



July 31, 2019

Jayne Graham, Manager
Air Quality Program
Allegheny County Health Department

Sent by email to: aqcomments@alleghenycounty.us

Dear Ms. Graham,

Oh behalf of Clean Water Action's over 8,000 members in Allegheny County, we are submitting the following comments on the proposed settlement agreement between the Allegheny County Health Department (ACHD) and U.S. Steel regarding violations at U.S. Steel's Clairton Coke Works. While we understand the benefits of avoiding lengthy litigation regarding the violations which led to ACHD's Enforcement Order in June, 2018, Clean Water Action is greatly concerned that the proposed settlement will not contribute to an eventual end to the ongoing coke battery violations at the plant. Our concerns regarding the proposed settlement fall into the following areas:

U.S. Steel's Compliance with ACHD's Article XXI

The overall documented improvement in compliance by the Clairton Coke Works with ACHD's Article XXI regulations between 2018 and 2019 was extremely small, going from a compliance rate of 98.1% to 98.2%. This increase in compliance of 0.1% represents an elimination of at best only 5% of the outstanding violations of emission rules at the coke batteries. The proposed settlement does not set quantified targets for improvement in the compliance rate of coke batteries in the future, simply requiring improved compliance over time. If the current rate of improvement continues going forward, full compliance would not be achieved until 2039.

ACHD should require ongoing quantified targets for improvement in compliance with Article XXI, with the goal of reaching 100% compliance in a timely manner with U.S. Steel's permit and with coke battery emissions regulations.

ACHD's Ability to Enforce Future Violations of Article XXI

While the stipulated penalty provisions have value in enforcement for future violations, it is clear that the threat of putting poor performing batteries on hot idle is necessary for US Steel to take action to address their poor environmental performance. While ACHD may be reserving its rights to take other

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enforcement actions for future violations, this settlement should explicitly state that ACHD will act to move violating batteries to hot idle.

The settlement should set a compliance level that if any battery goes below it in the future, ACHD will put that battery on hot idle. At a minimum that level should be set at the 2018 compliance rate of 98.1%. ACHD should also consider the idling of individual poor performing ovens, as opposed to entire batteries, as a method that would both gain the greatest environmental improvements, while minimizing the impact on the company's operations.

In addition, we are greatly concerned with the proposed modifications to the test methods that ACHD and U.S. Steel have included in the agreement. These test methods are the core measures that ACHD inspectors use to determine violations at the Clairton Coke Works. By adopting changes in these methods through a settlement agreement, ACHD is circumventing the proper and legal rulemaking process that is required by Local Health Administration Law 16 P.S. § 12011(c). ACHD cannot perform the County's rulemaking functions through a settlement agreement.

Some of the proposed changes to test methods do not appear to be enforceable, such as the speed at which an ACHD inspector walks while conducting visual observations. Adopting unenforceable test measures is certain to assist U.S. Steel in avoiding legal prosecution for future violations of ACHD coke oven emission rules.

In future rulemaking regarding test measures, ACHD should consider the use of technology such as FLIR cameras which can accurately record visual emissions and leaks from the many emission points on a coke oven. Technology like FLIR cameras, in addition to providing a reviewable record of emission violations, can also help focus enforcement and emission reductions efforts on the biggest emission problems first, providing the greatest relief for nearby residents breathing the illegal sources of pollution.

Achieving National Ambient Air Quality Standards (NAAQS) in the Mon Valley

Despite federal ambient air standards (NAAQS) having been set for fine particles (PM2.5) in 2006 and sulfur dioxide in 2010, the Mon Valley continues to have unhealthy air that exceeds these NAAQS. Despite U.S. Steel's efforts under ACHD's 2018 Enforcement Order, preliminary data from 2019 at the Liberty monitor is showing an average of 14 micrograms/cubic meter of PM2.5, well above the standard of 12 (even considering the potential error from the continuous monitor at Liberty).

ACHD has projected in its State Implementation Plan (SIP) revision recently published that the PM2.5 standard will be met by 2021, fifteen years after the standard was set to protect residents' health. However, as ACHD's SIP revision requires no further emission reduction action by U.S. Steel, and given that local monitors show a failure to attain the standard, it is hard to see how the NAAQS will be met

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without significant emission reductions from the Clairton Coke Works which is responsible for the vast majority of the ambient PM2.5 in the Mon Valley.

The proposed settlement agreement lists a number of emission reduction projects that U.S. Steel will be carrying out. Overall, we would comment that there is no certainty that these projects will significantly impact future compliance by U.S. Steel with ACHD emission rules, or that they will result in ambient air in the Mon Valley attaining the NAAQS. We would make the following recommendations regarding the emission reductions projects:

- The emission reduction projects should be analyzed to determine the quantity of emissions reduced from the Clairton Coke Works, and potential impact on compliance with ACHD coke oven emission rules.
- U.S. Steel has publicly stated that these emission reduction projects will cost \$200 million. These cost figures should be put on record in the settlement agreement to ensure that expenditures for emission reductions are enforceable by ACHD. In addition, the cost of individual projects should be considered in the above analysis in order to determine if these expenditures are an efficient way to reduce emissions from the facility.
- The Pushing Emission Control System Upgrades should include improved capture of pushing emissions in addition to addressing replacement of PEC baghouses.
- It is not clear that replacement of the Battery 15 stack will result in any emission reductions.
- The proposed settlement should make clear that ACHD may require further emission reduction projects if the project analysis does not result in compliance with the NAAQS and ACHD rules.
- The emission reduction projects should be incorporated into the Allegheny County PM2.5 SIP revisions in order to ensure they are federally enforceable.
- If ACHD fails to require significant reductions in emissions from the Clairton Coke Works through the settlement agreement *and* in the SIP, ACHD will set itself up to violate the current and future PM2.5 SIP. See *Oregon Env't'l Council v. Oregon Dep't Env'tl. Quality*, 1992 U.S. Dist. LEXIS 14842; 42 U.S.C.S. § 7410(i).

Establishing the Community Benefits Trust

The Community Benefits Trust provision is a positive step to ensure that penalties paid by U.S. Steel go towards the benefit of community residents who have borne the brunt of pollution from U.S. Steel. However, the Trust should be transparent, and its uses should be clearly defined.

It is critical that the Trust should not be held or managed by U.S. Steel, but should be held by an independent entity, such as a community foundation. As the funds in the Trust are a result of U.S. Steel's lack of compliance with air pollution rules, the company should not play a role in deciding the beneficiaries of the Trust.

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It should be clearly defined that funds for the trust should be used for the benefit of residents living near the Clairton Coke Works, to improve their health and well-being, and address the pollution impacts of U.S. Steel's Clairton Coke Works. Dispersal of the funds should be done in a transparent and public process, and the public should have the opportunity to participate in the process of determining how funds from the Trust are spent.

Development of New ACHD Coke Oven Emission Standards

We urge ACHD to expedite efforts to develop new more stringent Emission Standards for Coke Plants in Allegheny County. The settlement should require US Steel to cooperate with ACHD requests to develop technical data for the development of these rules.

Overall, we are concerned that language in the proposed settlement could result in ACHD illegally giving up their regulatory authority over the Clairton Coke Works in the future. As an example, given the compliance problems with C battery since its construction, we do not see a rationale for excluding it from new ACHD regulations. Using a settlement agreement as the method to determine the factors for a future rulemaking exceeds the County's statutory authority in Local Health Administration Law 16 P.S. § 12011(c), especially the proposed language in paragraph VII.12. of the Draft Settlement Agreement. ACHD should not use a settlement agreement to determine when or how it can adopt more stringent emission standards for coke batteries.

ACHD should present a draft rule for public comment as soon as possible to hear from all stakeholders as early in the process as is feasible.

Establishing a Community Advisory Panel

Recent accidents at the Clairton Coke Works have highlighted the lack of communication between U.S. Steel towards nearby residents regarding emergency response and other hazards from emissions from the plant. Establishing a Community Advisory Panel could assist with improving communication and transparency of how incidents and operation of the Clairton Coke Works could impact the local community. To achieve these goals, it will be critical for the Panel to fully represent nearby residents impacted by plant operations, and that the meetings of the Community Advisory Panel should be open to the public. In addition, it is critical that U.S. Steel not be the sole decision maker regarding which individuals are selected as members of the Panel.

Length of Settlement Agreement

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We are concerned that a 5 year agreement is overly lengthy, especially given ACHD's commitment to attain the NAAQS by 2021. While U.S. Steel is searching for certainty regarding future actions of ACHD, there is no corresponding certainty for the community that the poor air quality that has resulted from past violations will not continue. We would recommend that the proposed settlement should terminate after 1 year to allow ACHD discretion to enforce future violations as they see fit.

We appreciate ACHD giving the public the opportunity to comment on the proposed settlement agreement with U.S. Steel and we urge ACHD to consider carefully the full ramifications of finalizing the proposed settlement without addressing the issues raised in our comments.

Sincerely,

A handwritten signature in black ink that reads "Myron Arnowitt".

Myron Arnowitt
Pennsylvania Director

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