any objection to the
3 admission of ACHD 14?

4 MR. DAUSCH: My suggestion would be that we make
5 just the first page of this an exhibit, ACHD 14 which
6 was the front and back, because the others are already
7 exhibits.

8 MR. WILLIS: Yeah, I was trying to figure out a
9 plan.

10 MR. DAUSCH: We have the correct exhibits for the
11 other ones. I'm not sure that we know that those are
12 the final versions. So exhibit USS 14 has the
13 spreadsheets that were for all of the dates at issue.

14 MR. WILLIS: Wait a minute. This one is a draft.
15 It has notations on it.

16 MR. DAUSCH: It's mine. This is the final
17 version.

18 MR. WILLIS: This is where?

19 MR. DAUSCH: 14.

20 MR. WILLIS: 14?

21 MR. DAUSCH: Yeah.

22 MR. WILLIS: So you're saying that these are
23 already in 14?

24 MR. DAUSCH: Uh-huh (affirmative.)

25 MR. WILLIS: Okay, that's fair.

1 MR. DAUSCH: So just the first two pages.

2 HEARING OFFICER SLATER: Okay. So yeah, ACHD 14
3 is admitted with the note with just the first two pages.

4 BY MR. WILLIS:

5 Q. All right. Can you take a look at what is going
6 to be Exhibit 15? Did you generate this document?

7 A. I created the spreadsheet and then transferred it
8 over for the 2018 calendar year, and then the coke oven
9 inspectors enter the data into the spreadsheet. So I
10 created the actual spreadsheet itself, but I didn't
11 enter all the data.

12 Q. Okay. What are we looking at, if you can help
13 describe this?

14 A. Okay, yeah, 14441, this is part of the Excel file
15 where the coke oven inspectors enter the information.
16 And listed on here on the left side is simply the data
17 entry portion of it. And then the right side, as an
18 example, this is Clairton Battery B and the months, the
19 number of inspections, number of compliant inspections,
20 and then the compliant percentage and this is broken
21 down in the Excel format for each battery in a plant
22 total.

23 Q. Is this just for 2018?

24 A. It just has January, February, March, and April
25 for 2018. At least no inspections were done here in

1 May.

2 Q. Can we take away from that the fact that this is
3 just solely -- this was generated or created after --
4 well, after the issuance of the enforcement order on
5 appeal?

6 A. Depends on how far it goes, 'cause the order
7 would have been issued -- the order was issued June 28th
8 and this appears just to go to the end of April. So I'd
9 assume all the data in here would have been entered
10 prior to the order.

11 Q. Could you review the full document and go through
12 this?

13 A. In detail?

14 Q. Just scan --

15 A. Just scroll through?

16 Q. Yeah, just scroll through.

17 A. And I'm just checking to see if it's the same
18 timeframe?

19 Q. Yes, please.

20 A. So it looks like it goes up until April 30th for
21 the doors. Yeah, so this is January 1st, 2018 until
22 April 30th, 2018, the coke oven inspections for ACHD's
23 entries into the Excel sheets.

24 Q. Is it fair to say that this presents the
25 compliance percentages for each of the inspection types?

1 anything else.

2 Q. Oh, okay. So for purposes of compliance with the
3 enforcement order, this would be incomplete data?

4 A. Correct.

5 Q. Okay.

6 MR. WILLIS: I would admit that.

7 HEARING OFFICER SLATER: Any objection to A15?

8 MR. DAUSCH: No objection.

9 HEARING OFFICER SLATER: A15 is admitted.

10 BY MR. WILLIS:

11 Q. For whatever reason, the Bates labeling is
12 upsidedown on this document. Take a look at that.

13 HEARING OFFICER SLATER: This will be A16?

14 MR. WILLIS: 16, please.

15 BY MR. WILLIS:

16 Q. Can you tell me what we are looking at here with
17 these documents?

18 A. This is historical compliance data for the U.S.
19 Steel Clairton plant for pushing and travel. I don't
20 think anything else would be on that. Okay, yeah, so
21 pushing and travel compliance data for U.S. Steel
22 Clairton from 1989 to 2017.

23 Q. Take a look at, for an example, page 14581 to --

24 A. Battery 13?

25 Q. Is that what that represents? I'm looking at the

1 A. Yeah, for the months listed.

2 Q. Is it broken down by battery?

3 A. It is.

4 Q. Okay.

5 A. It seems like it might be missing the first
6 sheet; but other than that, yeah.

7 Q. The first sheet?

8 A. Yeah, 'cause typically, I have this set up where
9 it goes by plant total, then Battery 1, Battery 2,
10 Battery 3. And this 14441 starts at Battery 2. That's
11 the only difference.

12 Q. The plant total numbers, those were encapsulated
13 in a prior exhibit, I believe. Did you recall the one
14 that --

15 A. That would be the plant total for charging. So
16 this is split up by inspection type.

17 Q. Oh, okay.

18 A. Yeah, like 14446 shows the Clairton doors from
19 ACHD and then 1 and 2. So that's what I mean by that.

20 Q. Is it fair to say that this is a good
21 representation of what would be the baseline on a per-
22 inspection type basis?

23 A. For ACHD's portion, yeah.

24 Q. Just for ACHD's portion?

25 A. Yeah. This is not incorporating Keramida or

1 chart that is next to the table.

2 A. Okay.

3 Q. From 2014 to 2016, is that chart saying that
4 there is decreased compliance in terms of percentages?

5 A. Yeah. If you look at the tables on the left and
6 then match them up with the charts, you have 2014 for
7 Battery 13 pushing was 98.1 percent compliant; and then
8 2015, it was 94.7; and then down to 86.7 in 2016.

9 Q. Okay. And just so we have a -- the percentages
10 are fairly high; you would agree with that? I mean, it
11 looks like for 2016, the percentage is 86.7 percent; and
12 then 2017, which did not make its way on the chart, is
13 97.5 percent compliant; is that correct?

14 A. Those numbers are, yes.

15 Q. Okay. And that's over 128 inspections for 2016
16 and 120 inspections for 2017?

17 A. Correct.

18 Q. Just for that inspection type?

19 A. That would be pushing inspections on Battery 13
20 done by ACHD for that year, for those two years.

21 Q. Similarly on ACHD014584, it looks as though there
22 was a dip from 2014 to 2016 and the pushing compliance?

23 A. Yeah. Are you looking at 19 battery?

24 Q. Yes.

25 A. Yes.

1 Q. And again, over those years, you're looking at
2 over 400 inspections from 2014 to 2017 -- or 2016 per
3 the chart?

4 A. Yeah, 2014 to 2016, there is a total of **greater**
5 **than 400 inspections.**

6 Q. But along with that, there are about 100 and --
7 estimating -- I'm sorry, for that same period, there is
8 approximately 340 violations?

9 A. **Compliant inspections.**

10 Q. Oh, compliant inspections? Thank you for
11 correcting that.

12 A. **About 60 or so violations, 60 or 70.**

13 Q. Okay. If we flip to 14587, this is Battery C
14 which is, I believe, the newest battery?

15 A. **Correct, that's the newest.**

16 Q. Okay. And we have pretty high compliance numbers
17 there as well, correct?

18 A. **These numbers are greater than the 78 and 87**
19 **percent than the other batteries.**

20 MR. WILLIS: Okay, that's all I have with those.

21 HEARING OFFICER SLATER: Any objection to the
22 admission of ACHD 16?

23 MR. DAUSCH: No objection.

24 HEARING OFFICER SLATER: ACHD 16 is admitted.

25 MR. WILLIS: For this exhibit, we are only

1 A. **Correct.**

2 Q. So based on 2014, there was decreased compliance
3 over 2016-2017?

4 A. **Yeah. 2014 was better than 2015, which is better**
5 **than 2016, and then 2017 was better than 2016 but still**
6 **worse than '15.**

7 Q. And worse than '14?

8 A. **Correct, yeah, '14 was definitely the best.**

9 Q. Moving to -- moving backwards, we are going to go
10 to 14599. This is regarding Battery 3, soaking
11 compliance percentages.

12 A. **Okay.**

13 Q. Would you agree that over 2014 to 2017, there was
14 at least a decrease in compliance percentage?

15 A. **Yes.**

16 Q. Okay. And for Battery 2 soaking, there was a
17 decrease in soaking compliance percentages?

18 A. **Yeah. Battery 2 was a decrease each year,**
19 **actually.**

20 Q. Okay. Moving again backwards to 14597, would you
21 agree that there was a decrease in compliance percentage
22 from 2014 to 2017 for soaking at Battery 1?

23 A. **Yeah, another decreasing compliance percentage.**

24 Q. Now, taking that as a whole, if we were to look
25 at the entire facility, would you agree, and this is in

1 concerned about 14596 through 14608. I will try to
2 clean that up in post and take care of that cover page.
3 BY MR. WILLIS:

4 Q. This is going to be 17. If you look at 14600...

5 A. **Okay.**

6 Q. For 2014, there was only one violation per 165
7 inspections; is that correct?

8 A. **Yes. This is Battery 13.**

9 Q. Thank you. Yet, in 2017, we had 180 inspections,
10 28 or so -- or 15 or so more inspections. Yet, there
11 were 24 violations; is that correct?

12 A. **Yeah, the inspections increased by 15. The**
13 **violations increased by 23.**

14 Q. Okay. Similarly, on the preceding page -- or the
15 subsequent page, 14601, concerning Battery 14 soaking
16 compliance, in 2014 there was 120 inspections but only
17 one violation?

18 A. **Correct.**

19 Q. Yet, in 2017, there were 195 inspections and 27
20 violations?

21 A. **Correct.**

22 Q. And the preceding year in 2016, which was also
23 subject to -- well, scratch that.

24 In 2016, you had 159 inspections that resulted in
25 36 violations; is that correct?

1 reference to 14596, there was a decrease in the
2 compliance percentage with respect to soaking plant-
3 wide?

4 A. **Yeah, there was a decreased compliance.**

5 Q. Okay, thank you.

6 MR. WILLIS: That's all I have for that document.

7 HEARING OFFICER SLATER: Any objection to the
8 admission of ACHD 17?

9 MR. DAUSCH: No objection.

10 HEARING OFFICER SLATER: ACHD 17 is admitted.

11 BY MR. WILLIS:

12 Q. Could you look to Exhibit 30 in the binder? I
13 think it's Volume 1.

14 A. **U.S. Steel Clairton's permit?**

15 Q. Yes, sir. As the chief of enforcement, did you
16 enforce the permit conditions which are -- that exist in
17 this permit?

18 A. **Yeah, our section does.**

19 Q. Do you pay attention to work practices as a part
20 of that?

21 A. **It's not typically part of the quarterly**
22 **enforcement. It is a condition of Article 21 that could**
23 **be enforced.**

24 Q. If you are aware of an issue with respect to work
25 practices or maintenance and operations of a facility,

1 would you take enforcement action with respect to that?

2 A. We have in the past and we definitely could. On
3 the ones that are more -- there's a certain subjectivity
4 to an operation maintenance violation. With that level
5 of subjectivity, I would probably refer to Jayme Graham,
6 the department manager, to make sure it's going to go in
7 that direction before we issue an enforcement order --
8 or violation.

9 Q. What --

10 A. But yes, it's enforceable.

11 Q. What would lead you, in terms of conditions or
12 the environment at a facility, what would lead you to go
13 to Jayme Graham with an issue regarding work practices
14 or operations?

15 A. Work practices are a little bit more, we will
16 call it, gray. It's not as defined on what a good work
17 practice is.

18 So if we see something that is an un -- a bad
19 work practice or a bad environmental work practice, we
20 would have to -- I would rather get the manager's
21 approval to go that direction before issuing an order.

22 For the typical quarterly -- fortunately, typical
23 quarterly violations, those ones, it's clear-cut. It's
24 a violation of 210521A. We know the charging condition
25 -- as an example, it exceeds that charging limit.

1 A. Okay.

2 Q. -- could you read "B"?

3 A. Yeah, "6B: As required by 63.6(e) (1) (i,) the
4 permittee shall operate and maintain each coke battery,
5 including air pollution control and monitoring
6 equipment, in a manner consistent with good air
7 pollution control practices for minimizing emissions at
8 least to the levels required by 40 CFR, Part 63, Subpart
9 5C."

10 Q. And is there a citation to Article 21 with that?

11 A. Two citations, it appears.

12 Q. Which ones would those be?

13 A. 2103.12.k and 2103.12.h.6.

14 Q. Thank you. I'm going to give you what is ACHD
15 18. Do you recognize this e-mail?

16 A. I need to read it. It brings back memories,
17 yeah.

18 Q. Could you tell me what this e-mail is about?

19 A. It was an e-mail that I sent to Colean Davis and
20 Jonelle Scheetz at Clairton concerning odor complaints.
21 This is from September 14th, 2016.

22 Q. Do you remember why you sent this?

23 A. I believe -- I'm trying to recall here. I
24 believe this was for -- if we had odor complaints in the
25 community, then we were going to send them on to U.S.

1 That's an easier one.

2 Operation and maintenance, some of these other
3 ones are a little bit more -- I want to make sure the
4 Department is in agreement before we issue anything for
5 operation and maintenance.

6 Q. Okay. You mentioned earlier that you had some
7 training with respect to coke ovens and particularly how
8 they operate.

9 A. Yeah, at the Canada class.

10 Q. The Canada class. And that was a week-long class
11 which entailed basically an instruction as to how a
12 properly functioning coke facility should operate?

13 A. That was definitely a part of it, yes.

14 Q. Okay. If you turn to page 59 of that permit,
15 that's a section -- in looking at Number 6, it says,
16 "Work practice standards"?

17 A. Correct.

18 Q. This relates to coke ovens batteries 1, 2 and 3;
19 would you agree?

20 A. Yes.

21 Q. Okay. Could you read letter A?

22 A. "Coke oven batteries 1, 2 and 3 shall be properly
23 maintained and operated at all times according to good
24 engineering and air pollution control practices."

25 Q. Okay. And if you turn to page 77, --

1 Steel so that they could respond accordingly and see if
2 they could find a cause of that odor.

3 Q. Was this ever followed up by an inspection?

4 A. I don't recall.

5 Q. Given that it was one complaint that was of
6 concern here, is this something that we could have
7 enforced against, to your knowledge?

8 A. Oh, I don't think this is only one complaint;
9 'cause the second paragraph, it says, "Following in the
10 body is two of the complaints received today." And then
11 the bottom, "...received at least 10 other similar
12 complaints today where stated odors were observed either
13 overnight or this morning."

14 Q. Is there any way that we could have done an odor
15 investigation on site based on the fact that it's
16 alleged that they were overnight or morning?

17 A. We could have done observations offsite and seen
18 if we could determine the origination point of that
19 odor; and if we had the citizens confirming that odor
20 existed, we could have done an odor violation for that,
21 yeah. It is a little bit of a harder threshold to reach
22 the odor violation, but...

23 Q. Why is that?

24 A. Just because we have to do a full method with it.
25 We have to observe the odor firsthand, Department only.

1 We can't take the citizens' words saying it smells bad
2 and write an order based off that. It has to be
3 Department-observed. So we have to actually observe it
4 and confirm it with citizens that it exists, that it is
5 the same odor they are smelling.

6 Q. Do we get a lot of odor complaints overnight?

7 A. We get a lot of odor complaints. A lot of them
8 happen overnight, yeah, early mornings.

9 Q. Do we have any in the region of Clairton Coke
10 Works?

11 A. Sorry, what was that?

12 Q. Do we get a lot of complaints originating in the
13 area surrounding Clairton Coke Works?

14 A. I don't look at the complaints anymore because
15 there are too many of them, but I know we get complaints
16 throughout the whole county.

17 There are definitely complaints which come in
18 from Clairton. I don't know how many.

19 Q. Okay. But this, at least, puts Clairton on
20 notice that we will be providing them with that
21 information as we receive it?

22 A. Definitely at this time, yes.

23 Q. Okay. Is that consistent to what we do now?

24 A. I don't know if we are still sending that out or
25 not. I would have to talk to current staff.

1 those categories. Could you explain why there is a
2 number system in there?

3 A. Yeah, those -- there is also the calculation
4 sheet, which would be the first portion of this guidance
5 document. This is a second tab to it. And in that
6 sheet, there are separate categories going down.

7 The first group incorporated maybe six or seven
8 of these that was zero, one, or two. And then all of
9 these numbers were factored into the maximum potential
10 penalty, and it was basically graded downward from
11 there.

12 So if you were at the maximum rate for
13 everything, that would come up with the maximum penalty;
14 and then anything lower than that decreased it
15 numerically.

16 Q. And this is all you had prior to 2018 in terms of
17 determining a penalty to be assessed?

18 A. For coke ovens, yes. We had a separate one for
19 non-coke ovens.

20 Q. Turn to the next exhibit, 12.

21 A. Okay.

22 Q. What are we looking at here?

23 A. This is the 2018 ACHD penalty policy. It looks
24 like it has some pages after the policy too, but...

25 Q. Where does that begin?

1 MR. WILLIS: That's all I have for that one.

2 HEARING OFFICER SLATER: Any objection to the
3 admission of ACHD 18?

4 MR. DAUSCH: No objection.

5 HEARING OFFICER SLATER: ACHD 18 is admitted.

6 MR. WILLIS: I think you guys have this, but I
7 don't know where. This is the old guidelines.

8 MR. DAUSCH: 11.

9 BY MR. WILLIS:

10 Q. Please turn to Exhibit 11 and describe what we
11 are looking at with respect to Exhibit 11.

12 A. This -- yeah, this is the calculation guidance
13 specifically for coke ovens prior to the 2018 penalty
14 policy.

15 Q. So this is the old guidance that we have?

16 A. Yes. It's not the old, yes, but it is a prior
17 one to 2018.

18 Q. You would agree there is really not much to it?

19 A. No. The front and back is one sheet and then
20 there was a separate tab I put in there in case anyone
21 wanted to use it, the calculations.

22 Q. Could you explain the numbering system with
23 respect to this one? It looks as though for each of
24 these categories, health effects, impacts on public,
25 severity, that there is a number attributed to each of

1 A. 12929.

2 Q. Okay. Now, this penalty policy is 17 pages in
3 length; is that correct?

4 A. Correct.

5 Q. And the prior penalty policy was two pages in
6 length, correct?

7 A. Yeah, yes.

8 Q. Why the huge difference between the volume of
9 these policies? What is going on that is so different
10 from the new policy to the old?

11 A. It incorporates a lot more. It was written with
12 legal assistance. It incorporated supplemental and
13 environmental projects. It incorporated more of a
14 description as to how violations should be counted, the
15 number of violations, -- I'm just going through it --
16 the economic benefit portion of it. It goes into a lot
17 more detail than the prior one did.

18 Q. So it is fair to say that this is a far more
19 comprehensive policy than the previous policy that was
20 in place?

21 A. Yeah, yeah. This one also includes the procedure
22 which I know I use, and I'm sure a lot of the engineers
23 also use, whenever they are creating the penalty
24 policies, creating the penalties; going through step by
25 step and figuring out what factor is for each of them

1 and then putting that into the spreadsheet.

2 Q. So instead of having merely a 012, there is
3 actually a full description that would appear. Let's
4 take, for example, severity of violation. The severity
5 of violation under the old policy is basically 012 with
6 some description to it. If you look at the new policy
7 under Exhibit 12, it is an entire table.

8 A. Correct.

9 Q. Does that make it more comprehensive or less
10 comprehensive than the old policy?

11 A. It incorporates more information into it, so it's
12 more comprehensive.

13 Q. And it contemplates different types of sources
14 with respect to the severity, it's not merely just coke
15 ovens that are involved with this?

16 A. Correct, yeah. This is used for the Air Quality
17 Program.

18 Q. In fact, the third column on the -- or the third
19 row in this table refers to open burning violations; is
20 that correct?

21 A. Correct.

22 Q. Is there anything in here specifically geared
23 towards coke ovens?

24 A. In this severity of violation table?

25 Q. In the severity of violation table.

1 observed and issued as penalties in the order on appeal?

2 A. Yes, those are the inspections.

3 Q. Okay. Now, do you typically send out -- and I
4 think you may have mentioned this before -- do you
5 typically send out this information with a violation or
6 Notice of Violation?

7 A. Yeah, the standard procedure would be to send out
8 the inspections with the order.

9 Q. And is that to allow the source to understand the
10 nature of the violations?

11 A. It is a little bit different for coke ovens
12 because of the quantity of violations each quarter. But
13 we want to make sure we are on the same -- so we issue
14 all of the violations with -- well, the inspection data
15 for the violations with the order itself, and it would
16 do it in table form.

17 If it is a visible emission inspection at a stack
18 for a different type of plant, we may include the full
19 inspection sheet with it. So because of the number, we
20 can't incorporate all of those inspection sheets. We
21 summarize them in the tables.

22 Q. I see. And the recipients of this e-mail are:
23 Mike Dzurinko, Jonelle Scheetz, Bill Clark, and AQ
24 Reports. Who is Mike Dzurinko and Jonelle Scheetz?

25 A. Mike Dzurinko -- I don't know the exact titles,

1 A. The star note on the first row refers to a note
2 for it saying, "Use this factor for determination of
3 high-opacity door violations on coke batteries."

4 Q. Okay. Where is that referenced in the table?

5 A. It's the first row.

6 Q. The first row?

7 A. Yeah. And o is the only part that has anything
8 specific to coke ovens.

9 Q. Okay.

10 MR. WILLIS: You may have this data. If you have
11 the data, then I would just go with the e-mail.

12 MR. DAUSCH: We have both.

13 MR. WILLIS: You have both, okay.

14 MR. DAUSCH: 14.

15 BY MR. WILLIS:

16 Q. Could you look at Number 14 in the booklet?
17 Could you identify that e-mail?

18 A. This is an e-mail that I sent to Mike Dzurinko
19 and Jonelle Scheetz on June 29th, 2018.

20 Q. It shows there are several attachments. Can you
21 describe the attachments?

22 A. Yes, it is the first quarter of 2018, the fourth
23 quarter of 2017, and the third quarter of 2017
24 inspection data.

25 Q. And that relates to the violations which were

1 but Mike Dzurinko is the head of Mon Valley
2 Environmental for U.S. Steel and then Jonelle Scheetz is
3 the U.S. Clairton environmental person and Bill Clark is
4 the enforcement engineer for ACHD.

5 Q. So with each of these enforcement orders or
6 Notices of Violation, somebody at U.S. Steel is apprised
7 as to the nature of the violations, the breakdown of
8 what they are?

9 A. Yes.

10 Q. Okay. And what is AQ Reports?

11 A. That is the e-mail that the docket manager uses
12 whenever companies submit reports. Anything we want to
13 get scanned onto the system, we send to AQ Report; and
14 then that eventually makes its way onto the network.

15 Q. Is that used for any specific purpose after it's
16 been sent to that folder, for lack of a better term?

17 A. I'm not certain. I just know that the e-mails
18 get scanned onto the network from that e-mail address.
19 So the companies will submit reports to that address
20 too.

21 MR. WILLIS: Again, we have the issue with the
22 two-sided printing. We are only concerned with ACHD's
23 7210. Again, at the end, we will get together as a
24 collective and try to sort that out.

25 HEARING OFFICER SLATER: That's all right. So

1 just the first page?

2 MR. WILLIS: Just the first page, 7210. What are
3 we at, 19?

4 HEARING OFFICER SLATER: We are at 19, yeah.

5 BY MR. WILLIS:

6 Q. Do you recognize this?

7 A. This is the -- this is part of Keramida's monthly
8 report that they submit to us and this is for December
9 2017.

10 Q. What does it represent?

11 A. It represents the inspections that occur on each
12 shift because we -- in the agreement, we had 40 percent
13 as a no-more-than goal to try to ensure the inspections
14 are done on a daily basis throughout the whole day.

15 Q. And this is something that we asked Keramida to
16 do for us?

17 A. Yeah, yes.

18 Q. And what does it represent? I mean, what is your
19 takeaway from this?

20 A. Well, as an example, just the -- the first row
21 for Battery Number 1, so what that means is for the
22 month of December on Battery 1, 25.81 percent of their
23 inspections were done in the afternoon, 35.48 in
24 daylight, and 38.71 at midnight.

25 The idea behind it is to ensure that the

1 inspections are done throughout the whole course of the
2 day, and then that example follows for all 10 of the
3 batteries.

4 Q. And that's just with Keramida inspections?

5 A. This is just Keramida, yes.

6 Q. ACHD does not do midnight inspections?

7 A. They do not.

8 Q. Okay. But we do do daylight and afternoon
9 inspections?

10 A. Yes. The way these shifts -- because I believe
11 -- the shifts go, I think, from midnight to eight a.m.
12 and then eight to four. So we would be over both of
13 those shifts.

14 Q. And with respect to those inspections, do we do
15 it sequentially, battery by battery?

16 A. Which inspections, Keramida's inspections?

17 Q. ACHD inspections.

18 A. Not as far as I know.

19 Q. Okay. How are they performed?

20 A. ACHD inspections, it just has the monthly
21 requirement to do each battery, each inspection type and
22 each battery at least once at month.

23 Q. Okay. So you leave it to the inspectors to
24 determine which places they go in any given day so long
25 as they meet that requirement?

1 A. Yes.

2 MR. WILLIS: Okay, that's all I have for that
3 one.

4 HEARING OFFICER SLATER: Any objection to the
5 admission of ACHD 19?

6 MR. DAUSCH: No objection.

7 HEARING OFFICER SLATER: ACHD 19 is admitted.

8 MR. WILLIS: It is 6690, and I think they are
9 sequential to 7210. I'm sorry, not 7210, but 7209.

10 MR. DAUSCH: Check 32.

11 MR. WILLIS: I think it is a different set. We
12 have a different set, I think, so...

13 MR. PARKER: This will be ACHD 20.

14 BY MR. WILLIS:

15 Q. So just to make sure we're looking at the same
16 documents here, do you have 6690 -- ACHD6690 through
17 ACHD7209?

18 A. My first page is 6690, that's correct. My last
19 page is 7208. I'm probably just missing December 31st.

20 Q. You don't have a backside to that sheet?

21 A. Wait. Yeah, I do. Sorry.

22 Q. Okay. The last sheet was --

23 A. I wasn't expecting that to be the last sheet,
24 yes.

25 HEARING OFFICER SLATER: This is ACHD 20?

1 MR. WILLIS: Yes.

2 BY MR. WILLIS:

3 Q. If you could take a look through all of these
4 pages really quickly? Just breeze through so you can
5 familiarize yourself with them so you know what we are
6 talking about.

7 HEARING OFFICER SLATER: Keramida is
8 K-E-R-A-M-I-D-A?

9 MR. WILLIS: Yes.

10 MR. DELUCA: After a quick scroll, it looks like
11 it is six months of Keramida's reports, from August to
12 December of 2017.

13 BY MR. WILLIS:

14 Q. Okay. It might go further back in that.

15 A. Well, not six months, but July -- the first one I
16 see is July of 2017.

17 Q. You're familiar with these documents?

18 A. Yeah.

19 Q. Can you --

20 A. I recognize these reports.

21 Q. Can you describe what they are?

22 A. This is the monthly summary sheets that Keramida
23 gives to us. Well, monthly summary report that they
24 gave to us that covers their inspections for the month,
25 for 303.

1 Q. I think you mentioned earlier that we receive
2 daily reports as well?

3 A. We receive daily e-mails with the raw data for
4 each of the battery inspections, yes; "we" being U.S.
5 Steel and ACHD.

6 Q. But at the end of any given month, there is an
7 actual quality assured copy of the same data?

8 A. Yeah, that's what this is. This is the monthly
9 report.

10 Q. Okay. If you look to ACHD6735, what are we
11 looking at here?

12 A. This is the Battery B high-frequency, door-
13 leaking summary.

14 Q. Again, this is provided by Keramida, who will do
15 inspections on the coke side of Battery B?

16 A. Correct.

17 Q. Okay. So these are their observations from the
18 coke side of Battery B?

19 A. The monthly summary of what they've observed,
20 yes.

21 Q. Okay. Am I correct in thinking that on the left
22 side -- because it says "push side" here, that that side
23 of the table relates solely to observations on the push
24 side?

25 A. That's correct.

1 Q. And on the right side of that table, it relates
2 to coke-side observations?

3 A. Correct.

4 Q. Okay. How many leaks, based on this sheet, were
5 observed on the push side?

6 A. Sixteen.

7 Q. And on the coke side?

8 A. One hundred sixty.

9 Q. Did we enforce with respect to that 160 leaks?

10 A. No, we did not.

11 Q. Flip to 6740, please.

12 A. Okay.

13 Q. Is that the same type of -- inspection type?

14 A. Yeah, it's the high-frequency door leaking for
15 Battery C.

16 Q. For Battery C. Battery C doesn't have a shed?

17 A. They do not.

18 Q. How many leaks on the push side?

19 A. Four.

20 Q. How many leaks on the coke side?

21 A. Twenty-five.

22 Q. Would you expect to find more leaks on the coke
23 side than the push side?

24 A. That's what I've been told secondhand that it is
25 supposed to be because the thermal stresses are greater

1 on coke side than the push side, but I don't know that
2 for certain.

3 Q. But would you agree, based on what you see for
4 Battery C, that there are more coke-side leaks than
5 there are on Battery B?

6 A. Battery C was 25 and Battery B was, I think, 160.
7 So yeah, 160, yeah, there was definitely more in Battery
8 B.

9 Q. Flip to 6820.

10 A. Okay.

11 Q. How many leaks on the push side?

12 A. This is Battery B. August is 20 on the push
13 side.

14 Q. And how many for the coke side?

15 A. Two hundred eleven.

16 Q. Factor of 10, would you say?

17 A. Yeah, it was more than 10 times as many on the
18 coke side.

19 Q. Okay. And just randomly picking another battery,
20 take a look at 6866.

21 A. Okay.

22 Q. We're looking at Battery 1, right?

23 A. Yes.

24 Q. Battery 1 is one of the oldest batteries at the
25 facility; is that correct?

1 A. Yes.

2 Q. Okay. How many leaks on the push side?

3 A. Three.

4 Q. How many leaks on the coke side?

5 A. Forty-nine.

6 Q. Okay. Let's look at 6909.

7 A. Okay.

8 Q. This is for September 2017. How many leaks on
9 the push side?

10 A. 6909?

11 Q. Oh, sorry, 6906, I apologize.

12 A. Okay, 23 on the push side.

13 Q. And for the coke side?

14 A. One hundred sixty-nine.

15 Q. Okay. Let's look to 6993. This is for October
16 2017.

17 A. Okay.

18 MR. DAUSCH: Can you say that again?

19 MR. WILLIS: 6993.

20 MR. DAUSCH: Thanks.

21 BY MR. WILLIS:

22 Q. So for the push side, how many leaks?

23 A. Seventeen.

24 Q. And for the coke side?

25 A. Two hundred nine.

1 Q. Okay. And that was for October 2017?
 2 A. Yeah, October 2017, Battery B.
 3 Q. Okay. If you'll look to 7084, also door leaks
 4 for Battery B?
 5 A. Yes, this is for November of 2017.
 6 Q. How many on the push side?
 7 A. Six.
 8 Q. How many on the coke side?
 9 A. One hundred sixty-seven.
 10 Q. Let's move to 7171.
 11 A. Okay.
 12 Q. How many on the push side?
 13 A. Nine.
 14 Q. How many on the coke side?
 15 A. One hundred eighty-nine.
 16 Q. And in looking at this table, on the left-hand
 17 side, there is something -- there is a column called
 18 "depiction." Can you describe what that is all about?
 19 A. That graphically shows -- it will be a longer bar
 20 for more violations. So it depicts the number as a
 21 longer length bar versus a shorter length bar. If there
 22 are no leaks, then the depiction is just going to be
 23 blank.
 24 Q. Okay. And with respect to the depiction on 7171,
 25 and looking on the push side, would you say it's kind of

1 sparse?
 2 A. Yes, there's only seven entries for the whole
 3 month with all the ovens.
 4 Q. And on the coke side, it's pretty heavily
 5 blackened?
 6 A. It's almost the reverse. This is probably about
 7 seven. I can't count them all but about seven.
 8 Q. Okay, and those are 189 leaks. Did we enforce
 9 against that 189 leaks?
 10 A. We did not.
 11 Q. Is it fair to say that each of those leaks
 12 represents an opportunity for an emission into the air?
 13 A. Yeah, yes.
 14 Q. And as you mentioned earlier, those emissions
 15 would be -- or could be coke oven gas?
 16 A. They should be raw coke oven gas coming out of
 17 the door leak, more than likely, along with other
 18 compounds.
 19 Q. Okay. All right.
 20 MR. WILLIS: I was going to move for the
 21 admission.
 22 HEARING OFFICER SLATER: Oh, yes. Any objection
 23 to the admission of A20?
 24 MR. DAUSCH: No objection.
 25 HEARING OFFICER SLATER: A20 is admitted

1 MR. WILLIS: I have a whole other stack to go
 2 through. Can we take a break at this point, because I
 3 kind of need to get my head straight?
 4 HEARING OFFICER SLATER: We can take lunch, and
 5 then --
 6 MR. WILLIS: If they're okay with that.
 7 HEARING OFFICER SLATER: Is that all right with
 8 U.S. Steel?
 9 MR. DAUSCH: That's fine.
 10 HEARING OFFICER SLATER: We'll resume at about
 11 1:05.
 12 (The hearing recessed at 12:08 p.m. and
 13 reconvened at 1:05 p.m.)
 14 HEARING OFFICER SLATER: Let's go back on the
 15 record then.
 16 BY MR. WILLIS:
 17 Q. I'm going to give you what is going to be ACHD
 18 21. This is also a summary inspection, data summary
 19 from Keramida.
 20 A. It's from October of 2017.
 21 Q. Okay. Could you look to ACHD3643?
 22 A. Okay.
 23 Q. How many leaks on the push side?
 24 A. This is a high-frequency door, 17 on push side.
 25 Q. And on the coke side?

1 A. Two hundred nine.
 2 Q. And that's for October 2017?
 3 A. Correct.
 4 Q. Just for Battery B?
 5 A. Battery B, high-frequency door leaking summary.
 6 MR. DAUSCH: Jason, we've already gone over
 7 these. We already did these ones with the last exhibit.
 8 MR. WILLIS: We already did November?
 9 MR. DAUSCH: Yeah, we did third and fourth
 10 quarter of November of 2017.
 11 MR. WILLIS: Sorry about that. What's the last
 12 one that we have, December?
 13 MR. WINEK: Yes.
 14 MR. DAUSCH: You did up to December of '17, so
 15 you are in '18.
 16 MR. WILLIS: Okay. Let's strike that. We are
 17 going into 2018.
 18 BY MR. WILLIS:
 19 Q. If you turn to Tab 32 in the binder, you will see
 20 what is also a Keramida report.
 21 HEARING OFFICER SLATER: Tab 32?
 22 MR. WILLIS: Yes, sir.
 23 HEARING OFFICER SLATER: All right.
 24 BY MR. WILLIS:
 25 Q. If you can find the Battery B emissions for the

1 coke-side doors, the door-leaking summary. I believe
 2 it's on --
 3 A. 3822?
 4 Q. 3821. 22 is the offtakes and 21 --
 5 A. Correct, yeah, 21.
 6 Q. Okay. Again, this is from December of 2017. How
 7 many on the -- how many leaks on the push side?
 8 (Exhibit 21 was marked at this time.)
 9 A. Push side has nine and coke side has 189.
 10 Q. Okay. If you could, look to page 3907.
 11 A. Okay.
 12 Q. How many leaks on the push side?
 13 A. Nine.
 14 Q. And on coke side?
 15 A. One hundred sixty-six.
 16 Q. Again, this is for January of 2018?
 17 A. January for Battery B, January of 2018, yes.
 18 Q. And those are for the door leaks?
 19 A. High-frequency door-leaking summary, yeah.
 20 Q. And then for those 200 -- or sorry, 166 leaks,
 21 there were no violations described to as leaks?
 22 A. No.
 23 Q. Okay. Could we have counted those leaks per
 24 Article 21?
 25 A. Per Article 21, yes.

1 Q. And if we were to have counted those leaks under
 2 Article 21, would the penalty have been higher?
 3 A. Assuming there would have been violations of that
 4 standard, which it appears it would have been, it would
 5 have been a higher violation, yes.
 6 Q. Why do you say "appears it would have been"?
 7 A. 'Cause just looking at the number of violations,
 8 it would be 160 -- or 175 for the month. Just off of an
 9 averaging, it's somewhere in the range of three a day.
 10 I'm just assuming that it would be at some point, but I
 11 can't confirm this by this sheet.
 12 Q. Okay.
 13 MR. WILLIS: Any objection to that?
 14 MR. DAUSCH: No. What number are we on?
 15 COURT REPORTER: 21.
 16 MR. DAUSCH: No objection.
 17 HEARING OFFICER SLATER: So A21 is admitted.
 18 BY MR. WILLIS:
 19 Q. So this will be Exhibit 22. I'm handing you
 20 another document also from Keramida, and this one is
 21 dated March 9, 2018.
 22 HEARING OFFICER SLATER: I'll mark that as A22.
 23 BY MR. WILLIS:
 24 Q. 22.
 25 A. A22.

1 Q. If you would, sir, look to -- it's ACHD3995.
 2 A. Okay.
 3 Q. How many leaks on the push side?
 4 A. Push side has three, and the coke side has 208.
 5 Q. And again, those 208 leaks were from under the
 6 shed on Battery B?
 7 A. Coke side under the shed, yes.
 8 Q. Okay.
 9 MR. WILLIS: Any objection?
 10 MR. DAUSCH: No objection.
 11 HEARING OFFICER SLATER: All right, A22 is
 12 admitted.
 13 BY MR. WILLIS:
 14 Q. Are you familiar with this document, sir, A23?
 15 A. Yes.
 16 Q. It's dated April 10, 2018, also from Keramida.
 17 If you would turn to page 4081?
 18 A. Okay.
 19 Q. Okay, this one is interesting. How many leaks on
 20 the push side?
 21 A. Eighty-one or 80?
 22 Q. Eighty-one.
 23 A. Okay, the offtakes.
 24 Q. Oh, these are offtakes, I'm sorry. That's why
 25 they were interesting. Sorry.

1 Go back to 4080. How many leaks on the push
 2 side?
 3 A. Yeah, this is Battery B, high-frequency door
 4 leaking again, was March of 2018. Push side is five and
 5 the coke side is 185.
 6 Q. Okay, thank you.
 7 MR. WILLIS: Any objection to that one?
 8 MR. DAUSCH: No objection.
 9 HEARING OFFICER SLATER: All right, A23 is
 10 admitted.
 11 MR. WILLIS: Again, Mr. Slater, this is one of
 12 those that has the difficulty with the two sides. We
 13 are really only concerned with 4717 through 4786.
 14 HEARING OFFICER SLATER: Duly noted. What is
 15 this document?
 16 MR. WILLIS: The first page has at the top "2017
 17 charging."
 18 BY MR. WILLIS:
 19 Q. Do you recognize this document, sir?
 20 A. Yes.
 21 Q. Could you describe it for Mr. Slater?
 22 A. This is the ACHD inspection data from 2017 that
 23 was entered by the coke oven inspectors for charging.
 24 The left table that goes over multiple pages is
 25 the data entry, and the right is the summary tables for

1 the plant-wide charging and then each individual battery
2 following.

3 Q. Okay. So this, at least based on the
4 representation of the first page, looks as though you've
5 incorporated both the inspection, the results of the
6 inspection, and then did some compliance calculations to
7 the right in the right-hand tables?

8 A. Yeah, it does a monthly summary of the compliant
9 inspections over the ACHD total inspections and then the
10 annual summary up to that point.

11 Q. But it's just ACHD inspections?

12 A. Correct.

13 Q. Okay. If you move to page 4724, -- you have to
14 excuse me, but the print is very fine on this page --
15 what are we looking at here?

16 A. This is the same Excel spreadsheet just for the
17 doors tab. So it is the doors data entry and then the
18 doors tables.

19 Q. And it looks as though you did some compliance
20 calculations on the right-hand side; is that correct?

21 A. Correct, yes.

22 Q. And this is solely for 2017?

23 A. Yeah, 2017, ACHD for doors.

24 Q. Okay. If you look to 4729, can you describe what
25 this is about?

1 topside (lids.)" Could you explain what that is
2 reflecting?

3 A. Yeah, this is the -- 'cause the topsides do both
4 lids and oftakes. So in the -- what we do, data is
5 only entered on the oftakes tab. And then we will copy
6 and paste it over to the lids tab for the actual
7 compliance data. So that's why it's "topside (lids.)"

8 Q. Could you explain what you mean by oftakes and
9 lids?

10 A. Oftakes and lids are two of the inspection types
11 done by ACHD inspectors and Method 303, actually on top
12 of the battery. So it states -- you are comparing it to
13 a percent leaking. So the total number of lids is 100.
14 You count the number of lids which are leaking and that
15 is what is recorded here, and then the percent lid
16 leaking is calculated by the spreadsheet.

17 Q. And what's a lid?

18 A. A lid is a -- it's a charging port. It's where
19 coal is introduced into the oven.

20 Q. And what is an oftake?

21 A. And oftake is on the outside of the batteries.
22 Each oven has an oftake on both sides, except for
23 Battery C with one oftake, and then that is a point to,
24 I guess, divert gas when they are soaking. And I don't
25 know what else it is used for specifically, but it is on

1 A. This is the high-opacity door exceedances or
2 readings from ACHD from 2017.

3 Q. Okay. And it's specific for Battery B or is it
4 for all batteries?

5 A. This is for all batteries.

6 Q. Okay. It just notes 30 percent for Battery C?

7 A. Yeah. The 40 percent standard is in Article 21,
8 and Battery C has a 30 percent in their IP, their
9 permit.

10 Q. Okay. Do you know why Battery C has a 30 percent
11 as opposed to 40 percent?

12 A. I was not involved in the permit development.

13 Q. That's a permit condition?

14 A. Yeah.

15 Q. Okay. Can you explain -- and I think I know the
16 answer -- but in the far left column -- or sorry, far
17 right column of that chart, there are certain portions
18 of it that just say, "hashtag value, explanation point."
19 Could you explain what's going on up there?

20 A. Yeah, if you look in the upper right, it explains
21 it a little bit. So that's the read minus charge time.

22 So if it just has hashtags the whole way across
23 and the read was before the charge, it has hashtag
24 value, then it's from the previous day.

25 Q. Okay. If you go to 4735, the top says, "2017,

1 the outside of each oven and they inspect that for leaks
2 whenever they are doing topside inspections.

3 Q. Could you explain soaking a little bit for us
4 since you've mentioned soaking?

5 A. Soaking is the procedure that occurs before
6 pushing of the oven towards the end of the cooling cycle.
7 Coke is in there 18 hours or so and they pop up the lids
8 to drop it off the collector main; stop the flow of gas;
9 open up the oftakes for the soaking emissions to occur,
10 if there are emissions. There doesn't have to be
11 emissions. They open that up to let any of the excess
12 gas to come up before they push the ovens.

13 Q. Okay. Why would you do that?

14 A. I believe it's for -- I think it's for
15 explosive -- to stop any explosive things from
16 happening, but I'm not positive on the why.

17 Q. Okay. All right. On 20 -- sorry, on 4739, it
18 also says "topside" but here it says "oftakes."

19 A. Yes.

20 Q. So you broke that out from topside lids to
21 topside oftakes?

22 A. Yeah. If you look at the actual tables for those
23 two, you have a column for oftake leaks and a column
24 for leaking lids. So it's the same -- the information
25 from the topsides is put on the sheet for lids -- for

1 the offtakes, and then it is transferred over to the
2 lids. So the same data entry is going to be on both of
3 the sheets. Just 'cause of the complexity, we have two
4 separate sheets because there are two separate sets of
5 standards.

6 Q. Okay. If you look at 4743, this one says,
7 "Clairton pushing." Some of these don't have just
8 pushing, but they have something called travel. Could
9 you explain what travel is?

10 A. Travel is the part of the pushing where the hot
11 car goes to the quench tower. The pushing operation
12 goes — depending upon Article 21 definitions, it
13 changes depending how much battery it's on.

14 Basically, the pushing happens when the coke goes
15 out and it goes into the quench tower. The travel is
16 the second half of that operation. After all the coke
17 is put into the hot car, the hot car travels down to the
18 quench tower. That's the act of travel.

19 Q. Okay. And these are all the observations with
20 respect to that in 2017?

21 A. For pushing and travel by ACHD, yes.

22 Q. Okay. Look to 4759.

23 A. Okay.

24 Q. What do we have here?

25 A. This is the soaking inspection by ACHD for 2017.

1 consistent, that there aren't anomalies?

2 A. Yeah, I checked to make sure there is nothing
3 that's — I didn't go through every single inspection
4 for the year, but I checked the spreadsheet itself to
5 make sure that everything in here appears like it's
6 accurate.

7 A good example would be, if there's an opacity
8 written down of eight percent, we read opacity in five
9 percent increments, so that's a typo. So I would have
10 to check back to the actual inspection sheet to see what
11 that error was, as an example.

12 Q. And you've been doing this for how long?

13 A. I know I did it for 2017 and 2016, maybe the last
14 three years.

15 Q. The last three years?

16 A. Or something, yeah.

17 Q. Has anything jumped out at you with respect to
18 any of these inspections? As they are entered in, did
19 you ever --

20 A. Any individual inspections?

21 Q. Well, let's say with respect to your view of
22 2017, did something jump out at you as anomalous?

23 A. Whenever I put all the data into the annual
24 sheets and saw there were more violations.

25 Q. Okay. Well, with respect to the data that was

1 Q. Same thing, broken out by battery?

2 A. Broken out by battery on the right tables and the
3 plant total, yes.

4 Q. And on the left?

5 A. The left is the data entry portion of it with the
6 times, where it's located, its condition, and the
7 opacity.

8 Q. Okay. Having reviewed all of these documents,
9 you put together this table, correct?

10 A. I created the background spreadsheets and then
11 the coke oven inspectors put the data entry into it.

12 Q. And you've reviewed the data that's been entered?

13 A. I reviewed what? Sorry.

14 Q. Do you review the data that's been entered onto
15 the sheet?

16 A. That's more the engineer that reviews the actual
17 inspection sheets. I'll check the actual spreadsheet
18 itself and see if there are any obvious errors or typos
19 or anything like that at the end of the year. I will go
20 through and check those.

21 But more of that review is done by the -- well,
22 the inspector that is doing the entry and then the
23 engineer whenever the quarterly enforcement comes up.

24 Q. But you have had some contact with this
25 particular data set in terms of making sure that it's

1 entered by the coke oven inspectors, was there something
2 that jumped out at you as particularly unusual? Maybe,
3 I don't know, a timing?

4 Because it looks as though there is a start time
5 and an end time for all the recordings. There is a
6 duration of the readings and the battery location.

7 Does any of that -- did any of the data that you
8 review strike you as unusual with respect to the time of
9 the observation?

10 A. Not that I recall. Like, there may have been --
11 the same thing, there may have been a typo with the
12 dimpered time that it said like 1939 or something like
13 that, something that would, obviously, be in the evening
14 where you couldn't read opacity.

15 Q. Oh.

16 A. But nothing that stands out that I can recall.

17 MR. WILLIS: Okay, that's all I have for that.

18 HEARING OFFICER SLATER: Any objection to A24?

19 MR. DAUSCH: No objection.

20 HEARING OFFICER SLATER: ACHD 24 is admitted.

21 MR. WILLIS: I don't believe I have any more
22 exhibits, and I don't have any further questions.

23 HEARING OFFICER SLATER: Mr. Dausch, I assume you
24 have some questions for Mr. DeLuca?

25 MR. DAUSCH: Yes, I have some questions.

CROSS-EXAMINATION

1
2 BY MR. DAUSCH:
3 Q. Mr. DeLuca, we just spent a lot of time going
4 through monthly summary reports from Keramida and
5 looking at the B battery door leaks, right?
6 A. Correct.
7 Q. And you went through every month that's at issue
8 in this enforcement order?
9 A. Correct.
10 Q. We started in the third quarter of 2017, went
11 through the first quarter of 2018?
12 A. I don't know if we did all nine months today.
13 Q. We generally covered the penalty period?
14 A. Yeah, correct.
15 Q. Okay. And in the months that you looked at that
16 are on the record, you compared the coke-side door leaks
17 to the push-side door leaks on the B battery, correct?
18 A. Correct.
19 Q. Those are inspections that were done by Keramida?
20 A. Correct.
21 Q. The coke-side door leaks were read from a
22 different position than the push-side door leaks; is
23 that fair?
24 A. Correct.
25 Q. So the push-side door leaks would have been read

1 from the yard?
2 A. Correct.
3 Q. And the coke-side door leaks would have been read
4 from the bench?
5 A. Yes.
6 Q. The bench is much closer to the doors than the
7 yard?
8 A. Yes.
9 Q. And you can't compare readings from the yard
10 compared to readings from the bench and say, "One is
11 more than the other" just by looking at the numbers; is
12 that fair?
13 A. I can look at the two numbers and say that one is
14 greater than the other. I'm not sure what you are -- if
15 you are --
16 Q. It is not an apples-to-apples comparison, is it?
17 A. Method 303 has a coke-load equivalency that
18 implies it's not. I can't definitively say, but I know
19 you are closer. And if it is a small leak, you are less
20 likely to see it from the yard than the door -- or than
21 the bench.
22 Q. Mr. DeLuca, if I held up a sheet that has a bunch
23 of numbers, from here is it harder to see if I'm right
24 here or if I'm right up next to you?
25 A. It's harder to see from across the room.

1 Q. Would you expect the same to happen when you are
2 looking at door leaks on a coke oven?
3 A. It would be harder to see. I'm just saying if
4 there is a large leak, you would still be able to see it
5 at both locations.
6 Q. And there have been studies done on this, right?
7 A. I don't know.
8 Q. EPA did a study to come up with the yard
9 equivalent?
10 A. It -- I know that the yard equivalency is in 303.
11 I don't know how they came up with that.
12 Q. You're not saying it was a random number?
13 A. I'm assuming it was not, but I don't know.
14 Q. Okay. Are you assuming that every door leak you
15 could see from the bench you could also see from the
16 yard?
17 A. I don't believe so.
18 Q. Okay. And so if you're looking at door leaks
19 from the coke side of B battery and comparing them to
20 leaks on the push side, you can't say they are
21 necessarily equivalent?
22 A. No. You would assume that from five feet each
23 way, you would be able to see more than 25 feet or so
24 away.
25 Q. Right, and that's why the yard equivalent

1 calculation exists?
2 A. As I know, yes.
3 Q. You haven't been to the Clairton plant since
4 before the penalty period in this enforcement order,
5 correct?
6 A. Definitely since before the order; the penalty
7 period, more than likely.
8 Q. When is the last time you were at the B battery?
9 A. I've never been on B battery, as far as I can
10 recall.
11 Q. Okay. So you've never actually seen the B
12 battery shed in person?
13 A. Not from the battery itself; driving by but
14 not --
15 Q. Okay. You would agree that operating the coke
16 plant is a highly complex process?
17 A. I don't know how to do it. I'd assume so.
18 Q. A highly technical process?
19 A. There is a technical aspect to it. I don't know
20 how to operate a coke plant.
21 Q. You're not a coke plant expert; is that fair?
22 A. I've been told there's a legal definition of
23 "expert." I don't know if I'm that or not. I know that
24 I can't run a coke plant.
25 Q. Okay. Do you consider yourself to be an expert

1 in coke plant operations?

2 A. What I've been told before is the expert is
3 somebody who knows more than 50 percent of people. So
4 I'm assuming I know more than 50 percent of people.

5 Q. So you're saying you consider yourself a coke
6 plant expert?

7 A. By that definition, I would not consider myself
8 to be one by that definition.

9 Q. And have you ever advertised yourself as a coke
10 plant expert?

11 A. No.

12 Q. The extent of your coke plant training is a
13 one-week course in Canada?

14 A. That's the focus of it. There is daily work, but
15 yes.

16 Q. And you don't have any actual work experience in
17 coke plants; is that fair?

18 A. Correct.

19 Q. You mentioned that the B battery coke-side shed
20 has spots that are not closed in?

21 A. Correct.

22 Q. And you believe that there's a way to close those
23 in like a garage door?

24 A. Maybe not for a hundred percent enclosure but to
25 enclose it more so than it is right now. If you have an

1 enclose a bigger area of the shed inside before the
2 quench tower.

3 Q. And what was that made of?

4 A. I don't know.

5 Q. Okay. Do you know where they got that material?

6 A. I do not.

7 Q. You talked about a scrubber going on the bag
8 house at the B battery coke-side shed?

9 A. Well, I think I was asked if there was a way to
10 control gaseous emissions from there, and it would be a
11 scrubber.

12 Q. Okay. Is there any scrubber that you are aware
13 of that's manufactured that goes on a bag house on a
14 shed from a coke battery?

15 A. Not that I'm aware of.

16 Q. U.S. Steel is subject to a higher level of
17 inspections than any other coke plant in the country; is
18 that fair?

19 A. Method 303 requirements are the same in all coke
20 plants, but we have the two full-time coke oven
21 inspectors, which other regions do not, so that leads to
22 more inspections.

23 Q. So back to my question. U.S. Steel is subject to
24 a higher number of inspections than any coke plant in
25 the country, correct?

1 open shed that's, I don't know, 25 feet across by 20-
2 foot high and that entire area is open, there are things
3 that you can put in there --

4 Like the example I used was those clear plastic
5 strips you'll see on doors just to keep temperature
6 differentials from inside the building versus outside
7 the building, and something like that would also
8 increase the capture.

9 Q. Who creates -- or who manufacturers those clear
10 strips for coke ovens?

11 A. I have no idea.

12 Q. Do you know if they even exist?

13 A. I do not. That was just an example of something
14 that could be used.

15 Q. Okay. Do you know of any technology that is
16 currently in existence that does what you are
17 describing, that completely closes up any gaps in a coke
18 oven shed?

19 A. Well, my description wouldn't completely enclose
20 it, it just would increase the capture of it. I know
21 that the prior coke plant, it could design some sort of
22 saddle to increase the capture from their shedded side.

23 Q. So do you know any product that is on the market
24 now that's what you are describing?

25 A. I know that Shenango built something in-house to

1 A. Yes.

2 Q. And there are thousands of fugitive emissions
3 points in a battery?

4 A. Correct.

5 Q. And fugitive emissions points are not measured
6 through scientific equipment?

7 A. Not generally, no.

8 Q. Okay. They don't go through a stack, so they're
9 harder to accurately measure?

10 A. Correct.

11 Q. It's rare to have both full-time Keramida Method
12 303 inspectors and county inspectors at a coke plant; is
13 that fair?

14 A. Yes. Not the 303 portion, because that's
15 standard, but the ACHD portion is definitely rare.

16 Q. Right. It's rare to have both of those together
17 at the same coke plant?

18 A. Yes, you can take it to both sides.

19 Q. Every year, U.S. Steel has to put together an
20 annual emissions inventory, correct?

21 A. Yes.

22 Q. And that annual emissions inventory has to
23 estimate the total emissions from all different sources
24 at the Clairton plant?

25 A. Yeah, it goes to data.

1 Q. And the annual emissions inventory would
2 currently be the most reliable information we have if we
3 wanted to compare total emissions from the battery
4 fugitive emissions points to the site-wide emissions; is
5 that fair?

6 A. There's always the caveat -- I'm using the
7 estimated actuals for reality in fugitive emissions, and
8 a lot of the battery fugitives -- there's variation in
9 it. There are assumptions made.

10 The source will submit emission inventories to
11 ACHD and ACHD will review it and determine some
12 conditions to challenge and some conditions to let go.

13 So there is a question mark to that. Is it the
14 best that we have? Probably.

15 Q. So it would currently be the most reliable data
16 that we have for that comparison?

17 A. Unless somebody has done some more detailed
18 analysis other than emissions inventory, yeah.

19 Q. Is it the most reliable data that you're aware
20 of?

21 A. That I'm aware of? Yeah.

22 Q. And before the enforcement order was prepared,
23 you didn't look at any of that data; is that fair?

24 A. Correct.

25 Q. Most of the battery emissions points have both

1 Q. For oftakes, there would be a federal NESHAP
2 standard?

3 A. Yes.

4 Q. There would be an Article 21 standard?

5 A. Yes.

6 Q. There are violations related to oftakes in the
7 enforcement order?

8 A. Yes.

9 Q. Charging would have a federal NESHAP standard?

10 A. Uh-huh (affirmative,) yes.

11 Q. It would have an Article 21 standard?

12 A. Yes.

13 Q. There are charging violations alleged in the
14 enforcement order?

15 A. Yes.

16 Q. High oftake -- or high-opacity doors would have
17 an Article 21 standard?

18 A. Yes, they do.

19 Q. There wouldn't be a NESHAP standard?

20 A. No.

21 Q. Soaking would have an Article 21 standard?

22 A. Yes.

23 Q. There wouldn't be a NESHAP standard?

24 A. Yes.

25 Q. Article 21 regulations that apply to all of those

1 state and federal limits, correct?

2 A. By state, do you mean Article 21?

3 Q. Yeah, I'm sorry, Article 21. Let me ask the
4 question again.

5 Most of the battery fugitive emissions points
6 have both Article 21 and federal limits, correct?

7 A. The battery fugitive emissions points which are
8 inspected, yes.

9 Q. Okay. And let's do, for example, doors. If we
10 are looking at door leaks, there would be an Article 21
11 standard?

12 A. Yes.

13 Q. There would be a federal NESHAP standard?

14 A. Yes.

15 Q. And for doors, there are violations alleged in
16 the enforcement order?

17 A. Yes.

18 Q. Okay. For lids, there would be a federal NESHAP
19 standard?

20 A. Yes.

21 Q. There would be an Article 21 standard?

22 A. Yes.

23 Q. And in the enforcement order, there are alleged
24 violations related to lids?

25 A. Yes.

1 emissions points that we just discussed, they went
2 through a regulatory approval process before they became
3 regulations, correct?

4 A. Yes, they are in the regulations. They would
5 have had to.

6 Q. And do you know what that process is?

7 A. Cursory, I know it goes through stages of
8 approval.

9 Q. Okay. Do you know if there was a health-based
10 analysis done in any of those in the process for any of
11 those rules or regulations?

12 A. The coke oven section?

13 Q. Yes.

14 A. No, I'm not aware.

15 Q. The NESHAP limits are the federal emission
16 limits, correct?

17 A. Yes.

18 Q. And every industry uses different technology and
19 has different hazardous air pollutants; is that fair?

20 A. There probably are industries that don't have
21 hazardous air pollutants.

22 Q. Okay. Do you know the NESHAP regulations are
23 industry-specific regulations?

24 A. They are pollutant specific, I believe. I'm not
25 positive on that.

- 1 Q. You're not sure either way?
- 2 A. No, I'm not.
- 3 Q. Do you know if the federal NESHAP regulations
- 4 involve some analysis of technological feasibility
- 5 before they were enacted?
- 6 A. I don't know how they were enacted.
- 7 Q. U.S. Steel was 100 percent compliant with the
- 8 federal NESHAP limits; is that correct?
- 9 A. Over what timeframe?
- 10 Q. The penalty period that's at issue in this case.
- 11 A. Yes.
- 12 Q. The Keramida inspectors follow Method 303,
- 13 correct?
- 14 A. Yes.
- 15 Q. And they do inspections for NESHAP limits?
- 16 A. And Article 21 limits; but yes, they do the
- 17 NESHAP.
- 18 Q. Okay. And the Keramida inspectors inspect every
- 19 battery every day?
- 20 A. Yes.
- 21 Q. So there should be an equal number of inspections
- 22 for the different batteries from the Keramida
- 23 inspectors?
- 24 A. Yes.
- 25 Q. And that's based on the federal requirements in

- 1 Method 303?
- 2 A. Yeah, they have to do every battery every day,
- 3 so...
- 4 Q. Okay. And the Keramida inspectors use a tablet
- 5 similar to an iPad to do their inspections?
- 6 A. Yeah.
- 7 Q. And that data is available to you on a -- is it a
- 8 daily basis?
- 9 A. We get the raw data e-mailed daily after the
- 10 shift, after each battery shift. The monthly summary is
- 11 more where we actually look at it. That comes every
- 12 month.
- 13 Q. And you have an electronic system that allows you
- 14 to have Keramida's daily inspection data?
- 15 A. I have access to the Careport (phonetic) System,
- 16 yes.
- 17 Q. And that allows you to have daily access to their
- 18 inspection results?
- 19 A. Correct.
- 20 Q. The Allegheny County Health Department inspectors
- 21 don't inspect seven days a week?
- 22 A. They do not.
- 23 Q. They inspect five days a week?
- 24 A. Not on vacations and holidays, yeah, normal work.
- 25 Q. And unlike the Keramida inspectors, the county

- 1 inspectors have discretion as to where they inspect on
- 2 any given day?
- 3 A. Correct.
- 4 Q. So we can expect that there would be an uneven
- 5 number of inspections from the county inspectors because
- 6 they can pick and choose where they go each day?
- 7 A. Yeah, I wouldn't consider it to be dead even
- 8 given all the batteries.
- 9 Q. And there's no guidance or written document that
- 10 puts any restrictions on what or where the county
- 11 inspectors should be inspecting on any given day?
- 12 A. No.
- 13 Q. The continuity inspectors, they do handwritten
- 14 inspection sheets for their inspections?
- 15 A. Correct.
- 16 Q. And so every day, they are generating hard copies
- 17 of their inspections?
- 18 A. Yes.
- 19 Q. And they keep these hard copy pieces of paper
- 20 with their inspection results and, on some basis, come
- 21 down to this office and enter them into a computer?
- 22 A. Correct.
- 23 Q. And in that process, they look at the handwritten
- 24 inspection sheets and enter it into an Excel file that
- 25 you've created?

- 1 A. Yes.
- 2 Q. The county inspectors don't follow Method 303?
- 3 A. Not for their inspections, no.
- 4 Q. You mentioned Method 22 in your direct testimony.
- 5 Can you explain what that is?
- 6 A. My recollection of it is that it's just "Is there
- 7 smoke or not?" It is not one we frequently use. We
- 8 typically do Method 9 'cause it's more formalized to the
- 9 standards. But Method 22 is another EPA method for
- 10 smoke observance.
- 11 Q. And does the Department use Method 22?
- 12 A. Not that I'm aware. We are all Method 9
- 13 certified for enforcement, so...
- 14 Q. So you're not aware of any situation where the
- 15 Department uses Method 22?
- 16 A. Fugitive emissions or roadway emissions, there
- 17 are potentialities where we could use Method 22, but
- 18 Method 9 is by far more common.
- 19 Q. Okay. Are you certified in Method 22?
- 20 A. No.
- 21 Q. Do you know if any of the Allegheny County Health
- 22 Department inspectors are?
- 23 A. I don't know if there's any certification for
- 24 Method 22.
- 25 Q. Okay. Do you know if any of the inspections that

1 were used as part of the enforcement order used Method
2 22?

3 A. They did not.

4 Q. The Allegheny County Health Department inspectors
5 follow the methods in the source test manual?

6 A. That's the manual, yeah.

7 Q. And the source test manual's method for
8 inspecting coke batteries is different from Method 303?

9 A. Yes.

10 Q. And you use both the Keramida Method 303
11 inspections and the County Health Department inspections
12 for compliance with Article 21?

13 A. Correct.

14 Q. And why is it that you do that?

15 A. Because it's inspection data that we have that we
16 are able to use to compare to the Article 21 standards
17 for enforcement purposes or for inspection purposes,
18 compliance purposes. Occasionally, like, for example,
19 the Battery B shed side doors, for consistent
20 enforcement, we enforce their inspections the same way
21 as ours have been.

22 So we will take that data and then transfer it to
23 the way that our inspections are done and the way that
24 we are enforcing our inspections, if that's clear.

25 Q. It's not. Can you explain how you transfer the

1 it's supposed to be done. If there is, I guess,
2 discrepancies, we would use the — sorry. I guess, can
3 you ask the question again?

4 Q. Yeah. Was it the county's position that
5 inspectors do not have to use the source test manual for
6 inspection data that can be used to enforce the Article
7 21 standards?

8 A. Oh, correct.

9 Q. And so the county's position is it does not have
10 to follow the source test manual to enforce Article 21
11 standards?

12 A. Correct.

13 Q. And who gets to make that decision as to whether
14 or not to follow the source test manual?

15 A. I'm assuming it could be multiple of us. I mean,
16 if an inspection is done that shows leaks that would be
17 a violation, the regulation says that that is an
18 exceedance of that condition. So we would use that
19 regulation.

20 Q. And as chief of the enforcement section, have you
21 made the decision to use inspection data that doesn't
22 follow the source test manual for enforcement of Article
23 21 standards?

24 A. I've continued to, yeah. It was done before I
25 got in the position also.

1 data from the Keramida inspectors who use it for Article
2 21 enforcement?

3 A. We take the data from their inspections. If they
4 list a number of leaks, for example, we would count
5 those number of leaks and compare those number of leaks
6 to our standards.

7 Q. And the Keramida inspectors aren't using the
8 source test manual method for their inspections?

9 A. No, they are not.

10 Q. And is it the Department's position that the
11 Department can enforce Article 21 standards based on
12 inspections that don't use the source test manual
13 methods?

14 A. Yes.

15 Q. And why is that?

16 A. 'Cause it's evidence of a violation. The manual
17 is just a guidance; the regulation is what has to be
18 followed.

19 Q. And so is it the Department's position that it
20 doesn't have to follow the source test manual to find
21 violations of the Article 21 regulations?

22 A. If it's — it goes by the regulation. If you —
23 if somebody sees 12 leaks of a standard, they would
24 compare that to the regulation.

25 The manual is more of a procedure policy of how

1 Q. Okay. And you've made that decision as part of
2 the enforcement that occurred in the enforcement order
3 that is the subject of this appeal?

4 A. Correct.

5 Q. Do you know if the Keramida inspectors have the
6 ability to not follow Method 303?

7 A. There might be a deviation from the everyday
8 condition. Well, there's some sort of deviation if they
9 are unable to get inspections on a daily basis due to a
10 battery outage, shutdown, something like that. There
11 are conditions to not meet the requirements of everyday
12 inspections. But following the method, they do follow
13 Method 303 for their inspections.

14 Q. And are they allowed to not follow that method if
15 they choose to?

16 A. They are not.

17 Q. And does U.S. Steel have to follow the source
18 test manual?

19 A. In what sense?

20 Q. Are there requirements for regulated sources that
21 are contained in the source test manual?

22 A. You mean for stack testing and other portions
23 other than coke ovens?

24 Q. Correct.

25 A. Yeah, they would follow the manual. The manual

1 refers to EPA guidance a lot of the time. So if there
2 is EPA guidance that overrides the manual, they would
3 use the more current EPA guide.

4 Q. And in one of those situations where there is
5 sections in the manual that apply to U.S. Steel, can it
6 pick and choose which ones it follows?

7 A. That makes it sound very arbitrary. But if there
8 is something that is better than the source testing
9 manual, they would follow the more recent version; not
10 the source testing manual but the more recent guidance
11 or EPA requirements.

12 Q. Okay, I'm not sure I understand. Does U.S. Steel
13 have to follow the source test manual?

14 A. Not if there's something better out there.

15 Q. So it can pick and choose when it follows the
16 source test manual?

17 A. No, you are going back to where it's pick and
18 choose again. That sounds arbitrary. If you have a
19 condition in the source testing manual that has a date
20 of 2008 that this was created and then later on in 2016
21 the EPA has a more recent document that hasn't been put
22 into the manual, they would have to follow the more
23 recent document.

24 Q. And does U.S. Steel get to make that decision on
25 its own?

1 303, they use 30-day average calculations?

2 A. For compliance with the NESHAP, yes.

3 Q. Okay. None of the alleged violations in the
4 enforcement order use 30-day averages?

5 A. Correct.

6 Q. Every Method 303 inspection during the penalty
7 period was compliant?

8 A. With the Method 303?

9 Q. With the NESHAP.

10 A. Yeah, with the NESHAP.

11 Q. Every Method 303 inspection that used the 30-day
12 average during the penalty period was compliant?

13 A. Yes.

14 Q. When an inspector reads opacity, there's some
15 subjectivity that's involved; is that fair?

16 A. Correct, yeah, the method that describes how, but
17 yes.

18 Q. There's some room for error when humans are
19 reading opacity; is that fair?

20 A. Correct.

21 Q. Did you adjust the violations or penalty in any
22 way based on the accuracy of having humans read opacity?

23 A. No.

24 Q. After you review inspection data that you get
25 from either county inspectors or from Keramida

1 A. I don't believe. No, they wouldn't. The most
2 recent would have to be used as long as all the parties
3 are aware of its existence.

4 Q. And so any time the source test manual references
5 an actual regulation, the actual regulation has to be
6 followed?

7 A. Yeah.

8 Q. Okay. And in those situations, neither the
9 Department nor U.S. Steel can deviate from the
10 regulation?

11 A. As long as everybody is aware of it. If the
12 situation exists where neither party knows it's been
13 revised, then they wouldn't know it's there. In that
14 case, they would deviate from that newer version. But
15 if they are aware of that newer version, they would have
16 to follow the newer version.

17 Q. And where is that written down?

18 A. Where is what written down?

19 Q. That policy that you described.

20 A. I'm sure it's not.

21 Q. If the source test manual references a
22 regulation, both the Department and U.S. Steel have to
23 follow that regulation?

24 A. Yes, as long as it's the most recent one, yeah.

25 Q. The Keramida inspectors, when they follow Method

1 inspectors, is that when you decide whether or not it's
2 appropriate to deviate from the source test manual?

3 A. Well, if the engineer does the initial review of
4 the inspections but deviates from the source test
5 manual, we have to follow the regulation. It overrides
6 the manual. If the regulation and the manual disagree,
7 you have to agree with the regulation about the manual.

8 Q. And so when you look at results from either one
9 of your engineers after they reviewed inspection data,
10 or if you yourself are reviewing inspection data, is
11 that when you would decide whether or not it was
12 appropriate to deviate from the source test manual?

13 A. Or it would be in the spreadsheet itself. But
14 yeah, I mean, that's — before we would enforce
15 anything, we would check that, yeah.

16 Q. Okay. So after the inspections are done but
17 before an enforcement action is taken is when you would
18 decide whether or not to deviate from the source test
19 manual?

20 A. Only — well, if the regulation is different than
21 the manual, like I said, you have to follow the
22 regulation, so yeah.

23 Q. Can you look at Exhibit 22, please?

24 A. Still in Volume 1?

25 Q. Yes.

1 A. 22 you said?
 2 Q. Yes. Are you familiar with this document?
 3 A. Yes.
 4 Q. This is the source test manual?
 5 A. Correct.
 6 Q. This is the most recent version of the source
 7 test manual?
 8 A. As far as I'm aware.
 9 Q. Can you look at Chapter 109? That's about
 10 three-fourths of the way through the document.
 11 A. Okay. I'm still looking for it.
 12 Q. That's okay, I'll wait for you. It says "Chapter
 13 109." It would be a page on the right-hand side.
 14 HEARING OFFICER SLATER: Coke oven inspection
 15 procedures?
 16 MR. DELUCA: No, back one page.
 17 MR. DAUSCH: Yeah, back.
 18 HEARING OFFICER SLATER: Oh, I gotcha.
 19 BY MR. DAUSCH:
 20 Q. Are we all on the page that says "Chapter 109" on
 21 the right-hand side?
 22 A. Yes.
 23 Q. Mr. DeLuca, is this the chapter that is used by
 24 the Allegheny County Health Department inspectors to do
 25 their observations of the batteries at Clairton?

1 A. Yes.
 2 Q. And it says, "Determination of visible emissions
 3 from coke oven batteries, United States Environmental
 4 Protection Agency, 40 CFR 61, Appendix B, Method 109 as
 5 modified by the Allegheny County Health Department Air
 6 Quality Program;" is that correct?
 7 A. That is what it says, yes.
 8 Q. And before issuing the enforcement order, you
 9 never reviewed Method 109; is that fair?
 10 A. Not specifically for the enforcement order, no.
 11 Q. Okay. And the Department didn't have a copy of
 12 Method 109 in this building; is that fair?
 13 A. Yeah, I don't know what Method 109 is.
 14 Q. Okay. And you didn't know what that Method 109
 15 was when you issued the enforcement order?
 16 A. Correct.
 17 Q. And as far as you know, there is no training for
 18 any of the Allegheny County Health Department inspectors
 19 on EPA Method 109?
 20 A. Correct.
 21 Q. And as far as you know, the Allegheny County
 22 Health Department inspectors, because there was no
 23 training, weren't following EPA Method 109; is that
 24 fair?
 25 A. If that exists, they weren't following it.

1 Q. Okay. Let's look at Exhibit 33, and hold your
 2 spot on the source test manual 'cause we'll come back to
 3 it.
 4 A. Which exhibit again?
 5 Q. 33, please. Do you see in the top left corner of
 6 Exhibit 33 it says, "Environmental Protection Agency, 40
 7 CFR, Part 61"?
 8 A. Yes.
 9 Q. Is that the same reference that's in the
 10 Allegheny County source test manual, Chapter 109?
 11 A. Sorry, which one is the source testing manual?
 12 Q. Yeah, it's Exhibit 22.
 13 A. Yeah, except for the Appendix B, 109, it is 40
 14 CFR, 61.
 15 Q. Okay. Let's go back to Exhibit 22. If we go to
 16 the next page on Exhibit 22, there are actual paragraphs
 17 related to the different emissions points that are
 18 observed by the county inspectors; is that correct?
 19 A. Correct.
 20 Q. Section C relates to door leaks; is that correct?
 21 A. Yes.
 22 Q. It says, "Observations of door area emissions
 23 shall be made from a minimum distance of 25 feet from
 24 each door;" is that correct?
 25 A. Correct.

1 Q. And if we look on the next page, there's a
 2 requirement that the observer observe both sides of the
 3 battery; is that correct?
 4 A. Is that in that first paragraph?
 5 Q. Yes.
 6 A. "The observer shall continue this..."
 7 COURT REPORTER: I'm sorry, if you're going to
 8 read it —
 9 MR. DELUCA: Sorry, I won't read it. Yes, it
 10 says it.
 11 BY MR. DAUSCH:
 12 Q. Okay. So there's a specific requirement in the
 13 source test manual that inspectors look at both sides of
 14 the battery during a door-leak inspection?
 15 A. Correct.
 16 Q. Okay. And we know that the Allegheny County
 17 Health Department inspectors do not look at both sides
 18 of the doors on the B battery, correct?
 19 A. Correct.
 20 Q. And the Department enforces Article 21 in door-
 21 leak regulations even though the inspectors only look at
 22 one side?
 23 A. Well, we don't count the other side at all. It
 24 basically counts as a "not observed" even in the
 25 calculation.

1 So whenever the ACRD inspectors or Karamida
2 inspectors do their inspection, the entire coke side of
3 the battery is considered as "not observed." So the
4 denominator is just the pusher-side doors.

5 Q. Let me ask it again. The Allegheny County Health
6 Department inspectors don't observe both sides of the B
7 battery; is that correct?

8 A. Correct.

9 Q. And under the source test manual, they are
10 required to, if you follow the terms of the source test
11 manual?

12 A. Yes.

13 Q. There are no exceptions in the source test
14 manual; is that fair?

15 A. I don't see any.

16 Q. Okay. And even though the Allegheny County
17 Health Department inspectors only look at one side of
18 the B battery, the Department still issues violations
19 related to the B battery doors; is that correct?

20 A. I mean, on the sheet, it has "doors obstructed
21 from view." I don't know. This might go back to your
22 previous question.

23 But on the denominator it says, "Minus the number
24 of door areas obstructed from view." So they're all
25 obstructed because of the shed. So that's -- we don't

1 test manual to find a violation of Article 21?

2 A. Yeah, we don't read under the shed, so yeah.

3 Q. The very last sentence in that paragraph on the
4 right page -- the very last sentence in Section C,
5 Doors, it says, "Compliance with this section shall be
6 calculated by application of the following formula,
7 which excludes two door areas representing the last oven
8 charged from the numerator and obstructive door areas
9 from the denominator;" do you see that?

10 A. Yes.

11 Q. Okay. And the source test manual has a
12 compliance calculation that shall be used according to
13 the source test manual, correct?

14 A. According to the source testing manual, yes.

15 Q. The Department doesn't follow this calculation?

16 A. At this point we are, 'cause we decided to use --
17 based off the meeting with U.S. Steel last year, we went
18 back to subtracting two door leaks at all times.

19 Q. So it is your testimony that the Department does
20 follow the calculation that is contained in the source
21 test manual for door leaks?

22 A. The portions of it -- the 10 percent or less is
23 no longer relevant. So ignoring that portion of it, we
24 do count the number of door areas with visible
25 emissions. We are currently subtracting off two of

1 count the shed side in addition to the 25 foot.

2 Q. And so the Department finds violations of Article
3 21 even in situations where its inspectors don't inspect
4 both sides of the battery?

5 A. Yeah, if there are enough leaks on the pushing
6 side, yes.

7 Q. And is this one of those situations where the
8 Department chooses not to follow the terms of the source
9 test manual?

10 A. Yes. Well, we don't follow -- we follow the
11 source testing manual for the 25 feet. That's why we
12 don't observe underneath the shed.

13 But we aren't following Article 21 in the sense
14 that we should be observing both sides. We are
15 following the source testing manual to give U.S. Steel
16 a little bit more leniency on that 25 foot underneath
17 that shed.

18 Q. Let me back up.

19 A. Okay.

20 Q. The Department will find a violation of a door-
21 leak standard even though it doesn't follow the source
22 test manual as it's written?

23 A. Yes.

24 Q. That's one of the situations where the Department
25 has determined that it doesn't need to follow the source

1 those before we got anywhere for enforcement.

2 And then the denominator with the operating
3 ovens, we just subtract the non-operating ovens and we
4 subtract the door areas obstructed from view.

5 Q. But you don't include the last piece of the
6 calculation?

7 A. The door areas obstructed from view are
8 subtracted off the bottom if a pushing machine or
9 something is in the way blocking the inspectors.

10 Q. The calculation says, "Ten percent or less is
11 compliance;" is that correct?

12 A. Yeah, we don't follow that 'cause that standard
13 no longer applies. That was for the older batteries.
14 The newer standards are more stringent than that.

15 Q. And so is that another situation where the
16 Department will enforce Article 21 but not follow the
17 source test manual as it's written?

18 A. Yes.

19 Q. If the Department followed the source test manual
20 as it's written, there would be significantly less door-
21 leak violations; is that fair?

22 A. The standard doesn't apply anymore; but using it,
23 yeah, there would be less leaks.

24 Q. Significantly less?

25 A. I don't know.

1 Q. Well, let's look at your Exhibit 14. Will that
2 tell us?

3 A. I don't know what 14 is. Let's find out.

4 HEARING OFFICER SLATER: This is U.S. Steel 14?

5 MR. DAUSCH: Yes.

6 MR. DELUCA: Okay.

7 BY MR. DAUSCH:

8 Q. If the Department uses the compliance calculation
9 that shall be used pursuant to the source test manual
10 terms, how would that affect violations of door areas?

11 A. Using the 10 percent from the source testing
12 manual, the first quarter of 2018, there was one that
13 was over 10 percent.

14 And then in the fourth quarter of 2017, there
15 were zero that were over 10 percent.

16 And then the third quarter of '17, which weren't
17 initially counted, were all also less than 10 percent,
18 both of those.

19 Q. So one total violation?

20 A. Yeah, to an old standard, yes.

21 Q. Okay. So if the Department followed the source
22 test manual as it's written, there would only be one
23 door-leak violation in the entire enforcement order?

24 A. Yes.

25 Q. You mentioned a moment ago a mistake that was

1 testing manual for, obviously, subtracting off two doors
2 and not following the regulation for the second half of
3 '17. A couple of those doors were calculated per the
4 regulation and not the source testing manual.

5 Q. And which battery did that apply to?

6 A. Fifteen affected compliance, and 20 also had an
7 error but didn't affect compliance.

8 Q. All of the mistakes that occurred with respect to
9 the third quarter of 2017, those weren't mistakes that
10 U.S. Steel caused; is that fair?

11 A. Well, the violations were caused by U.S. Steel,
12 actually, but not the actual mistakes.

13 Q. Okay. The mistakes were either the Department or
14 Keramida?

15 A. Correct.

16 Q. And there were more Keramida mistakes?

17 A. Not in this one, no.

18 Q. Okay. Can you look at Exhibit 15?

19 A. Okay.

20 Q. This is an exhibit where there were more Keramida
21 mistakes, correct?

22 A. Yeah, this is the Battery 15 doors.

23 Unfortunately, these two that were part of the third
24 quarter were not initially incorporated, and then they
25 we were informed they should be incorporated and then we

1 made in the third quarter of 2017?

2 A. There were inspections that weren't initially
3 counted in the third quarter enforcement order which
4 should have been.

5 Q. That was a mistake from one of your engineers?

6 A. It was a combination, unfortunately. There was a
7 mistake on Keramida's side and on our internal side.

8 Q. Okay, explain the mistake on the Department's
9 side.

10 A. There were violations which simply didn't get
11 added in that were on the -- that should have been added
12 in.

13 Q. And why didn't they get added in?

14 A. Missed.

15 Q. Just overlooked?

16 A. The column wasn't -- yeah, they were just
17 overlooked and not put in.

18 Q. And do you know how that occurred?

19 A. Error in transcription, I guess. It was -- the
20 engineer had them on the draft sheet but they didn't
21 make it onto the final sheet. So they were all missed
22 and not put into the order.

23 Q. What was Keramida's mistake?

24 A. There was a calculation error with Battery 15 for
25 the doors whenever we went back to following the source

1 were informed they should not be again.

2 So, unfortunately, those two door leaks of
3 Battery 15, the third quarter, went both ways.

4 Q. So there were double mistakes?

5 A. It goes back to the original, yeah.

6 Q. And these mistakes are still in the enforcement
7 order that's the subject of this appeal?

8 A. The order as written, yes. This was found
9 September 20th, 2018, this e-mail here in '15, so that
10 would have been after the order was issued. So it
11 wasn't known until after the order was issued.

12 Q. And the Department didn't go back and fix the
13 enforcement order after these mistakes were found?

14 A. No. We informed -- I don't know how exactly it
15 was that the information was transferred, but because
16 it's under appeal, I don't know all the procedures on
17 how it has to be done. But we did find that error
18 afterwards and we have done the recalculation for
19 excluding those errors.

20 Q. Where is that?

21 A. I honestly couldn't tell you where it is right
22 now. I don't know if U.S. Steel has gotten a copy or
23 not.

24 Q. Can you pull out Exhibit 14, please? It probably
25 makes sense to take it out of the binder and use it

1 separately.

2 A. Okay.

3 Q. Exhibit 14 is all of the alleged violations that
4 are in the enforcement order, correct?

5 A. Yeah, this is what I sent over after, yes.

6 Q. Okay. So let's look back at Exhibit 15, which is
7 the e-mail from Keramida.

8 A. Okay.

9 Q. Okay, let's start at the very bottom e-mail. Can
10 you explain to us what's happening here?

11 A. Yeah. This is where Brian Harrington from
12 Keramida sent me an e-mail saying that -- he had called
13 me on the phone right beforehand saying that was a
14 formula error with the Battery 15 doors. He gave me an
15 attachment with what actually happened before and
16 afterwards, and these are the dates that were impacted
17 with compliance.

18 Q. And the formula error is because the Keramida
19 inspectors aren't using the source test manual to do
20 their inspections, correct?

21 A. That's not the cause of the error. The error was
22 that ACHD was enforcing as per the regulation in the
23 first half of 2017; and then somewhere around the middle
24 of 2017, we went back to the source testing manual to
25 always subtracting two doors.

1 in the enforcement order right now?

2 A. Yeah, 'cause we didn't go through a formal
3 modification, whatever it's termed, because it's under
4 appeal.

5 Q. Okay. And it looks like after you received this
6 e-mail on September 20th, 2018 that identified mistakes
7 on Battery 15, you received another e-mail saying that
8 there were mistakes for Battery 20; is that correct?

9 A. Yeah, the same day, yes.

10 Q. Okay. So the same day after the enforcement
11 order was issued, you received two e-mails from Keramida
12 about mistakes in their calculations, correct?

13 A. Well, not the day after the enforcement order was
14 issued but on the same day, September 20th, yes, we
15 received both.

16 Q. And did that concern you?

17 A. Yeah.

18 Q. And did you go back and do any QA/QC on the other
19 Keramida calculations in the enforcement order?

20 A. I had a phone call with Keramida and we went back
21 and looked at the background data at that point to see
22 where the error was, what created it.

23 And then they came forward afterwards with what
24 they are going to do with corrective actions so it
25 doesn't happen again. And as part of that, we did go

1 So the calculation error was in the formula where
2 it was subtracting only if it was the oven charged as
3 per the reg, not per minus two.

4 Q. And does the Department rely on Keramida to
5 determine compliance?

6 A. They provide the information to us and then we
7 determine compliance or not.

8 Q. Okay. And do you do any QA/QC on their
9 determinations of compliance?

10 A. Determinations of compliance, yes. The
11 background data is a lot harder to do. We get their
12 sheets and the monthly reports, and whatever data is in
13 the monthly report is what we were using. But checking
14 the background data lead into it.

15 Q. And so the Department did not check any of
16 Keramida's calculations for all of the mistakes that
17 were identified here and then put those in the
18 enforcement order?

19 A. Correct. We took the data from the sheets and
20 put them in the enforcement order and then we checked --
21 or the engineer checked the data in the -- versus what
22 we were putting in ours to make sure there was an
23 exceedance but not the background data that led to that
24 number.

25 Q. Okay. And these mistakes that Keramida made are

1 back to see if the calculations were done correctly.

2 Q. And so the Department itself went back through
3 all of the alleged violations in the enforcement order
4 and made sure that they were calculated correctly?

5 A. There were only a few of them that we checked,
6 specifically the ones listed here. But yeah, we checked
7 those.

8 Q. Okay. You only checked the ones that Keramida
9 identified as errors?

10 A. To be honest, I can't recall if I did more than
11 that or not.

12 Q. Okay. So you don't know if you went back and
13 rechecked Keramida's calculations after they identified
14 errors in two separate batteries?

15 A. I went back and rechecked them; I'm just not sure
16 to what extent.

17 Q. Okay. And if we look at Exhibit 14, which
18 includes all of the alleged violations, we would see
19 these violations that were really errors, correct?

20 A. I can check right now. They should be in there,
21 yes.

22 Q. So let's look at the very last page of Exhibit
23 14.

24 A. Okay.

25 Q. These are violations which were not initially

1 counted in the third quarter of 2017 but should have
 2 been counted, correct?
 3 A. Yes.
 4 Q. That's what it says?
 5 A. Yeah.
 6 Q. So these were errors that were missed originally?
 7 A. Correct.
 8 Q. And then there were more errors that Keramida
 9 identified in its e-mail which is Exhibit 15?
 10 A. Yes.
 11 Q. Okay. For example, the doors, the second alleged
 12 violation is from September 11th.
 13 A. Okay.
 14 Q. Do you see that?
 15 A. Yes.
 16 Q. That is alleged as a violation in this
 17 enforcement order, correct?
 18 A. Yes.
 19 Q. There is a penalty that was issued based on this
 20 alleged violation?
 21 A. Yes.
 22 Q. U.S. Steel has submitted a check into escrow for
 23 this alleged violation?
 24 A. Yes.
 25 Q. It's not actually a violation?

1 A. Well, that's what I said, as we went back through
 2 and recalculated what it should have been afterwards.
 3 But because of the appeal process, I don't know what it
 4 ended up. But the final of the million and some that is
 5 in the enforcement order is slightly incorrect because
 6 of a couple violations which are not.
 7 Q. Mr. DeLuca --
 8 A. Well, they are not enforced, sorry. They are
 9 still violations.
 10 Q. Let's look at the second page of Exhibit 14.
 11 A. Okay.
 12 Q. At the very bottom, there are alleged door
 13 violations from the first quarter of 2018. Do you see
 14 that?
 15 A. The very bottom -- the 52 is for high-opacity
 16 doors.
 17 Q. At the very bottom, it starts on the second page
 18 of the exhibit.
 19 A. Oh, I'm sorry, I was looking at the third page.
 20 Yes, 10412?
 21 Q. Correct.
 22 A. Okay.
 23 Q. 10412 starts the alleged door violations for the
 24 first quarter of 2018; is that correct?
 25 A. Yes.

1 Q. And it continues on to the next page, which is
 2 10413, correct?
 3 A. Yes.
 4 Q. And there are eight alleged door violations from
 5 the first quarter of 2018 in the enforcement order,
 6 correct?
 7 A. For the door leaking percentage, yes.
 8 Q. Okay. And we know that not all of those are
 9 actually violations, correct?
 10 A. I would have to go back and check. Yeah, 2/26 is
 11 listed here and that's listed in both of them, so yes.
 12 Q. Okay. So February 26th, which is on ACHD10413,
 13 is identified as a violation, correct?
 14 A. Yes.
 15 Q. U.S. Steel paid a penalty in escrow for that
 16 alleged violation?
 17 A. Yes.
 18 Q. And it's not actually a violation?
 19 A. Correct. And then it was --
 20 Q. March 5th --
 21 MR. WILLIS: Could you let him finish?
 22 MR. DELUCA: I wanted to expand a little on it
 23 too. There were a couple that weren't listed here that
 24 still were non-compliant, but they were non-compliant to
 25 a lower severity based off the ACHD's interpretation for

1 that minus two.
 2 So a couple of them were removed completely as
 3 non-violations that were initially violations -- well,
 4 enforced as violations.
 5 And then other ones had a decreased severity,
 6 which moved them down on the penalty scale. So even --
 7 there are a couple beyond here that were still listed as
 8 violations. We had to review them to see if the
 9 severity of those violations changed.
 10 BY MR. DAUSCH:
 11 Q. And so the county changed the severity of
 12 violations based on mistakes that Keramida made?
 13 A. That data came available and we used it, yeah, so
 14 we had to change them. I mean, if there is a mistake
 15 made and somebody tells me that it is incorrect, I
 16 typically want to correct it.
 17 Q. And are you saying that the Department found more
 18 severe violations?
 19 A. No. Because we were following Article 21
 20 previously and that's where the error came in on
 21 Keramida's spreadsheet, we were subtracting only the
 22 last over charged and then we were going to enforce it
 23 as to minus two. The severity on those violations
 24 decreased. So it may have gone from a major to a
 25 moderate, for example.

1 Q. Well, let's look back at ACHD10413 where there
2 are door leak violations alleged from the first quarter
3 of 2018.

4 A. Okay.

5 Q. Do you see March 5th?

6 A. Yes.

7 Q. That's alleged as a violation?

8 A. Correct.

9 Q. And U.S. Steel paid a penalty into escrow for
10 that alleged violation?

11 A. Correct.

12 Q. That's not a violation?

13 A. It's not enforced as a violation. It still is a
14 non-compliant condition, but because we are currently
15 enforcing as per the manual because of our agreement
16 with U.S. Steel, it's a violation that wouldn't have an
17 associated penalty.

18 Q. Isn't this one of the dates that Keramida said
19 was a mistake and there wasn't actually a violation?

20 A. Yeah, correct, but that is using that
21 interpretation. It's still non-compliant with Article
22 21. It just wouldn't be enforced as to the way ACHD is
23 currently doing it.

24 Keramida, in their e-mail, wrote, "not in
25 compliance to in compliance" because of the way that we

1 minus two. But in reality, it still is a violation of
2 Article 21.

3 Q. Well, Keramida says that its mistake moved this
4 date to in compliance?

5 A. Correct.

6 Q. Is Keramida mistaken about its mistake?

7 A. The terms used there are "not in compliance" and
8 "in compliance," and that's based off of what we have
9 told them what the interpretation is.

10 Q. Does the Department just pick and choose what it
11 wants to follow for violations?

12 A. No.

13 Q. So the March 5th date --

14 A. I realize it is complex, but yeah.

15 Q. The door leak that Keramida says was a mistake
16 that should be in compliance, is that considered
17 compliant?

18 A. We are -- this is where it gets really confusing.
19 I understand your confusion with it.

20 It is a violation of Article 21. The number of
21 leaks observed, subtracting out the last oven charged,
22 is a violation of Article 21; however, the Department is
23 currently following that manual for the minus two leaks.
24 So subtracting those two leaks out, that moves it to in
25 compliance, which is what Keramida stated here.

1 are enforcing it. But the reality is that that still is
2 a non-compliant condition based off of Article 21 that
3 we aren't enforcing.

4 Q. So is it a violation or not a violation?

5 A. It's a violation.

6 Q. And should it be in the enforcement order or
7 shouldn't it be?

8 A. In my opinion, it should be.

9 Q. It should be?

10 A. But it's not.

11 Q. And your opinion is that for the enforcement
12 order, you should change the agreement you have with
13 U.S. Steel to use calculations consistent with the
14 source test manual?

15 A. No, no. I think we should be following the
16 regulation if the regulation and the manual disagree.
17 Currently, for this door -- for this minus two doors, we
18 are following the manual.

19 My opinion is we would be following the
20 regulation. It's still a violation, this February --
21 I'm sorry, March 5th, because it's 6.67 percent leaking
22 as per the regulation. That's a non-compliant
23 condition; however, because we are subtracting two at
24 all times from the leaks, that knocks it down below the
25 compliance standard and makes it compliant with that

1 So that's what they're referring to, I believe.
2 But not in compliance refers to that of the -- the way
3 we are interpreting it to in compliance off that
4 interpretation.

5 Q. So the way the Department is interpreting
6 compliance today, is this a violation or not a
7 violation?

8 A. The basis of your question is different. It's a
9 violation; we are not enforcing it.

10 Q. So the way the Department is interpreting
11 violations or compliance today, this should be compliant
12 and not in the enforcement order?

13 A. The way we are enforcing it, it should not be in
14 the enforcement order.

15 Q. So we can take that one out?

16 A. Yeah.

17 Q. Okay.

18 A. It's still a violation; we just aren't enforcing
19 it right now.

20 Q. What about the one below it, March 8th?

21 A. Again, like I said, I redid this calculation with
22 all these changes in it somewhere. March 8th is in the
23 same category as March 5th.

24 Q. So is March 8th a violation or not a violation?

25 A. It's in the same location as the March 5th where

1 it's a violation which ACHD is not penalizing.

2 Q. So the March 5th calculation is incorrect; is
3 that correct?

4 A. The calculation listed there is based off of
5 Article 21.

6 Q. And that's incorrect based on the agreement that
7 the Department has with U.S. Steel?

8 A. Correct.

9 Q. Okay. So that should come out?

10 A. Yes.

11 Q. How many did we take out of the first quarter of
12 2018, three?

13 A. Again, I have to verify the accuracy of it, but
14 there are three dates listed in the first quarter of
15 2018, yeah.

16 Q. That should come out?

17 A. Again, I want to verify before I confirm that,
18 but it appears that way.

19 Q. Well, look at Keramida's e-mail.

20 A. This isn't everything. I just can't do it from
21 this. I would rather go beyond this to confirm it under
22 oath for certainty. Yes, there are three dates listed
23 here that should have been changed.

24 Q. Are there more mistakes that we don't know about?

25 A. Well, all of the Battery 15 was subtracting those

1 Keramida's calculations?

2 A. No, that's -- again, I don't remember the extent
3 that I went back to. I know I checked the ones that
4 were under note with that of Battery 15 and 20, I
5 checked those specific ones. I don't remember how much
6 was done beyond that.

7 Q. You know how to do the door-leak calculations per
8 the source test manual; is that fair?

9 A. Using the equation of the source testing manual,
10 I can follow the equation.

11 Q. Why don't we look at the page that is ACHD10415?

12 A. Okay.

13 Q. And there are door-leak violations on this page,
14 correct?

15 A. Yes.

16 Q. Let's look at the one that is at the very bottom.
17 There's a November 17th door-leak violation, correct?

18 A. Yes.

19 Q. And that's for the C battery?

20 A. Correct.

21 Q. And Keramida calculated that at 3.01 percent?

22 A. I don't know if that was Keramida or ACHD.

23 Q. Can you look at Exhibit 62 and keep this page
24 out?

25 A. Is that in Volume 2?

1 two. So it's the same time period that had the same
2 issues.

3 Keramida brought to our attention the ones where
4 the compliance changed. The severity of those
5 violations may have changed also but still have been a
6 violation. There would not be ones beyond that time
7 period.

8 Q. So three of the eight door-leak violations in the
9 enforcement order should be changed from non-compliant
10 to compliant?

11 A. We are enforcing it, yes.

12 Q. Three of eight?

13 A. Yes.

14 Q. So what's the Department's compliance percentage
15 on issuing door penalties correctly?

16 A. I think that's sarcastic. But I'm not sure.
17 What do you mean?

18 Q. What's that compliance percentage?

19 A. Five over eight?

20 Q. Yeah.

21 A. Sixty-seven and a half.

22 Q. Do you consider that to be good?

23 A. No. I don't like when mistakes are made either.

24 Q. And am I correct that the Department didn't go
25 back and check to see if there were more mistakes with

1 Q. That would be in Volume 2.

2 A. So you want me to go to this November 17th date?

3 Q. Yeah, it would start on page 22 of Exhibit 62.
4 HEARING OFFICER SLATER: Page 22 you said?

5 MR. DAUSCH: Yes.

6 MR. DELUCA: Is that 3737?

7 BY MR. DAUSCH:

8 Q. Or I'm sorry, Exhibit -- it is page 20 of Exhibit
9 62.

10 A. Okay.

11 Q. And then I want to walk through these documents
12 and make sure we understand what they are. If we start
13 on Exhibit 62, page 20, which has Bates label
14 ACHD003758, are you at that document?

15 A. Yes.

16 Q. This is a handwritten inspection sheet that was
17 prepared by Keramida?

18 A. Well, this is just a daily summary of what the
19 inspectors write when they get back to their trailer,
20 but yes.

21 Q. Okay. And can we tell the number of leaks that
22 were found on the C battery on November 17th, 2017?

23 A. I never used this for enforcement. It looks like
24 there's seven, but I wouldn't use that as the final one
25 'cause that is hand copied afterwards. That is not QAQC

1 or anything.

2 Q. Would you use the document that's on page 21 that
3 is ACHD3736?

4 A. Yeah, that's more of what the engineers start
5 with.

6 Q. Okay. And does this document show the November
7 17th, 2017 C battery door-leak inspection?

8 A. Yeah. It has seven leaks.

9 Q. Okay. And so using the calculation that's in the
10 source test manual, can you explain to us how we
11 determine compliance?

12 A. So not following the regs but following the
13 source testing manual?

14 Q. Following the source test manual. Which is what
15 the agreement is with U.S. Steel; is that correct?

16 A. Yeah, I just wanted to make sure. So what we
17 would do there is we would take the seven number of
18 leaks and then subtract off the two to give you five
19 leaks for Battery C.

20 And then the denominator would be the number of
21 observed doors. So November 17th has zero non-observed
22 doors. So they would take the denominator there of 168.

23 Q. Okay. And so it would be 5 divided by 168?

24 A. Yes.

25 Q. Can you -- here is a calculator.

1 Q. Well, let's do the math and see if it matches
2 their numbers. Instead of 5 divided by 168, the new
3 calculation would be 5 divided by 166. What does that
4 give you?

5 A. 3.01.

6 Q. 3.01?

7 A. Yeah.

8 Q. What's in your alleged violation?

9 A. 3.01.

10 Q. 3.01 is a non-compliance?

11 A. Yes.

12 Q. The way you did the calculation was 2.97,
13 correct?

14 A. The 5 over 168 is 2.97.

15 Q. That is compliant?

16 A. Yes, 5 -- well, 5 over 168 is less than 3, so
17 yes.

18 Q. Another mistake?

19 A. Potentially. I just say "potentially" because
20 I'm not certain of all the background data that went
21 into 301; but based off of that information here, yes.

22 Q. And you are not certain because after Keramida
23 identified at least two batteries where there are
24 mistakes, the Department didn't go back and check the
25 other calculations; is that fair?

1 A. 2.976.

2 Q. 2.976?

3 A. Yeah.

4 Q. What do you have listed on Exhibit 14?

5 A. 3.01. That's why I wanted to see more of the
6 background, to see where that 3.01 came from. But using
7 this here, 5 over 168, what may have happened is the
8 denominator may have changed one or two. I'm not
9 positive.

10 Q. The calculation that you did, 2.97 is compliant?

11 A. Yes, it's definitely one that is very close to
12 the standards. Do I need the calculator?

13 Q. Yeah, keep it. If you look at the next page, 22,
14 at the footnote, does that help you?

15 A. Excludes the two door errors less than charged
16 and the total number of doors observed and two door
17 leaks. Okay, so that's where their --

18 Q. That's another mistake?

19 A. I'm not sure what this refers to. Sorry. I'm
20 just trying to review this first right now, which makes
21 it more difficult. I don't think I could speak to that
22 without knowing more, taking more time.

23 Q. Keramida is subtracting two from the numerator
24 and denominator, aren't they?

25 A. That's what it sounds like they're doing.

1 A. I wouldn't have done that check.

2 Q. If you look back at --

3 MR. DAUSCH: Is it a good time to take a break
4 now?

5 HEARING OFFICER SLATER: Sure, we can take our
6 afternoon break.

7 Let's go off the record.

8 (The hearing recessed at 2:30 p.m. and reconvened
9 at 2:41 p.m.)

10 HEARING OFFICER SLATER: All right. Well, let's
11 try to get this done as soon as we can. I don't know
12 how long this will take.

13 BY MR. DAUSCH:

14 Q. Mr. DeLuca, I want to refer you back to Exhibit
15 14, U.S. Steel 14. Look, again, on the page that is
16 Bates labeled ACHD10415.

17 A. Okay.

18 Q. Do you see the door violation that's alleged for
19 November 3rd?

20 A. Yes.

21 Q. Okay. And that's for the B battery, correct?

22 A. Yes.

23 Q. Can you keep this out and look at Exhibit 62 on
24 page 18?

25 A. Okay.

1 Q. And can you tell us what Exhibit 62, page 18 is?

2 A. That's a daily inspection sheet from ACHD for
3 November 3rd on B battery for doors.

4 Q. And this is an inspection of doors on this date
5 that was performed by an Allegheny County Health
6 Department inspector?

7 A. Yes.

8 Q. And this inspection only included one side of the
9 battery; is that correct?

10 A. Correct.

11 Q. There was only inspection on the push side and
12 not on the coke side, correct?

13 A. Yes.

14 Q. And following the source test manual as it's
15 written, this is not a proper procedure, correct?

16 A. Correct.

17 Q. Okay. Is there a violation alleged in the
18 enforcement order based on this inspection from November
19 3rd, 2017?

20 A. Yes.

21 Q. And is this a situation where the Department
22 issued a violation and didn't follow the source test
23 manual as it's written?

24 A. Correct.

25 Q. Can you look again on U.S. Steel Exhibit 14,

1 Q. Okay. And how many total doors on operating
2 ovens were observed?

3 A. One twenty.

4 Q. Okay. And can you do that calculation again
5 based on the formula that's in the source test manual
6 and tell me what you get?

7 A. So you are doing the 8 leaks over — 8 minus 2,
8 so you have 6 over 120, 5 percent.

9 Q. Five percent. What's contained in the
10 enforcement order?

11 A. 5.08.

12 Q. Five percent would be compliant, correct?

13 A. I'm not positive. I don't know if it's five or
14 greater than five. I don't — I don't know.

15 Q. Okay. If it is greater than five, would it be
16 compliant?

17 A. Yeah, if it would be five or less, it would be
18 compliant.

19 Q. Okay. Do you know what the answer is?

20 A. No, I don't know if the standard is five or
21 greater or greater than five.

22 Q. If the standard is greater than five, then this
23 should be compliant instead of non-compliant; is that
24 fair?

25 A. Yes, if it's allowed to be five or less, then it

1 ACHD10415, at October 18th?

2 A. Okay.

3 Q. For doors, do you see that?

4 A. Yes.

5 Q. There is an alleged violation, 5.08 percent,
6 correct?

7 A. October 18th, yes.

8 Q. Okay. Can you look at Exhibit 62 on page 12?

9 A. Okay.

10 Q. And Exhibit 62 on page 12 is a handwritten
11 inspection sheet from October 18th, 2017 from Keramida,
12 correct?

13 A. Well, not an inspection sheet; but it is a
14 handwritten sheet from them, yes.

15 Q. Okay. And the handwritten sheet that reflects
16 inspections that were done on that date?

17 A. Yeah, not QC, but yes.

18 Q. Okay. And how many Battery 13 door leaks were
19 found that day?

20 A. Battery B? I'm sorry, which battery is this?
21 Battery 13 on October 18th, from this sheet, it looks
22 like -- it's hard to read, but it looks like eight.

23 Q. Okay. If you look at page 13 on Exhibit 62, does
24 that tell you how many door leaks were observed?

25 A. October 18th, Battery 13, yeah, eight.

1 would be compliant. Again, I didn't do these
2 calculations either, but...

3 Q. Right, and if the standard was allowed to be five
4 or less, this would be another mistake?

5 A. It would be, based off of that minus two; but
6 yes, that's how we are enforcing it, so yes.

7 Q. I want to go back to the source test manual,
8 which is Exhibit 22, and look again at Chapter 109.

9 HEARING OFFICER SLATER: 109?

10 MR. DAUSCH: Correct.

11 MR. DELUCA: Okay.

12 BY MR. DAUSCH:

13 Q. Chapter 109D provides the county's procedure for
14 inspecting charging ports; is that correct?

15 A. D, yes.

16 Q. And the very last sentence of that procedure
17 says, "Compliance shall be determined by application of
18 the following formula..." and there is a formula,
19 correct?

20 A. Yes.

21 Q. And the Department didn't apply the formula as
22 written in the source test manual for the enforcement
23 order; is that fair?

24 A. I forget. There are some standards that are
25 still — I think some batteries still have 2 percent

1 lead leaks, but there are definitely ones that are less
2 than two, more stringent.

3 Q. So the Department did not apply the charging
4 ports provisions in the source test manual as they are
5 written in the enforcement order; is that fair?

6 A. There were times we did not, yeah, correct.

7 Q. Okay. And had the Department applied the
8 charging ports procedure that's in the source test
9 manual as it's written, there would be less violations
10 in the enforcement order?

11 A. As long as there were actual inspections from 2
12 to either .6 or 1 percent, yes, they would be less.

13 Q. And can you tell that by your Exhibit 14?

14 A. Going back to 14, yeah, there are some here less
15 than 2 percent.

16 Q. Okay. So if the Department had followed the
17 source test manual for charging ports, there would be
18 less violations than there are in the enforcement order?

19 A. Yes.

20 Q. And are you able to tell how many less?

21 A. Well, I can tell which ones are less than two,
22 but 10417 sheet has 11 lids of, which three of them are
23 greater than 2 percent.

24 Q. And so if the Department had applied the source
25 test manual as written charging ports, there would only

1 A. Yes.

2 Q. And the Department did not apply this formula for
3 compliance in the enforcement order, correct?

4 A. Not on all batteries.

5 Q. Had it applied the formula that's in the source
6 test manual, there would be less violations in the
7 enforcement order, correct?

8 A. Most likely. I will look through the data now;
9 but yes, there would be less.

10 Q. Chapter 109A is charging, correct?

11 A. Yes.

12 Q. And there are charging violations alleged in the
13 enforcement order, correct?

14 A. Correct.

15 Q. Very last sentence of the charging section in the
16 source test manual says, "Compliance shall be determined
17 by summing the seconds of charging emissions observed
18 during each of the four charges," correct?

19 A. Yes.

20 Q. And so based on the terms of the source test
21 manual, four charges are supposed to be used for
22 compliance, correct?

23 A. The source testing manual says "four charges."
24 The older standard is four chargers for 75 seconds, and
25 the newer one is five at 55.

1 be three total violations?

2 A. For this quarter, for the fourth quarter of '17.

3 Q. Okay. How many total?

4 A. You mean in the other quarters?

5 Q. Yes, all together for the penalty period.

6 A. This is -- it's just an odd calculation because
7 it's not the regulation. But the first quarter of '18
8 has six listed in the order, of which two of them are
9 greater than 2 percent, and then the fourth quarter --
10 the third quarter of '17 doesn't have any lids.

11 Q. Okay. So how many less violations would there be
12 if the Department had followed the source test manual as
13 written?

14 A. Twelve.

15 Q. Twelve less violations?

16 A. If you followed the manual, yeah.

17 Q. Okay. I want to look back at Exhibit 22 and
18 Chapter 109 and now look at E, offtake piping.

19 A. Okay.

20 Q. Offtake piping goes on to the next page, correct?

21 A. Yes.

22 Q. And on the next page, there's a sentence that
23 says, "Compliance shall be determined by application of
24 the following formula..." and then there is a formula
25 for compliance, correct?

1 Q. And so the Department did not apply the source
2 test manual as written when it found violations that are
3 contained in the enforcement order; is that correct?

4 A. Correct.

5 Q. Okay. And had the Department applied the source
6 testing manual, there would be less violations for
7 charging?

8 A. I'm not certain on that one actually 'cause the
9 four charges -- if the first four charges were greater
10 than 55 seconds on those other batteries, it would still
11 be exceedances. So I'm not certain on that one. I
12 would have to go to the individual charging sheets.

13 Q. And so you're not sure if there would be less
14 violations for charging because the Department did not
15 use the source test manual as written, correct?

16 A. I'm not certain, no, because it's the fifth
17 charge -- because based off this, it would be each of
18 the four charges.

19 So if we are reading five charges, we would have
20 to take either one to four and two to five and add those
21 up and ignore the other one. So I don't know based off
22 the total summation.

23 Q. Okay. And just so we're clear, the Department
24 did not apply the source test manual as written for
25 charging?

1 A. For the batteries that have a standard of five at
2 55, it did not.

3 Q. There are alleged soaking violations in the
4 enforcement order; is that correct?

5 A. Yes.

6 Q. And on Exhibit 14, the page that's Bates labeled
7 ACHD10414, there are two soaking violations for January
8 of 2017; is that correct?

9 A. Yes.

10 Q. And can you keep that page out and look at
11 Exhibit 64 on page 3?

12 A. Okay, January 17th, okay.

13 Q. Is Exhibit 64 at page 3 the inspection sheet that
14 correlates to the January 17th alleged soaking
15 violation?

16 A. Yes.

17 Q. Okay. Exhibit 64, page 3 is a Department form
18 for observing soaking; is that correct?

19 A. Yes.

20 Q. Who created this form?

21 A. It may have been me. It may have been
22 secretaries. I'm not positive.

23 Q. Okay. Do you know when it was created?

24 A. No.

25 Q. This is the standard form that all of the county

1 A. That's for the 15-second increment for Method 9.

2 Q. And the way we read the form is you can see how
3 many seconds of visible emission opacity that was
4 recorded based on the row and the time that's associated
5 with that row; is that correct?

6 A. You would -- you'd -- typically, it's assumed to
7 be true. In this case, it's an instantaneous standard.
8 So the first line would lead to non-compliant. If
9 there's -- since they're not looking at it continuously,
10 the assumption is if you have the same opacity, then
11 it's occurring for that entire duration.

12 Q. And how does an inspector know when to start
13 recording opacity on one of these forms?

14 A. Typically, whenever they push.

15 Q. And how does an inspector know that?

16 A. You'd have to ask them. I don't know
17 specifically.

18 Q. Okay. There's no guidance or instructions that
19 inspectors have to know when to stop reading opacity for
20 soaking?

21 A. I think it's defined in Article 21, the soaking
22 process. And then they can -- they have been told they
23 can hear the ram movement of when the push actually
24 starts.

25 Q. And is it your testimony that Article 21

1 inspectors use for soaking; is that correct?

2 A. Right now, yes.

3 Q. On this form, there's a section for Method 9
4 readings; is that correct?

5 A. Yes.

6 Q. That's because Method 9 is used to read opacity?

7 A. Method 9, yeah, it's an opacity reading.

8 Q. And the EPA's Method 9 for reading opacity
9 requires a certification?

10 A. Yes.

11 Q. And are Allegheny County Health Department
12 inspectors certified in Method 9?

13 A. Yes.

14 Q. And on this form, there's a total of -- a
15 potential total of 21 readings; is that correct?

16 A. It's the first five minutes on this form. If it
17 goes beyond five minutes, they would extend it. I don't
18 know if it's 21 or not, but it probably is.

19 Q. Do you know why the form has a five-minute total
20 time period for observations?

21 A. It fits on one sheet.

22 Q. Is that the sole reason?

23 A. Yeah.

24 Q. Okay. Do you know why the different observations
25 are on 15-second intervals?

1 instructs Allegheny County observers as to when to stop
2 doing soaking observations?

3 A. I'd have to check. I know that soaking is the
4 pre-pushing process, so soaking would end whenever
5 pushing starts. I just don't know if it's specifically
6 in Article 21.

7 Q. If it's not in Article 21, do you know any other
8 document that a health inspector could look at to know
9 when to stop observing soaking?

10 A. I don't know if they have any requirement to stop
11 at a certain point.

12 Q. So you are not aware of any documents?

13 A. No. Because, I mean, once they see an
14 exceedance, they could stop, in theory, at that point.

15 Q. The Allegheny County Health Department
16 inspectors, do they make the final call on whether
17 inspections are compliant or non-compliant with the
18 regulations?

19 A. No.

20 Q. Who makes that call?

21 A. It starts with the engineer. The engineer
22 reviews it and determines compliance and then it comes
23 up to me for a secondary review.

24 Q. Okay. And as the enforcement chief, do you make
25 the final call on whether an observation is compliant or

1 non-compliant?

2 A. Most of the time, although I don't go into as
3 much detail of the background counts as the engineer
4 would.

5 Q. And do you make final calls on whether or not the
6 Department will deviate or not deviate from the source
7 test manual?

8 A. I could.

9 Q. Do you?

10 A. I suppose I do at times. And again, a lot of
11 this is carryover from the way it was done prior to my
12 starting.

13 Q. Okay. And so since you've started, you've been
14 the person whose made decisions on whether or not to
15 deviate from the source test manual when determining
16 compliance?

17 A. I don't know if that is even a conscious
18 decision. I typically refer more to the regulation than
19 the manual. I don't look at the source manual as much.
20 I know it exists and I know what it is, but I look more
21 at the regulation.

22 Q. And so sometimes, you unconsciously deviate from
23 the source test manual?

24 A. Potentially, yes.

25 Q. And sometimes do you consciously deviate from it?

1 would deviate or not deviate?

2 A. No.

3 Q. Is there any guidance document or policy within
4 the Department that you know of that tells you when it's
5 appropriate to deviate or not deviate from the source
6 test manual?

7 A. Just go back to the regulation. You keep going
8 back to the manual. It's the starting point. I start
9 with the regulation.

10 Q. Okay. So other than the regulation, you are not
11 aware of any written document or guidance that tells you
12 when you can deviate or not deviate from the source
13 testing manual?

14 A. No. I mean, the penalty policy may indirectly
15 say it, but no.

16 Q. Okay. I want to switch topics now and talk to
17 you about the 2016 Consent Judgment. You're familiar
18 with that document, correct?

19 A. Yes.

20 Q. This was negotiated between U.S. Steel and
21 Allegheny County's Health Department in March of 2016?

22 A. Yes.

23 Q. You were the enforcement chief at that time?

24 A. Yes.

25 Q. And you are one of the main individuals

1 A. There are times -- the doors, for example, I know
2 about that one.

3 Q. Okay. So sometimes you intentionally deviate and
4 sometimes you unintentionally deviate; is that fair?

5 A. I could. I don't know for certain if I do it
6 unintentionally or not.

7 Q. Okay. And is there any way for a company like
8 U.S. Steel to know in advance when you are going to
9 deviate and not deviate from the source test manual?

10 A. Follow the regulation.

11 Q. And the regulations will tell U.S. Steel when you
12 are going to deviate and not deviate from the source
13 test manual?

14 A. I'm not just going to willy-nilly ignore it. I
15 would have a reason for it. If the regulation overrides
16 the manual, I would look at the regulation, not the
17 manual.

18 Q. Okay. And if the regulation doesn't tell U.S.
19 Steel whether or not you are going to deviate from the
20 source test manual, is there any way to know?

21 A. Well, the regulation wouldn't say that, "Dean is
22 going to deviate it." Because, I mean, the regulation
23 would be the outstanding condition that would be
24 followed.

25 Q. Right. It wouldn't tell U.S. Steel whether you

1 responsible for enforcing the 2016 Consent Judgment?

2 A. Yes.

3 Q. But that has not expired yet, correct?

4 A. It has not.

5 Q. There's still a compliance determination that is
6 in existence for the 2016 Consent Judgment?

7 A. For the COMS, yes.

8 Q. The 2016 Consent Judgment applies not to just
9 COMS but also to pushing and soaking on batteries 1, 2
10 and 3, correct?

11 A. Correct.

12 Q. And there is a procedure for penalties related to
13 those things: COMS, pushing, soaking on 1, 2 and 3,
14 correct?

15 A. Yeah, it's stipulated penalties in that consent
16 judgment.

17 Q. And can we agree that the major focus of the 2016
18 Consent Judgment was the battery stacks or the COMS
19 compliance?

20 A. Yeah, and then the work that may or may not have
21 been required to achieve better compliance with them.

22 Q. And can we also agree that the most effective
23 surrogate that's actually measurable for environmental
24 performance at the site, the Clairton site, would be
25 battery stack opacity from the COMS?

1 A. That's the best way to look at the state of the
2 battery, not the way it's being operated but the actual
3 state of it, yes.

4 Q. Would you agree that that's the most effective
5 surrogate that's actually measurable for environmental
6 performance at the site?

7 A. The whole site is different than the stacks
8 themselves. That is the best surrogate for the stacks
9 themselves. That stack implies the condition of the
10 battery, of the walls in the battery itself. So based
11 off of that, yes.

12 Q. And is your testimony it's not the best
13 environmental surrogate for the whole site that's
14 measurable?

15 A. It's -- well, the problem is that you have -- a
16 condition of the site is different than operating the
17 site. The condition of the site, the CQMS are the best
18 surrogate for that because it tells you whether there
19 are holes in the walls between the ovens, and any leaks
20 would go into there and eventually would go out the
21 stacks.

22 But if you operate it, that's different than the
23 way that the CQMS exceedance would come in. So the
24 operations is more like the pushing, the charging, and
25 things like that as the operational side of things.

1 Q. And let me back up to my question. The most
2 effective surrogate that's actually measurable for
3 environmental performance at the site is battery stack
4 opacity; do you agree with that? Yes or no?

5 A. The best individual surrogate? Yes.

6 Q. There are no battery stack CQMS violations in the
7 enforcement order, correct?

8 A. No.

9 Q. I'm correct?

10 A. Correct, there's no CQMS.

11 Q. And since the -- the 2016 Consent Judgment has
12 resulted in major improvement in battery stacks; is that
13 fair?

14 A. In the compliance of those, yeah, there's a lot
15 less exceedance.

16 Q. Okay. And in using the best data that's actually
17 available, there has been a major improvement in the
18 2016 -- or since the 2016 Consent Judgment and the best
19 overall surrogate for environmental performance across
20 the site?

21 A. If the best data available you are referring to
22 is the number of non-compliant hours with the CQMS, yes,
23 there's been much less exceedances from there. So there
24 has been improvement there.

25 Q. Major improvement?

1 A. Yeah, I'd say major improvement from before and
2 after the 2016 judgment.

3 Q. And you calculated the first quarter 2008 (sic)
4 battery stacks CQMS compliance percentage for purposes
5 of this case, correct?

6 A. Yes.

7 Q. 99.384 percent?

8 A. That sounds right.

9 Q. That's a high compliance percentage?

10 A. Yeah, there's a lot of violations in that .6
11 percent. But yeah, it's pretty high.

12 Q. 98.5 is the target that was agreed to in the 2016
13 Consent Judgment, correct?

14 A. I wouldn't categorize it as a target, but that is
15 where the stipulated penalties came in.

16 Q. Okay. And that's the compliance demonstration
17 that has to be met, 98.5 percent?

18 A. I'd have to check to remind myself. That sounds
19 right. I'd have to just to check to make sure.

20 Q. Okay. And that would be in the 2016 Consent
21 Judgment itself? It's a written document, right?

22 A. Yeah.

23 Q. Mr. DeLuca, I want to talk a little bit about the
24 enforcement order now that's the subject of this appeal.
25 That's at Exhibit 1 in the U.S. Steel binders.

1 A. Should I put 14 back in?

2 Q. Yeah, you can.

3 A. Okay.

4 Q. And Exhibit 1 is the enforcement order that's the
5 subject of this appeal, correct?

6 A. Yes.

7 Q. Can you look at page 2 of that enforcement order?

8 A. I'm there.

9 Q. At the bottom of page 2, there's a section that's
10 called "Ongoing and Deteriorating Issues;" is that
11 correct?

12 A. Okay, yes.

13 Q. And in this section, this is a section that you
14 helped prepare, correct?

15 A. Yes.

16 Q. And what you did is you identified trends that
17 stood out to you in terms of decreasing compliance,
18 correct?

19 A. I looked at the compliance over time and then --
20 specifically looking at the last few years or so, and
21 then figured out ones that were different than they were
22 previously; and yes, that led to a lot of the lower
23 compliance which I put into here.

24 Q. Right. You identified trends that stood out to
25 you?

1 A. Yes.

2 Q. And you identified those different trends by the
3 type of inspection, correct?

4 A. Correct, and the battery individually.

5 Q. Okay. And then you put compliance percentages
6 that you associated with those trends, correct?

7 A. Based off ACHD numbers, yeah.

8 Q. And that goes to my question. In the enforcement
9 order, you used inspection data from both Allegheny
10 County Health Department inspectors and Keramida
11 inspectors, correct?

12 A. Yes.

13 Q. Okay. That's what you used for compliance in the
14 enforcement order?

15 A. Yeah, for the inspection half of it, yes.

16 Q. And that's what you used for penalties in the
17 enforcement order?

18 A. Yes.

19 Q. Okay. In the Ongoing and Deteriorating Issue
20 section, you didn't use that same data set?

21 A. Correct.

22 Q. You used less data?

23 A. I had less data to look at in Excel, yes.

24 Q. You used only the Allegheny County Health
25 Department inspections for the ongoing and deteriorating

1 A. Well, the door area on this inspection has
2 Battery 1 and 3 listed and high-opacity door has other
3 batteries listed. I'm not sure if that answers it or
4 not.

5 Q. Okay. The door area emissions section doesn't
6 identify any B battery door ongoing and deteriorating
7 issues; is that fair?

8 A. Yeah, there is none.

9 Q. Okay. So when you were looking for trends that
10 stood out, you didn't find any trends with respect to
11 the door area emissions from the Battery B?

12 A. Correct.

13 Q. The order is not supposed to include any
14 penalties for battery stack violations, pushing and
15 soaking on 1, 2 and 3; is that correct?

16 A. Correct.

17 Q. Can you look at paragraph 65?

18 A. Okay.

19 Q. I'm sorry, paragraph 59, which is on page 18 of
20 Exhibit 1.

21 A. Okay.

22 Q. This paragraph is where it specifically stated
23 that the Department is not taking action with respect to
24 pushing, combustion stacks, or soaking on batteries 1, 2
25 and 3, correct?

1 issues?

2 A. Yes.

3 Q. And those inspection compliance percentages are
4 lower than the Keramida inspector compliance
5 percentages?

6 A. I can't say across the board; but a majority of
7 the time, yes, ACHD has a lower compliance.

8 Q. So if you actually used all the data that you
9 used for enforcement in this Ongoing and Deteriorating
10 Issue section, the numbers would look different?

11 A. They would definitely look different. I would
12 assume most of them would look better. But I don't --

13 Just like, for example, I'm just on page 3
14 randomly in the middle, it says, "Battery 14 has
15 declined from 100 percent in 2014 to 81 in 2017." The
16 Battery 14 in 2014 numbers may not have been 100 percent
17 compliant.

18 Q. If a member of the public was to pick up the
19 enforcement order and just read it as written, they
20 wouldn't know that you only use selective data for the
21 Ongoing and Deteriorating Issues section?

22 A. No.

23 Q. And the Ongoing and Deteriorating Issues section
24 doesn't identify any ongoing and deteriorating door-leak
25 issues; is that fair?

1 A. Yes.

2 Q. And that's because that's already covered by the
3 2016 Consent Judgment?

4 A. Yes.

5 Q. Paragraph 65 on the next page, page 19,
6 identifies a violation for soaking from Battery 2?

7 A. It's not supposed to be listed there. There was
8 no violation for soaking in Battery 2. That was a typo.

9 Q. Is that another error?

10 A. Yeah, it's a typo in the order.

11 Q. So there shouldn't be a soaking penalty for
12 Battery 2 in the enforcement order?

13 A. Not in this one, no.

14 Q. The enforcement order includes a baseline
15 calculation as part of the corrective action, correct?

16 A. Yes.

17 Q. So the way that works is, in the first quarter of
18 2018, the Department has determined U.S. Steel's
19 baseline compliance percentage for the batteries?

20 A. Yeah.

21 Q. And that baseline includes fugitive emissions
22 points and battery stack compliance, correct?

23 A. Yes.

24 Q. It includes battery stack compliance as half of
25 the baseline?

1 A. Yes.

2 Q. And battery stack compliance is governed by the
3 2016 Consent Judgment?

4 A. Yes.

5 Q. The baseline also includes fugitive emissions
6 points that are covered by the 2016 Consent Judgment,
7 correct?

8 A. It incorporates all of the inspection data, so
9 not just the 2016 stuff but everything that we have.

10 Q. So the baseline also includes pushing emissions
11 which are governed by the 2016 Consent Judgment,
12 correct?

13 A. Yeah, it includes all pushing and then all
14 soaking also for 1, 2, 3.

15 Q. And so the baseline includes both pushing and
16 soaking for 1, 2 and 3, which are fugitive emissions
17 points that are already governed by the 2016 Consent
18 Judgment, correct?

19 A. Yeah, it's just put in there as a metric for
20 compliance, yeah.

21 Q. And there is a potential situation where pushing
22 compliance could cause U.S. Steel not to meet the two
23 successive quarters improved upon the baseline; is that
24 correct?

25 A. Any potential battery could, yeah.

1 the entire battery performance.

2 And if you basically pick out that portion of it
3 and that potential existence, it could trigger hot idle,
4 but I don't -- I wouldn't consider that to be a penalty
5 by itself. It's not a financial penalty on both orders.

6 Q. Your testimony is hot idling two batteries is not
7 a penalty to U.S. Steel?

8 A. It's not a direct financial penalty. It's a
9 penalty, yes.

10 Q. Do you think there are direct financial
11 consequences for hot idling 20 percent of the Clairton
12 plant?

13 A. A majority of the time, I would say yes. I don't
14 know the production schedules of where they are at with
15 production. I can see a possibility existing where they
16 can meet all the requirements with eight batteries. I
17 don't know. I don't know U.S. Steel's production
18 schedule and requirements.

19 Q. Well, let's assume that hot idling two batteries
20 does cause a financial impact to U.S. Steel.

21 A. Okay.

22 Q. In that situation, if pushing was the driver for
23 both hot idling and caused a penalty under the 2016
24 Consent Judgment, U.S. Steel would effectively be
25 penalized twice for its pushing compliance; is that

1 Q. And one of those potential points could be
2 pushing, correct?

3 A. Yeah.

4 Q. And pushing could be a reason that a hot idle is
5 triggered under the enforcement order as it's written?

6 A. It could.

7 Q. And there could be a situation where U.S. Steel
8 would receive a penalty under the 2016 Consent Judgment
9 and also have to hot idle under the enforcement order at
10 the same time; is that correct?

11 A. Wait, ask that again. I forget the initial part.

12 Q. So back to the situation where pushing compliance
13 is the reason that hot idle is triggered under the
14 enforcement order, it could also be a scenario where
15 that same pushing compliance results in a penalty
16 pursuant to the 2016 Consent Judgment?

17 A. So if everything else stays stagnant and pushing
18 compliance is lower than it was, then that would be
19 lower overall compliance, yes.

20 Q. Okay. And in that situation, there would be
21 penalties for both the 2016 Consent Judgment and a hot
22 idle because of pushing compliance?

23 A. That goes to where you define the word "penalty."
24 There is no penalty in the 2018 order for pushing,
25 soaking 1, 2, 3 or CQMS. It goes into the metric for

1 fair?

2 A. They would be effected under both orders, yes.

3 Q. And the same hypothetical situation could apply
4 if we used soaking on 1, 2, and 3?

5 A. Yes.

6 Q. Or battery stack compliance?

7 A. Yeah, it's keeping everything else stacked, yes.

8 Q. The first time that the county calculated the
9 baseline calculation that U.S. Steel has to meet -- has
10 to beat and then beat again was after the enforcement
11 order was already issued, correct?

12 A. Yes.

13 Q. So the enforcement order was drafted and issued
14 and the Department didn't know what the baseline
15 calculation was?

16 A. No, it was based on just improving off past
17 operation.

18 Q. And you have already testified under oath that
19 you thought it was in the 90s, maybe above 95 percent;
20 is that fair?

21 A. Yeah.

22 Q. And it is significantly higher than that?

23 A. Yeah, 98.152 is greater than 95.

24 Q. And that's a fairly high rate of compliance,
25 98.152 percent?

1 A. If you look at the compliance percentage, yeah.
2 I mean, there are a few hundred violations in there,
3 though.

4 Q. Okay. I want to talk to you about the B battery
5 door-leak standard that's in the enforcement order.

6 What pollutants was the Department trying to
7 regulate with this standard?

8 A. It was the -- well, it's looking at visible
9 emissions. So the visible emissions would have any
10 particulate matter. And as a surrogate, you would
11 assume, whenever you see visible emissions, that there
12 is also gaseous emissions coming out in that open area
13 from the doors.

14 And then from those gaseous emissions, it creates
15 a lot of sulfur compounds that eventually come into SO2
16 and creates particulate matter. It would have the BTEX
17 coming out also. There are a good bit of compounds that
18 come out.

19 Q. And so the pollutants that were specifically
20 regulated would be PM, SO2, and BTEX. Anything else?

21 A. What do you mean by "specifically regulated"?

22 Q. Was there an intent to regulate or control
23 specific pollutants with the B battery door-leak
24 standard?

25 A. I was aware of a reduction in it, and that would

1 PM2.5.

2 Q. Can you tell me what exactly are the pollutants
3 in the gaseous emissions that would be emitted?

4 A. Raw coke oven gas, coke oven emissions, BTEX,
5 H2S, potentially some SO2 maybe as a lower amount.

6 Q. Anything else?

7 A. There's a whole -- I don't know all of them.

8 Q. Anything else that you know about?

9 A. I've heard carbon disulfide, carbonyl
10 sulfide, naphthalene, anoma. I don't know all of them.

11 Q. Did you tell me all the ones that you do know?

12 A. As I recall right now.

13 Q. And the Department didn't do any risk assessment
14 or analysis to determine the maximum level of any of
15 those pollutants that could come from B battery coke-
16 side doors and still be protective of public health,
17 safety and welfare; is that fair?

18 A. None of which I'm aware.

19 Q. Okay. And the B battery coke-side doors has a
20 shed, correct?

21 A. Yes.

22 Q. And that shed is a control device that controls
23 PM2.5 emissions; is that fair?

24 A. Yes.

25 Q. No other battery at Clairton has a shed designed

1 cause the reduction of the two non-attainment areas for
2 the PM and the SO2.

3 Q. And the goal was to focus on the two criteria
4 pollutants that are identified in the enforcement order:
5 SO2 and PM2.5?

6 A. Just basically to decrease emissions back to
7 where it was, and the cause of that would be a decrease
8 in those emissions of those pollutants.

9 Q. Okay. So the Department didn't have any
10 hazardous air pollutants or gaseous emissions in mind to
11 regulate with the B battery door-leak standard?

12 A. I don't think I can speak for the whole
13 Department.

14 Q. Well, you came up with the standard.

15 A. Yeah.

16 Q. Did you have any gaseous emissions or hazardous
17 pollutants in mind that you were trying to regulate with
18 the B battery door-leak standard?

19 A. Well, all of the gaseous emissions aren't
20 controlled. So any of the gaseous emissions would be
21 improved by reduction of leaks on the B side shed.

22 So the gaseous emissions would incorporate the
23 SO2, the BTEX, naphthalene, any of the coke oven gas
24 emissions, all of that would be controlled better by a
25 reduction in emissions. The bag house controls the

1 to control PM2.5 emissions, correct?

2 A. Not a full shed, no.

3 Q. Okay. The B battery coke side has better PM
4 controls than any other battery at Clairton; is that
5 fair?

6 A. From the coke side, yeah. It has the bag house.

7 Q. You were testifying during your direct about the
8 data that you used to develop the B battery door-leak
9 standard for the coke side. Do you remember that?

10 A. Yeah.

11 Q. That data is in U.S. Steel Exhibit 8, correct?

12 A. Yes.

13 Q. And the data that you used goes back to January
14 of 2016, correct?

15 A. Yes.

16 Q. And the data that you used to develop the B
17 battery coke-side door-leak standard shows that U.S.
18 Steel would never have met it on any six-month basis,
19 correct?

20 A. Going back retroactively when they weren't
21 focusing on it, yes, correct, there's not a consecutive
22 six-month period.

23 Q. Right. And so the data you used to develop the
24 standard shows that U.S. Steel would never have met it;
25 is that fair?

1 A. Well, never have met it implies that they didn't.
2 They were attempting to do it and focusing on it at that
3 point.

4 The past data does not show a six-month period
5 and this order does require a six-month period. So this
6 order has to do slightly better than had been done in
7 the past.

8 Q. Right. So the standard of the data you used to
9 develop this standard didn't show one scenario where the
10 standard had been met?

11 A. Correct.

12 Q. ACHD 11 is additional data that you looked at
13 subsequent to issuing the enforcement order.

14 A. Are you referring to the sheet that goes back to
15 2014?

16 Q. Correct. Why don't you find that?

17 A. Okay.

18 Q. Looking at ACHD 11, this is data that you went
19 and looked at subsequent to issuing the enforcement
20 order, correct?

21 A. Yes.

22 Q. And why did you do that?

23 A. Well, because -- kind of because of the
24 deposition. Whenever you guys were saying that there
25 wasn't six consecutive months, I went back to prior

1 A. Yes.

2 Q. Which is depicted on Exhibit ACHD 11, correct?

3 A. Yes.

4 Q. Let's assume we can go back in time and go back
5 to January 14th -- or January of 2014. Let me back up.

6 The B battery coke-side door-leak standard
7 becomes effective January 1, 2019, correct?

8 A. I wouldn't call it a standard, but the portion of
9 the order referring to that does, yes.

10 Q. The requirement that, if U.S. Steel has more than
11 10 coke-side door leaks on the B battery using the yard
12 equivalent, that it has to hot idle two batteries, goes
13 into effect starting January 1st of 2019; is that
14 correct?

15 A. Correct.

16 Q. It lasts for six months, correct?

17 A. Correct.

18 Q. And if U.S. Steel has 11 leaks in any of those
19 months using yard equivalent, it has to hot idle two
20 batteries?

21 A. Yes.

22 Q. Okay. So let's pretend we can go back in time to
23 2014 in January and this standard exists. From the
24 first four months, what would have been the result -- or
25 the first six months, I'm sorry?

1 years to see if it actually did happen.

2 So whenever I first created it, I looked at it
3 and saw that more than half the time it was happening
4 and then there were a couple months that were just over
5 it.

6 So if U.S. Steel focused on the Battery B shed
7 side, it would be easily able to reduce those a little
8 bit just by focusing on it. 'Cause in March of 2016,
9 for example, with the half of a leak, there wasn't
10 anything that was requiring them to do that beyond the
11 regulations already in place.

12 Q. So after the deposition, you realized that the
13 data you used showed that U.S. Steel had never met the
14 standard, so you went back and looked at more data?

15 A. I'm not -- I -- let me retract a little bit. I'm
16 not sure if it was after the deposition or not. I know
17 it was after the order went out.

18 Q. Okay. At some point, you realized that the data
19 you used to develop the standard shows that it had never
20 been met?

21 A. Correct, for six consecutive months.

22 Q. So you went back a few more years to see what the
23 data showed?

24 A. Yeah, I went back two more years.

25 Q. You went back to January of 2016?

1 A. January, February, March were all greater than
2 10. April, May and June were all 10 or less. So it
3 would have been January of 2014 that would have greater
4 exceeded that standard.

5 Q. And so the first six months of 2014 would have
6 resulted in a hot idle?

7 A. Yes.

8 Q. Okay, let's look at the second half of the year
9 for 2014. If we use the second half of the year, the
10 six months of 2014, what would the result have been if
11 the standard was in place?

12 A. July, August and September would have met and
13 then October would have been greater than 10.

14 Q. So U.S. Steel would have had to hot idle?

15 A. Yes.

16 Q. Okay. Well, let's go to January of 2015 and look
17 at the first six months in 2015. If this standard was
18 in place, what would the result have been?

19 A. January, they were just over at 11 and a half, so
20 January would have had to hot idle. And the next five
21 months would have been under it.

22 Q. Okay. So there would have been a hot idle in
23 that scenario?

24 A. Yes.

25 Q. Okay. Well, let's look at the second half of

1 2015, that six-month period. If the standard was in
2 place then, what would the result have been?

3 A. That would have been a -- July '15 was greater
4 than 10.

5 Q. So there would have been a hot idle?

6 A. Yeah.

7 Q. Okay. Well, let's go to January of 2016 and look
8 at the first six months of 2016. If the standard was in
9 place then, what would the result have been?

10 A. January was greater than 10 and then February,
11 March, April and May were under and June was over.

12 Q. So there would have been a hot idle?

13 A. Yes.

14 Q. Okay. Well, let's look at the second half of
15 2016, for that six-month period. If the standard was in
16 place, what would have happened?

17 A. July, August, and September were under; October
18 was 10 and a half, and then November and December were
19 under. So there would be a hot idle for that 10 and a
20 half.

21 Q. Okay. What about the first six months of 2017,
22 if the standard was in place, what would have happened?

23 A. They were all greater than 10, so it would be a
24 hot idle.

25 Q. Okay. What about the second half of 2017 if the

1 Q. You didn't do any analysis to see if the standard
2 was technologically achievable; is that fair?

3 A. I didn't know I would have to if it was met, so
4 no.

5 Q. You didn't do any risk assessment to determine if
6 the standard was necessary to protect public health?

7 A. No.

8 Q. You didn't do any analysis to see what the impact
9 would be on the ambient air quality by imposing this
10 standard?

11 A. No.

12 Q. You didn't do any health-based risk emissions
13 standard analysis?

14 A. No. It was just thought if you have less
15 emissions, you have less in the air; but no, no
16 analysis.

17 Q. The standard didn't go through any rulemaking
18 process; is that fair?

19 A. I'm assuming you are referring to the order, 10
20 leaks?

21 Q. I am.

22 A. No.

23 Q. It wasn't reviewed by the Board of Health?

24 A. No.

25 Q. There was no public comment?

1 standard was in place, would have happened?

2 A. They were all greater than 10, so hot idle.

3 Q. Okay. What about the first six months of 2018 if
4 the standard was in place, what would the result have
5 been?

6 A. They were all greater than 10, so hot idle.

7 Q. Your process for coming up with the 10 door-leak
8 standard was pretty simple?

9 A. Yes.

10 Q. You just looked at the 2016 data and thought that
11 10 was something that was repeatable?

12 A. I looked at -- well, 2016 through 2018 and saw
13 that the numbers were a lot higher in '17 and '18; and
14 went back up and saw that in 2016, there were a lot of
15 months, 9 out of the 12, that were under 10. So that
16 was something that could be achieved, especially 'cause
17 if you are not focusing on something, you are going to
18 typically do a little bit worse than if you focus on it.

19 Q. So you looked at the data that is in U.S. Steel
20 Exhibit 8 and thought that 10 was a number that looked
21 to be repeatable?

22 A. Yes.

23 Q. You didn't do any empirical analysis?

24 A. It depends what you mean by "empirical." But no,
25 I believe that 9 of the 12 months, they were under.

1 A. No.

2 Q. There was no public hearing?

3 A. No.

4 Q. No approval by county council?

5 A. No.

6 Q. No input from U.S. Steel?

7 A. No.

8 Q. If U.S. Steel does what it's supposed to do under
9 the enforcement order with respect to the baseline and
10 it exceeds it in the first quarter of 2019 and then it
11 exceeds that number in the second quarter of 2019 but it
12 has one month with 11 coke-side door leaks on B battery
13 using the yard equivalent, it has to hot idle two
14 batteries?

15 A. That's what the order has, yeah.

16 Q. It seems like a lot, right?

17 A. It's something that can be done.

18 Q. Does it seem like a lot?

19 A. A lot in the sense if it's a strict standard.

20 Q. Strong penalty?

21 A. It's strict. I mean, it's something that --
22 like I said, in 2016, it was done without focusing on
23 it. So we do believe it is achievable. Is it a hot --
24 is it a lot to have two batteries idled for it? It is
25 up to interpretation. It's a strict penalty.

1 Q. It's excessive?

2 A. It's strict.

3 Q. Would you agree that it is excessive?

4 A. I don't think so, because it's achievable.

5 Q. Okay. Did you -- do you remember testifying in a
6 deposition a few weeks ago?

7 A. Yes.

8 Q. Do you remember you were under oath?

9 A. Yes.

10 Q. Do you remember you were in my office, I was
11 asking you questions?

12 A. Yes.

13 Q. Do you remember saying that the B battery coke-
14 side door-leak standard was excessive?

15 A. I remember you asking me a lot of questions along
16 the same lines. I don't know all of the answers.

17 Q. Okay.

18 A. I think it may have been my opinion, I'm not
19 sure.

20 Q. So is it fair to say that you had an opinion that
21 the door-leak standard was excessive?

22 A. I'm sure you have the document closer than I do.
23 I don't recall.

24 Q. In this -- it's underneath one of your binders.

25 A. Oh, okay.

1 Q. Your deposition is the first one. If you look at
2 page 181 starting with my question on line 4, "For
3 example, if U.S. Steel had 11 door leaks on the coke-
4 side B battery, that would be an excessive penalty to
5 require it to hot idle two batteries?"

6 Your answer: "Excessive might be different than
7 strong, but it's a strong penalty, yeah."

8 My question: "You wouldn't agree that it would
9 be excessive?"

10 Your answer: "I don't know how to define
11 excessive. But, I mean, it seems like a lot for having
12 one bad month of door leaks, but it's also something
13 that has been repeated in the past. Indirectly, I guess
14 it is excessive. It really depends on how you define
15 it."

16 Is that your testimony?

17 A. That's what it says here, yeah.

18 Q. Okay. So you testified earlier that the B
19 battery door-leak standard was excessive?

20 A. I said, "Indirectly, I guess it's excessive."

21 Q. Okay. Do you still stand by that statement?

22 A. I mean, the whole statement is, "Indirectly, I
23 guess it is excessive, but it really depends how you
24 define it."

25 Q. Okay. Using your definition of excessive, we

1 agree that it's excessive?

2 A. It's what I said there.

3 Q. Okay. We looked earlier -- well, actually, on
4 direct, your counsel showed you the penalty policy that
5 was enacted in 2018?

6 A. Yes.

7 Q. And that penalty policy covers a variety of
8 different sources, correct?

9 A. Yeah.

10 Q. It doesn't just cover coke ovens, it covers other
11 sources?

12 A. Correct.

13 Q. And do you know if that penalty policy went out
14 for public comment?

15 A. It did not.

16 Q. Okay. You also looked in your direct at a prior
17 policy which was Exhibit 11, correct?

18 A. Yes.

19 Q. And this policy, it was in existence until
20 January of this year?

21 HEARING OFFICER SLATER: This is U.S. Steel 11?

22 MR. DAUSCH: Correct.

23 HEARING OFFICER SLATER: Okay, just making sure.

24 MR. DELUCA: Yes.

25 BY MR. DAUSCH:

1 Q. This penalty policy, which is U.S. Steel 11, is
2 specific to coke ovens, correct?

3 A. Yes.

4 Q. It doesn't apply to other sources?

5 A. It does not.

6 Q. Can you look at the second page of this penalty
7 policy please, sir? That page is Bates labeled
8 ACHD010179, correct?

9 A. Yes.

10 Q. Do you see the section that is "Compliance
11 Frequency"?

12 A. Yes.

13 Q. And in this section, reasonable compliance
14 efforts during a quarter is the same as a compliance
15 rate above 95 percent, correct?

16 A. Both of those conditions lead to a factor of
17 zero.

18 Q. Right. And so, they are the same thing?

19 A. No, either condition -- so if you have reasonable
20 compliance efforts during a quarter that leads to a zero
21 or a compliance rate greater than 95, it's up to the
22 engineer doing it to determine if it's reasonable or
23 not.

24 Q. And your testimony now is that reasonable
25 compliance effort during a quarter does not equate to

1 compliance above 95 percent?

2 A. I'm just saying either of those conditions leads

3 to a zero.

4 Q. Are they the same thing under this policy? Are

5 they equivalent?

6 A. Yeah, yeah. In the sense that they both lead to

7 a zero, yeah, they are the same.

8 Q. Okay. So if reasonable compliance is a

9 compliance above 95 percent, U.S. Steel had reasonable

10 compliance?

11 A. Where or what?

12 Q. In the penalty period for all of the batteries.

13 A. This is a different metric. This included ACHD

14 only. So it wouldn't be -- I don't know what an "ACHD

15 only" was.

16 Q. Let's take this policy for what it says and say

17 that compliance above 95 percent is the same as

18 reasonable compliance. If that's the case, U.S. Steel

19 would be above reasonable compliance?

20 A. Yeah, that the plan total is above 95 percent.

21 Q. Right. And so if we were using the penalty

22 policy in existence during the first two quarters that

23 are at issue in this case, we would be using Exhibit 11?

24 A. Yeah. The reason I'm hesitating is because the

25 fourth quarter, we wouldn't have had all the information

1 to do it until after that.

2 Q. Yeah, I'm talking about --

3 A. Whatever occurred in that period when this policy

4 existed.

5 Q. Right. When the third quarter of 2017 occurred,

6 the penalty policy that is Exhibit 11 was in existence?

7 A. Yes, correct.

8 Q. When the fourth quarter of 2017 occurred, the

9 penalty policy that's identified as Exhibit 11 U.S.

10 Steel was in existence?

11 A. Yes.

12 Q. And in the beginning of the first quarter of

13 2018, the penalty policy in existence was U.S. Steel

14 Exhibit 11?

15 A. Yeah, for the first 10 days or so.

16 MR. DAUSCH: Mr. Slater, I would suggest that we

17 take a short break and see if I can get everything done

18 so we can officially finish this witness up.

19 MR. WILLIS: I still have questions after, by the

20 way.

21 HEARING OFFICER SLATER: Okay, for redirect?

22 MR. WILLIS: Yes.

23 HEARING OFFICER SLATER: Okay.

24 MR. DAUSCH: So maybe just a short five to

25 10-minute break so we can try to get this witness done.

1 HEARING OFFICER SLATER: All right. Let's resume

2 at 3:40.

3 (The hearing recessed at 3:35 p.m. and reconvened

4 at 3:43 p.m.)

5 HEARING OFFICER SLATER: All right. Let's go

6 back on the record then.

7 BY MR. DAUSCH:

8 Q. In the enforcement order, Mr. DeLuca, there is no

9 exception or discretion built in if the B battery coke-

10 side doors have any problems or malfunctions that causes

11 them to have more than 10 door leaks per month using the

12 yard equivalent; is that fair?

13 A. No, there's nothing in the order, that's correct.

14 Q. The order, the enforcement order, has a

15 methodology for determining the worst performing

16 batteries; is that correct?

17 A. Yes.

18 Q. And that's if a hot idle is triggered, there has

19 to be a calculation of the two worst performing

20 batteries pursuant to the enforcement order; is that

21 right?

22 A. Yes.

23 Q. And as part of this appeal, the Department did

24 that calculation for first quarter 2018 to show how it

25 works; do you recall that?

1 A. Right, yes.

2 Q. And do you recall that one of the batteries that

3 was identified was the C battery?

4 A. Yes.

5 Q. And so based on the methodology and the

6 enforcement order, C battery was determined to be one of

7 the worst performing batteries, correct?

8 A. Yes, during that period.

9 Q. And you were surprised that the B battery showed

10 up, correct -- or C battery?

11 A. I was, yes.

12 Q. And part of the reason is that C battery is the

13 newest battery?

14 A. Correct.

15 Q. And has the most advanced technology?

16 A. That's what I've been told.

17 Q. And did you do any analysis to determine why it

18 was that C battery showed up?

19 A. No formal analysis, no. I went back and kind of

20 looked at it. I think it was C soaking that came up.

21 Q. And C battery has traditionally been the best

22 battery with respect to CQMS or stack compliance?

23 A. To CQMS, yes.

24 Q. C battery has different emission limits than the

25 other batteries at Clairton, correct?

1 A. Yes.

2 Q. It's more stringent limits?

3 A. For most of them, yes.

4 Q. All right. And so there are certain times where

5 B battery would have an exceedance that wouldn't be an

6 exceedance on another battery?

7 A. Correct.

8 Q. And there's no control for that in the worst

9 performing battery methodology, correct?

10 A. No, it's based off of compliance.

11 Q. Can we look back at -- if you can take Exhibit 14

12 out again, I have a few more questions.

13 Mr. DeLuca, I want to talk about charging. Do

14 you recall from the source test manual the charging

15 section says that, "Compliance shall be determined by

16 summing four charges"?

17 A. Yeah, from earlier today, yes.

18 Q. Okay. On October 10th of 2017, there was a

19 charging violation for Battery 14.

20 A. October 10, 2014 (sic.)

21 Q. Do you see that?

22 A. Sixty-one and a half seconds?

23 Q. Yeah. And that is on ACHD10415, correct?

24 A. Yes.

25 Q. The total seconds identified is 61.5, correct?

1 A. Yes.

2 Q. Can you look at Exhibit 63 on pages 44 and 45?

3 A. Okay.

4 Q. Let's look at page 45 of Exhibit 63.

5 A. All right, I'm there.

6 Q. And are you familiar with this page?

7 A. I know it's from the Keramida monthly reports.

8 Q. And are you familiar with how to read this?

9 A. Yes.

10 Q. And this includes the Battery 14 inspection data

11 for the month of October of 2017, correct?

12 A. Yes.

13 Q. And can you find October 10th, 2017?

14 A. Yes.

15 Q. And how many charges were included for this date?

16 A. Five.

17 Q. And so if the Department had followed the terms

18 of the source test manual, can we agree that there would

19 be no violation for this date for charging?

20 A. No four consecutive charges greater than 75, so

21 correct, there wouldn't be an exceedance.

22 Q. Okay. So if the Department had followed the

23 terms of the source test manual, there would be no

24 charging violation for October 10th, 2017 for Battery

25 14, correct?

1 A. Yeah, we followed the manual. But again, it's

2 the regulation disagrees with the manual, but...

3 Q. On December 15th, there's also a charging

4 violation in 2017; is that correct?

5 A. Yeah.

6 Q. And that is, again, on Exhibit 14, page

7 ACHD10415, correct?

8 A. Yeah, Battery 14, 58 seconds.

9 Q. If you look at Exhibit 63 on page 128 --

10 A. Okay.

11 Q. Actually, let's look at page 129 of Exhibit 63.

12 A. Okay.

13 Q. This page is the Keramida inspection report for

14 Battery 14, correct?

15 A. Yeah, for December of 2017.

16 Q. And it would include the December 15th, 2017

17 violation that's included in the enforcement order,

18 correct?

19 A. Yes.

20 Q. And if the Department had followed the terms of

21 the source test manual to determine compliance with

22 charging, can we agree that there would be no violation?

23 A. There would not be.

24 Q. I'm correct?

25 A. Yes, you are correct, there would not be a

1 violation following the manual.

2 Q. Okay. Look back, please, if you would at Exhibit

3 14, again on page ACHD10415. There's a charging

4 violation for October 23rd, 2017, correct?

5 A. Yeah, Battery B, 58 seconds.

6 Q. Okay. Can you look at Exhibit 63 on page 68?

7 A. Okay.

8 Q. Are you familiar with this document?

9 A. Yeah, this is an ACHD charging inspection sheet.

10 Q. Okay. And based on this charging inspection

11 sheet, can you tell whether or not there would be a

12 violation for charging on October 23rd, 2017 if the

13 Department had followed the terms of the source testing

14 manual?

15 A. There would not be.

16 Q. Okay.

17 MR. DAUSCH: That's all I have.

18 HEARING OFFICER SLATER: Mr. Willis?

19 MR. WILLIS: Thank you.

20 REDIRECT EXAMINATION

21 BY MR. WILLIS:

22 Q. Mr. DeLuca, it seems that, based on your

23 testimony during your deposition, that you had a little

24 bit of confusion about the term "excessive" and what it

25 meant; would that be fair?

1 A. I think it is defined different by different
2 people, yes.

3 Q. Okay. Well, let me provide you with a
4 definition. I just took an opportunity to look at the
5 Merriam-Webster Dictionary online and "excessive" is
6 defined as: "Implies an amount or a degree too great to
7 be reasonable or acceptable."

8 Do you believe that the condition -- the
9 corrective action with respect to B battery, coke-side
10 shed and the leaked limit that's imposed, do you think
11 that is too great to be reasonable or acceptable?

12 A. No, 'cause it was something that was met in the
13 past.

14 Q. Okay. I'm just going to run through my questions
15 just to get them covered as quickly as possible.

16 There are, as you recall, over 300 violations
17 that were noted in the enforcement order that's at issue
18 today, right?

19 A. Yes, for the -- correct.

20 Q. Of those 300, how many were Keramida discussing?

21 A. I don't know the exact number, but I would say
22 less than 10.

23 Q. Less than 10?

24 A. Yes, 10 or less.

25 Q. Ten or fewer. Do you recall from your penalty

1 calculation sheet what the maximum penalty was for any
2 one violation?

3 A. It's 25,000 per violation per day.

4 Q. But you don't recall the exact number?

5 A. Of the maximum -- I'm sorry?

6 Q. The actual penalty that was imposed for any one
7 violation, do you remember what the max -- what the
8 highest number would have been?

9 A. Oh, the highest amount for each individual
10 violation?

11 Q. Yes.

12 A. No, I don't recall that.

13 Q. Let's find that. Sorry, I'm looking for the
14 penalty calculation sheet.

15 HEARING OFFICER SLATER: Is that U.S. Steel 11?
16 MR. WILLIS: 11?
17 HEARING OFFICER SLATER: That's the one before
18 2018.
19 MR. WILLIS: No, not that one. Oh, here it is.
20 It's 13.

21 BY MR. WILLIS:

22 Q. Can you turn to 13, please?

23 HEARING OFFICER SLATER: This is U.S. Steel 13?
24 MR. WILLIS: Yes.
25 MR. DELUCA: Okay, yes.

1 BY MR. WILLIS:

2 Q. I'm just taking a cursory glance, and if you look
3 to what is labeled as ACHD004893, do you see that?

4 A. Yes.

5 Q. Look to the number -- Violation Number 10 on
6 that.

7 A. Okay.

8 Q. It is in the first quarter of 2018. Do you see
9 the violation, the gravity-based penalty?

10 A. Yes.

11 Q. Is that the penalty for one violation, 2,750?

12 A. Those would be prior to adjustment.

13 Q. What is it per violation after adjustment, or do
14 you know?

15 A. I would have to calculate it from here, but it
16 would be the 2,750 is the gravity-based portion. The
17 adjustment would be -- that is the lids. So that would
18 go over to the left table, 2.2, 2,750 times 2.2, so
19 about 5,700, 5,800.

20 Q. 5,800. So at 10 violations at the maximum
21 violation that I've been able to discover, we are
22 talking about \$58,000?

23 A. I'm sorry, I just remembered I had a calculator
24 here. Yeah, about 6,000. Sorry, what was that question
25 again?

1 Q. So if we were to say -- well, at 6,000 at 10
2 violations, that is \$60,000?

3 A. Yes.

4 Q. Out of a \$1,000,000 penalty?

5 A. Yes.

6 Q. Is that a significant error in a monetary basis?

7 A. That would be 60,000 over 1,000,000. No, 6
8 percent, I mean, that depends on how you define
9 "significant" there. But it's a small portion of the
10 total penalty.

11 Q. That's enough. Are you aware -- you're aware of
12 Method 22, correct?

13 A. Yes, maybe not the specific details but I know of
14 it.

15 Q. Do you know if there is any certification that
16 can be gained from Method 22?

17 A. None of which I'm aware.

18 Q. The source testing manual is that regulation?

19 A. It is not.

20 Q. Has it gone through any sort of promulgation
21 process for regulation? Has it been before the Board of
22 -- Board of Health for review?

23 A. No.

24 Q. Has it been before county council?

25 A. No.

1 Q. Okay. So it's not a law that is regulated under
2 Allegheny County Health Department rules and
3 regulations?

4 A. It's not a final regulation. It just is
5 a manual, so no.

6 Q. But the manual does contain references to
7 regulations?

8 A. I would have to review the manual to make sure,
9 actually.

10 Q. Okay.

11 A. But I'm not positive.

12 Q. What is the source testing manual?

13 A. I think it was 22.

14 MR. PARKER: Yes, 22.

15 BY MR. WILLIS:

16 Q. Let's take a look at the source testing manual
17 real quick. There was a reference to Chapter 109, the
18 determination of visible emissions from coke oven
19 batteries.

20 A. Yes.

21 Q. It's an EPA reference. Have you seen that
22 reference, that document before?

23 A. The 40 CFR, Appendix B, Method 109, no.

24 Q. Okay. Let's go to 33 which was referenced in
25 relation to that document. If you look at Exhibit

1 emission reading; is that correct?

2 A. For doors.

3 Q. For doors. Is that possible to do at the shed?

4 A. Not safely.

5 Q. So by virtue of that, we have not taken in
6 consideration the violations on that side?

7 A. No. I mean, they could read it from the bench
8 which would be less than 25, but to meet that 25-foot
9 standard, they haven't done that safely. So we have not
10 considered that.

11 Q. Okay. And at one point, we were taking readings
12 from both sides of the coke Battery B?

13 A. I'm not certain on that.

14 Q. Okay. There was a point in which U.S. Steel
15 asked that we not make use of that regulation but to
16 defer to the source testing manual?

17 A. That 25 foot was in place whenever I started, so
18 it would have predated me. I don't know when that
19 started.

20 Q. But in terms of our actual application of that
21 portion of the source testing manual, that was something
22 that was specifically requested that we make use of as
23 opposed to going with the regulation?

24 A. I would assume that, but I can't speak certainly
25 because it's been -- we've been doing the "more than 25

1 33, --

2 A. Okay.

3 Q. -- could you read that top line where it says
4 "Federal Register"?

5 A. "Federal Register, Volume 52, Number 78,
6 Thursday, April 23rd, 1987 proposed rules."

7 Q. So as of 1987, this particular item here is just
8 a proposed rule?

9 A. As it states there, yes. I can't speak to the
10 whole document, though.

11 Q. Well...

12 A. It's a proposed rule up top there.

13 Q. Okay. Look to the whole document. Is there any
14 place that it does not notate that it is anything but a
15 proposed rule?

16 A. No, it's "proposed" on all the headers.

17 Q. Okay. I'm not asking for any particular legal
18 knowledge, but you would know the difference between a
19 proposed rule and a final rule?

20 A. Yeah.

21 Q. And a rule that has been promulgated?

22 A. A final rule has been promulgated; a proposed
23 rule would not be.

24 Q. Okay. The source testing manual requires a 25-
25 foot distance from the coke oven to do a visible

1 foot" since I started.

2 Q. Do you remember having the conversation with U.S.
3 Steel with respect to the source testing manual?

4 A. Yes.

5 Q. Do you remember any requests being made with
6 respect to how we enforce based off the source testing
7 manual?

8 A. Yeah, that was the minus two door leaks.

9 Q. That was the minus two door leaks?

10 A. Yes.

11 Q. And notwithstanding the fact that the regulations
12 would have us make use of the readings off of those two
13 door leaks, we opted to go with the source testing
14 manual?

15 A. In this case, yes.

16 Q. Okay. And that was at the request of U.S. Steel?

17 A. Correct.

18 Q. And to the extent that we would have made use of
19 the source testing manual, that would have benefited
20 U.S. Steel financially in terms of the calculation of
21 penalty?

22 A. By subtracting two leaks at all times, that would
23 lead to lower leaks and almost every time lead to lower
24 penalties for violations.

25 Q. Would it be fair to say that any time in which we

1 make use of the source testing manual and adhere to the
2 source testing manual over the regulation, that that
3 would actually work to the benefit of U.S. Steel in its
4 current form, the source testing manual?

5 A. As I can recall now, yes.

6 Q. Would any of that be because some of the
7 regulations have changed with respect to the things that
8 are covered under the source testing manual?

9 A. Yeah. For example, the ones we were going over
10 before, like the 10-percent door leaks, it's listed as
11 10 percent or less in the source testing manual but none
12 of the batteries currently apply to that 10-percent
13 standard.

14 So anything that would be -- so the source
15 testing manual would be less stringent than the
16 regulation; and whenever we followed it for the minus
17 two door leaks, that made it less stringent than the
18 regulation. So there would be less violations enforced.

19 Q. Okay. To your knowledge, does Keramida do
20 quality assurance on its own data?

21 A. Yes.

22 Q. Do you rely on their ability to do quality
23 assurance on their own data?

24 A. I have to, yeah.

25 Q. Why is that?

1 A. I mean, it would be an onerous task to go through
2 all of the inspections because of the 44 databases and
3 QACC for all of them. So, you know, we rely on
4 Keramida's QACC.

5 HEARING OFFICER SLATER: What is QACC?

6 MR. DELUCA: Quality assurance/quality control.

7 HEARING OFFICER SLATER: Okay.

8 BY MR. WILLIS:

9 Q. But you did have a conversation with Keramida
10 with respect to the quality assurance problems that they
11 had with some of those inspections?

12 A. Specifically with those doors, yes.

13 Q. And those errors were based on our use of the
14 source testing manual over the Article 21 regulation?

15 A. The change in that interpretation, yes, from that
16 U.S. Steel meeting.

17 Q. Had we been following the regulation as opposed
18 to the source testing manual, would those errors have
19 occurred?

20 A. If we had always followed the regulations -- no
21 -- yeah, 'cause their error was following the
22 regulation. So the errors would not have occurred if we
23 continued to follow the regulation.

24 Q. Okay. Does U.S. Steel follow the source testing
25 manual?

1 A. I don't know.

2 Q. Does U.S. Steel follow -- or is it required to
3 follow the regulation?

4 A. Yes.

5 Q. Is it required to follow the conditions of its
6 permit?

7 A. Yes.

8 Q. You mentioned with respect to paragraph 65 in the
9 enforcement order where it mentions the soaking of
10 Battery B as a violation?

11 A. Sorry, that was enforcement order, paragraph 65?

12 Q. Yes, sir.

13 A. Is that Exhibit 1?

14 MR. PARKER: Yes.

15 MR. DELUCA: What was the question?

16 BY MR. WILLIS:

17 Q. You characterize the inclusion of Battery 2 with
18 respect to soaking as an error?

19 A. Correct.

20 Q. Is that a typographical error?

21 A. Yeah, 'cause Batteries 1, 2 and 3 wouldn't be
22 included for soaking.

23 Q. So the insertion of 2 there is not an insertion
24 of violations with respect to 2?

25 A. No.

1 Q. Okay. Is it fair to say the visible emissions
2 are regulated by the coke-side standard that we've had
3 installed in the enforcement order?

4 A. Sorry, the coke side for Battery B, is that
5 regulated by visible emissions?

6 Q. I'm saying, is the thing that is sought to be
7 regulated visible emissions?

8 A. Oh, yes.

9 Q. Is it fair to say, and based upon your review of
10 the enforcement order, that 2014 is a critical starting
11 point for much of the deterioration that we saw in terms
12 of compliance?

13 A. That's when I noticed the higher compliance, was
14 in '14; and then afterwards, it decreased. I don't know
15 the exact months or years.

16 Q. Okay. And I know opposing counsel has gone
17 through a series of six-month spans beginning January to
18 June of '15, '16, '17 to demonstrate that at no time
19 during those periods that they could have gone six
20 months without having violated this new standard that we
21 have in the enforcement order; is that correct?

22 A. That's correct, based off that data in the past.

23 Q. Okay. But you would note -- and correct me if
24 I'm wrong -- there was no obligation to meet that door
25 standard at any time prior to this enforcement order?

1 A. Correct, it hasn't actually come into effect
2 until the first quarter of '19.

3 Q. Okay. But you did see a period from April of '14
4 to September of '14 of which there was a six-month
5 period that they were at or under 10 weeks on the coke-
6 side yard equivalency standard?

7 A. April 2014 to September 2014, there were six
8 consecutive months at 10 or less.

9 Q. And that would put them in compliance with our
10 order not even trying?

11 A. If those were the six months used, yeah, six
12 consecutive meetings it.

13 Q. And that's without any order over their head?

14 A. Correct.

15 Q. Would that suggest to you that there is some
16 control over the battery in its operation?

17 A. It suggests that it was done before, something
18 that should be able to be done again.

19 Q. Have you seen any violations to the NESHAP with
20 respect to any of the inspections this year?

21 A. I have not.

22 Q. Okay. You mentioned that you -- and I don't know
23 if you characterized it, but it sounded as though you
24 allowed your inspectors to randomly do inspections
25 throughout the facility so long as they hit one

1 inspection point per day, one inspection type?

2 A. No. Well, I'm not their direct supervisor but
3 the second-level inspector for the coke oven inspectors.
4 But they are required -- what I put on them was to have
5 each battery inspected for each inspection type at least
6 once a month.

7 Q. Okay. I want to direct you to ACHD Number 4. It
8 should be in that pile of papers there.

9 A. That's the part one enforcement, 2109, that
10 sheet?

11 Q. Yes, sir.

12 A. Okay.

13 Q. On page I3 it says, "2109-04A, general." Could
14 you just read that first line, please?

15 A. 2109-04?

16 Q. 04A.

17 A. Okay. "General A, general, whenever the
18 Department finds on the basis of any information
19 available to it, that --

20 Q. Okay, just the first line. Having read that, is
21 there any requirement that any studies be done?

22 A. No.

23 Q. Is there any requirement that all data be used?

24 A. Any information available, so no.

25 Q. Okay. Does it say "all information available"?

1 A. No, it does not.

2 Q. Does it specify any of the information at all,
3 specifically?

4 A. It does not, no.

5 Q. Would I be correct in saying that the only
6 qualification for further enforcement is that there be
7 information available to it?

8 A. Yeah, the Department finds any information
9 available.

10 Q. So any information, correct?

11 A. Yes.

12 Q. Okay. And on the following page, on the second
13 line, could you read that?

14 A. "Emissions may otherwise reasonably be
15 anticipated to endanger the public health, safety or
16 welfare."

17 Q. Okay. You've been working with coke ovens as an
18 enforcement chief for how many years?

19 A. About five.

20 Q. And you're aware of the types of emissions that
21 come out of a coke oven battery?

22 A. Yes.

23 Q. Would you consider any of those emissions to be a
24 threat or to endanger public health if exposed to those
25 chemicals that come out of a coke battery?

1 MR. DAUSCH: I'm going to object to the extent he
2 is asking for a legal conclusion based on this
3 regulation.

4 MR. WILLIS: I'm asking for a factual conclusion.
5 I'm asking if there is anything that he would find that
6 would be a danger to public health.

7 HEARING OFFICER SLATER: He can answer to the
8 best of his knowledge.

9 MR. DELUCA: There are a lot of hazardous air
10 pollutants that come out of coke batteries, particularly
11 raw coke oven gas, and those emissions would be
12 unhealthy for those persons to breath.

13 BY MR. WILLIS:

14 Q. And could you continue reading the third line?
15 Actually, start where it says, "It may..." on the second
16 line.

17 A. Okay. "It may order the person responsible for
18 such source to comply with an additional or more
19 stringent emission limitation."

20 Q. Okay. Does that say that it has to go through
21 county council?

22 A. It doesn't mention county council at all.

23 Q. Does it mention the Board of Health?

24 A. It does not.

25 Q. Does it mention any sort of rulemaking process

1 which would be required for the institution of a more
2 stringent standard?

3 A. No.

4 Q. On the fourth line after the word "or," could you
5 read that, please?

6 A. "Or it may order the immediate shutdown of the
7 source or any part thereof."

8 Q. Okay. Do you -- you've seen the enforcement
9 order?

10 A. Yes.

11 Q. Did we order any immediate shutdown of the
12 facility?

13 A. No.

14 Q. Did we order the immediate shutdown of any part
15 of the facility?

16 A. No.

17 Q. To the -- did we order any condition shutdown of
18 any part of the facility?

19 A. Hot idle, not a shutdown.

20 Q. So there's a distinction being made between a
21 shutdown of a battery and a hot idling of a battery?

22 A. Yeah.

23 Q. What is the distinction?

24 A. A hot idle is a temporary stop in operation that
25 could be restarted later on. To me, a shutdown is more

1 data; isn't that correct?

2 A. Yes.

3 Q. And that data would be during the six months
4 during that compliance period, correct?

5 A. Yes.

6 Q. So in order to determine the worst two performing
7 batteries, you would already have to go through six
8 months of that compliance period?

9 A. Yes.

10 Q. So even if they knew that a shutdown would have
11 -- or a hot idle would have to come with respect to any
12 two batteries, it would not happen until after the six
13 months of data gathering with respect to those two --
14 the performance, right?

15 A. Yeah, after that six months and after the
16 determination was made to the actual two batteries
17 performing.

18 Q. Okay. So if there was an exceedance at that 10-
19 leak standard, there wouldn't be any repercussions from
20 that until at least another four or five months down the
21 road?

22 A. It depends on which month it first exceeded. But
23 if it exceeded during the first or the second month,
24 yeah, it would have to wait until that full six-month
25 period passes.

1 permanent.

2 Well, let me think about that one a little more.
3 'Cause you can shut down a facility and stop operation
4 permanently; and with the coke batteries, an immediate
5 shutdown would cause harm to the battery greater than a
6 hot idle. A hot idle would keep it heated so the
7 refractory doesn't break or anything like that. So it
8 is a different condition specific to coke batteries.

9 A line that's more batch processed, an immediate
10 process -- if the batch process where it starts and it
11 stops, it's going to have a different effect from that
12 shutdown.

13 A coke battery, from an immediate shutdown,
14 that's going to be more hindrance to the battery itself.

15 Q. I understand. As the way the enforcement order
16 is designed, say they have an exceedance of 10 leaks on
17 the coke-side battery or the coke side of Battery B and
18 a shutdown would be required, would that be required
19 immediately?

20 A. I don't believe it was --

21 Q. Let me ask you this: there is a metric for
22 determining the worst two performing batteries; isn't
23 that correct?

24 A. Yes.

25 Q. And to determine that, you'd need six months of

1 Q. And we would make that determination, as to what
2 those two worst performing batteries would be, based on
3 that data?

4 A. Based on those six months, yeah.

5 Q. And so we would know -- only after having
6 reviewed that data, determine whether or not -- or to
7 determine which of the 10 batteries that existed at
8 Clairton Coke Works would have to go into hot idle?

9 A. Yeah, we would have to do that calculation
10 afterwards to make a final determination.

11 Q. All right. With respect to all of the corrective
12 actions that have been requested or demanded as a part
13 of this enforcement order, is there any requirement for
14 a control device?

15 A. No.

16 Q. Is it fair to say that these are all operational
17 requirements that we're asking for?

18 A. To improve compliance, yeah. The only part that
19 may be part of the battery is the maintenance for the
20 OOMS. That was the 2016 agreement.

21 Q. So again, if they maintain OOMS and improve on
22 the inspections, compliance with the order should be
23 sufficient?

24 A. Yeah. I mean, if you improve compliance in one
25 facet and leave the other one stagnant, it would be --

1 the compliance percentage would increase.

2 Q. Is it possible for them to control the number of
3 exceedances in the future given how many exceedances
4 they've had in the past?

5 A. (No response.)

6 Q. Let me back up. Let me back up.

7 You already mentioned that Keramida and U.S.
8 Steel provide U.S. Steel with data on a daily basis with
9 respect to exceedances?

10 A. Yes.

11 Q. And let's say that in week three of month two
12 they are getting pretty close, they know that they are
13 not going to improve upon the first quarter. Is there
14 something operationally that they can do to remedy that
15 situation going forward?

16 A. Within week three of month two they find that
17 their compliance is decreasing and they are not going to
18 meet that compliance percentage?

19 Q. It looks like it's trending towards
20 non-compliance. Can they do something operationally to
21 ensure compliance in that third month?

22 A. If you pay closer attention to it and do it more
23 slowly, the procedures, the thought is you will have
24 less violations, less exceedances. So you could bring
25 that compliance back up.

1 I figured, "Well, I don't have a whole lot of
2 money. Let me try to fix this." So I figured out a way
3 to actually get inside the headlight and clean it off
4 and clean it so that it was clear enough to pass
5 inspection.

6 Well, the rule was, I had to be able to pass
7 inspection with some sort of transparency that the
8 mechanic decided for that headlight, and I met that
9 condition. The manual had a different way of meeting
10 it, which was just replacing the headlight.

11 Q. I see. And so it really doesn't matter if U.S.
12 Steel adheres to the source testing manual because there
13 is really no requirement for them to do so?

14 A. It's not a regulation.

15 Q. Okay. We've had errors with respect to
16 enforcement orders in the past; is that correct?

17 A. Yes, unfortunately.

18 Q. When we find those errors, we revise the order?

19 A. Yeah, if necessary. I mean, we would correct any
20 mistakes we find.

21 Q. And with respect to discipline, we are prepared
22 to make that correction?

23 A. Yes.

24 Q. Okay. But we don't know exactly what that number
25 would be?

1 Q. So it's really in their hands to make sure that
2 they comply with the terms of the enforcement order?

3 A. Yeah. I mean, it's the compliance and the
4 Battery B leaks. Both of those are in U.S. Steel's
5 control, the number of leaks in the exceedances.

6 Q. And I've spoken to you about the source testing
7 manual in the past and you've provided an apt analogy
8 with respect to how we should be thinking about the
9 source testing manual and in comparison to Article 21.

10 I think it was something to do with a driver's
11 manual, and I think Jayme Graham has made that analogy
12 as well. Can you reiterate what you've -- how you would
13 analyze -- analogize that?

14 A. The regulation in this case, or the law in this
15 case, is you have to pass the inspection on a vehicle.
16 You have to do the -- in Pennsylvania, you have to do
17 the emissions and inspection.

18 The manual tells you how to do certain
19 maintenance on the vehicle. I'm assuming you are
20 talking about the example I had with my headlights where
21 I -- my car -- previous car didn't pass inspection.

22 I had a couple issues with it. One of them was
23 that my headlights weren't clear enough. So the
24 assumption, if you go by the manual, would be to replace
25 the headlights.

1 A. I remember doing a calculation based off the data
2 I had at that time. We would just -- we would reissue
3 the violation with the correct penalty amount based on
4 the information we have. This one, I know, has some
5 errors in it.

6 Q. And those violations and the corrections thereto
7 only affect the monetary penalty, it does not affect the
8 other corrective actions that we've asked U.S. Steel to
9 make?

10 A. The compliance percentage -- nothing I know of
11 right now affects the compliance percentage.

12 Q. And in terms of the performance of the corrective
13 actions, the errors with respect to the penalties has no
14 impact on that?

15 A. Sorry, ask that one again.

16 Q. There are two aspects of the enforcement order:
17 there is a civil penalty and the corrective action. The
18 corrective action is not a penalty, is it?

19 A. Not as I see it. It's a corrective action.

20 Q. Okay. And so to the extent that there were
21 errors with a penalty amount, does the penalty amount
22 have any bearing on the corrective action?

23 A. No, they are separate categories. You can change
24 the penalty amount and still have the same corrective
25 actions.

1 Q. Okay. You mentioned earlier there were thousands
2 of emissions points on the batteries; is that a fair
3 assessment?

4 A. Yeah. I mean, there are 10 batteries there, and
5 each one has hundreds of emission points on it.

6 Q. And we don't regulate all of those emission
7 points?

8 A. Not all of them. A good percentage of them but
9 not all of them.

10 Q. Is there any practical reason why we don't?

11 A. The regulations are written as they are.

12 Q. So the regulations described exactly what we are
13 to regulate?

14 A. Yeah.

15 Q. Okay. Nonetheless, would you agree that each of
16 those emission points is an opportunity for a regulated
17 emission to leave and enter the open atmosphere?

18 A. Yeah, at any point that emissions can escape,
19 yes.

20 Q. You mentioned something about the shed and the
21 ability to close it off on either side because there's
22 an opening on both sides of the shed, correct?

23 A. Yes.

24 Q. And I think what you were trying to get at was
25 you were talking about the plastic flaps in front of a

1 been in that area, and I've driven by and seen Battery B
2 area generally.

3 Q. Have you seen the shed?

4 A. I'm sure I have, but I don't know specifically.

5 Q. Okay. Let's take a hypothetical shed. Let's
6 take a shed that has two open sides on it and one that
7 has a port at the top, let's say a chimney, and you want
8 to control the particulate matter -- or let's say there
9 is a fire under that shed. You want to make sure that
10 the fire goes up the chimney and not outside the doors
11 of the shed. What would you do to control the
12 particulate matter from -- or the smoke from going out
13 the sides of the doors and going up the chimney?

14 MR. DAUSCH: I'm going to object based on
15 foundation, relevance.

16 MR. WILLIS: It's a hypothetical.

17 MR. DAUSCH: We are getting way off track.

18 MR. WILLIS: It's a hypothetical.

19 HEARING OFFICER SLATER: He can answer to the
20 best of his knowledge.

21 MR. DELUCA: You can increase capture by
22 increasing the draw of the fan at the top center of that
23 and that would pull in more of the emissions from the
24 outside.

25 You can develop ways to enclose it more than it

1 door. I call them air curtains. Are you familiar with
2 the concept?

3 A. Yes.

4 Q. Can you think -- I mean, you're an engineer,
5 right?

6 A. Civil environmental.

7 Q. Okay. Can you, as an engineer, discern -- and
8 granted, this is for purposes of this hearing -- but can
9 you discern any technical difficulties in having some
10 control, some sort of device at the site to ensure that
11 the gaseous emissions do -- are limited or reduced?

12 MR. DAUSCH: I'm going to object to foundation.
13 I don't think there's been any foundation that he can
14 devise controls for coke plants for batteries that he's
15 never physically been to.

16 MR. WILLIS: He says that he's been to them
17 before.

18 MR. DAUSCH: He drove by it.

19 BY MR. WILLIS:

20 Q. Have you been to Clairton Coke Works?

21 A. I've been to Clairton Coke Works.

22 MR. DAUSCH: You're talking about the shed?

23 BY MR. WILLIS:

24 Q. Have you seen the shed?

25 A. I've never been underneath the shed, I've never

1 was previously so that those emissions would be captured
2 through the top of it. It's more increasing the
3 capture. The control is beyond the shed itself because
4 it goes to the bag house which is a control device,
5 generally.

6 But to figure out ways to enclose it more so that
7 more of the emissions would be captured.

8 BY MR. WILLIS:

9 Q. Okay. You testified earlier that because of the
10 shed and because of the 303 method in which you're doing
11 the visual emission inspections from the bench, is that
12 from the side of the battery?

13 A. Method 303 reads from the bench, which is it
14 transverses along the length of the battery on the side.

15 Q. Okay. And they're doing that because of federal
16 regulation which requires them to do that?

17 A. Yes.

18 Q. Okay. And the coke-side yard equivalent is
19 designed to take into consideration that you are so much
20 closer to the battery that your visual emission
21 observations may be skewed?

22 A. I know it decreases the number. I'm assuming
23 it's because you are closer. It's commonsense. I
24 mentioned earlier that you are going to see more from
25 five feet than 25 feet if it's a small leak.

1 So that Method 303 coke yard equivalency is
2 designed to reduce the amount of emissions because you
3 are reading it closer. Not the amount of emissions,
4 sorry, the amount of counted leaks.

5 MR. WILLIS: Okay, that's all I have.

6 RECROSS-EXAMINATION

7 BY MR. DAUSCH:

8 Q. Sir, do you know who had the burden of proof in
9 this case?

10 A. I believe it's ACHD.

11 MR. DAUSCH: That's all I have.

12 HEARING OFFICER SLATER: That's it?

13 MR. WILLIS: That's it.

14 HEARING OFFICER SLATER: All right.

15
16 (The hearing recessed at 4:25 p.m.)
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1 CERTIFICATE OF REPORTER

2 COMMONWEALTH OF PENNSYLVANIA :
3 :
4 COUNTY OF ALLEGHENY :
5

6 I, Heidi R. Hawk, a Notary Public duly
7 commissioned and qualified in and for the said
8 Commonwealth and County, do hereby certify that pursuant
9 to the notice, the within named persons were sworn by me
10 to testify to the truth and nothing but the truth; that
11 the testimony was reduced to writing under my
12 supervision; that this transcript is a true record of
13 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 any
18 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 December 26,
22 2018.
23
24
25

My Commission Expires:
March 7, 2019

Heidi Hawk
COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
Heidi Hawk, Notary Public
Cheswick Boro, Allegheny County
My Commission Expires March 7, 2019
MEMBER PENNSYLVANIA ASSOCIATION OF NOTARIES

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