

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
**BEFORE THE ADMINISTRATOR**

IN THE MATTER OF:	)	PETITION FOR OBJECTION
	)	
Clean Air Act Renewal Title V	)	
Operating Permit Issued to United	)	Permit # 0052-OP22
States Steel Corp., Clairton Coke Works	)	
	)	
Issued by the Allegheny County Health	)	
Department	)	

The Group Against Smog and Pollution (“GASP”)<sup>1</sup> files this Petition pursuant to section 505(b)(2) of the Clean Air Act, 42 U.S.C. § 7661d(b)(2), and 40 C.F.R. § 70.8(d), and respectfully requests that the Administrator of the United States Environmental Protection Agency (“EPA”) object to a renewal Title V Operating Permit issued on November 21, 2022 to United States Steel Corporation (“U.S. Steel”) for a by-product coke plant (the “Clairton Coke Works”)<sup>2</sup> located in the City of Clairton, Allegheny County, Pennsylvania (Permit # 0052-OP22) (the “Permit”).

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<sup>1</sup> GASP is a membership-based non-profit environmental organization working for a healthy, sustainable environment. Founded in 1969, GASP serves as watchdog, advocate, and educator on environmental issues with a focus on air quality in southwestern Pennsylvania and surrounding regions. GASP membership includes hundreds of residents of southwestern Pennsylvania, including residents of the City of Clairton and adjacent and nearby municipalities. GASP’s ability to carry out its mission of improving the implementation and enforcement of the Clean Air Act and other environmental laws will be adversely impacted if the Administrator does not object to the Permit.

<sup>2</sup> The Clairton Coke Works is located on the west bank of the Monongahela River in the City of Clairton, Allegheny County, Pennsylvania, about twenty miles south of Pittsburgh. The Clairton Coke Works is the largest by-product coke plant in North America; it is a major source of carbon monoxide, nitrogen oxides, coarse particulate matter, fine particulate matter, sulfur oxides, volatile organic compounds, and hazardous air pollutants. The facility produces metallurgical coke in ten separate batteries. The facility also produces coke oven gas, which is processed to yield crude coal tar, light oil, elemental sulfur and anhydrous ammonia. *See* Permit, at 5 (page 2 of the Attachments to this Petition, “APP 2”).

GASP requests that EPA object to the Permit because the Permit does not incorporate a compliance schedule as required by 40 C.F.R. §§ 70.5(c)(8)(iii)(C) and 70.6(c)(3). The Permit must include such a compliance schedule because the Clairton Coke Works is not in compliance with regulations of the Allegheny County Health Department (“ACHD”) pertaining to emission limits and operating requirements for coke ovens; those regulations are codified in Article XXI, section 2105.21 of ACHD’s Rules and Regulations (the “Article XXI, § 2105.21 Emission Standards”),<sup>3</sup> and have been incorporated into Pennsylvania’s State Implementation Plan.<sup>4</sup>

U.S. Steel applied to renew the Title V Operating Permit for the Clairton Coke Works on or about September 26, 2016. ACHD published a draft renewal Title V Operating Permit for the Clairton Coke Works for public comment on or about January 13, 2022. The public comment period ended on March 15, 2022.

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<sup>3</sup> See 40 C.F.R. § 52.2020(c)(2). The § 2105.21 Emission Standards generally limit particulate and visible emissions from coke ovens. Specifically, the standards limit: visible emissions during charging (the process by which coke ovens are filled with coal), *see* Art. XXI, § 2105.21.a; visible emissions from coke oven door areas, *see* Art. XXI, § 2105.21.b; visible emissions from coke oven charging ports while the ovens are operating, *see* Art. XXI, § 2105.21.c; visible emissions from coke ovens’ offtake piping, *see* Art. XXI, § 2105.21.d; particulate and visible emissions during pushing (when hot coke is pushed out of ovens), *see* Art. XXI, § 2105.21.e; particulate and visible emissions from coke ovens’ combustion stacks, *see* 2105.21.f; and visible emissions during soaking (soaking emissions are emissions from open standpipes that have been dampered off in preparation of pushing hot coke out of coke ovens), *see* Art. XXI, § 2105.21.i.

Article XXI, § 2105.21 also restricts how hot coke is quenched, *see* § 2105.21.g, prohibits the venting of unburned coke oven gas, *see* § 2105.21.h, and restricts the amount of sulfur compounds that may be present in such gas, *see id.* GASP does not contend that the Permit must incorporate a compliance schedule for the Clairton Coke Works’ violations of section 2105.21.g and 2105.21.h standards.

A copy of § 2105.21 is included in the Attachments to this Petition, at APP 6-19

<sup>4</sup> See 40 C.F.R. § 52.2020(c).

GASP submitted comments regarding the Permit on March 15, 2022. In its comments, GASP argued that the Clairton Coke Works was not in compliance with Article XXI, § 2105.21 Emission Standards and, consequently, that pursuant to 40 C.F.R. § 70.6(c)(3), the Permit must include a compliance schedule consistent with 40 C.F.R. § 70.5(c)(8)(iii)(C).<sup>5</sup>

In response, ACHD did not contend that the Clairton Coke Works was in compliance with the Article XXI, § 2105.21 Emission Standards.<sup>6</sup> Rather, ACHD stated that a Settlement Agreement and Order between it and U.S. Steel dated June 27, 2019, was incorporated into the Permit; that violations of the Emission Standards by the Clairton Coke Works are also violations of the Permit; that such violations will result in the imposition of penalties and enforcement orders; and that ACHD will work with the Clairton Coke Works to correct such violations.<sup>7</sup> ACHD did not assert that the measures required by that Settlement Agreement and Order would yield compliance in the future, or that it had plans to take legal action against U.S. Steel to require it to undertake any new measures aimed at achieving compliance. ACHD issued the renewal Permit on November 21, 2022.

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<sup>5</sup> See Comments of the Group Against Smog and Pollution Regarding the Draft Title V Operating Permit for U.S. Steel's Clairton Coke Works (#0052-OP22), at 1-3 (March 15, 2022) (APP 21-23).

<sup>6</sup> At the time comments on the Permit were due in March 2022, ACHD's website described the Clairton Coke Works as "Non-Compliant," see ACHD, Compliance Status Report (rev. Oct. 20, 2020) (APP 37).

<sup>7</sup> See ACHD Air Quality Program, Summary of Public Comments and Department Responses on the Proposed Issuance of the U.S. Steel Clairton Works Title V Operating Permit No. 0052, at 24-25 (APP 39-40). The June 28, 2019, Settlement Agreement and Order is incorporated into the Permit by reference in section IV.32 of the Permit, on pages 51-52 (APP 3-4).

## **THE TITLE V PERMITTING PROCESS IN ALLEGHENY COUNTY, PENNSYLVANIA**

Title V of the Clean Air Act (“Title V”)<sup>8</sup> establishes an operating permit program for certain sources of air pollution, including “major sources.”<sup>9</sup> Title V requires each state to administer an operating permit program for “major sources,” subject to EPA’s approval and oversight of the program.<sup>10</sup>

EPA granted final approval to ACHD’s Title V permitting program on or about November 1, 2001, and the program became effective on December 17, 2001.<sup>11</sup> ACHD’s Title V permitting program is codified at Sections 2103.01 - 2103.25 of Article XXI of ACHD’s Rules and Regulations and has been incorporated into Pennsylvania’s State Implementation Plan (“SIP”).<sup>12</sup>

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<sup>8</sup> Title V is codified at 42 U.S.C. §§ 7661-7661f. Title V’s implementing regulations are codified, in pertinent part, at 40 C.F.R. Part 70.

<sup>9</sup> A “major source” includes a source that has the potential to emit more than 100 tons per year of certain criteria pollutants, ten tons per year or more of any single “hazardous air pollutant,” or twenty-five tons per year or more of any combination of “hazardous air pollutants.” 42 U.S.C. § 7661(2). The Clairton Coke Works is a “major source” within the meaning of Title V.

<sup>10</sup> See 42 U.S.C. § 7661a(d)(1).

<sup>11</sup> See *Clean Air Act Full Approval of Partial Operating Permit Program; Allegheny County; Pennsylvania*, 66 Fed. Reg. 55112 (Nov. 1, 2001).

<sup>12</sup> See 40 C.F.R. § 52.2020(c)(2); *Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Federally Enforceable State Operating Permit Program for Allegheny County*, 69 Fed. Reg. 52831 (Aug. 30, 2004); *Clean Air Act Full Approval of Partial Operating Permit Program; Allegheny County; Pennsylvania*, 67 Fed. Reg. 68935 (Nov. 14, 2002).

## SPECIFIC OBJECTION

### **I. THE TVOP DOES NOT INCORPORATE A COMPLIANCE SCHEDULE AS REQUIRED BY 40 C.F.R. §§ 70.5(c)(8)(iii)(C) AND 70.6(c)(3)**

Under the Clean Air Act, EPA’s obligation is clear: “[i]f any [Title V] Permit contains provisions that are determined by the Administrator as not in compliance with the applicable requirements of this chapter ... the Administrator **shall** ... object to its issuance.”<sup>13</sup> EPA “does not have discretion whether to object to draft Title V Operating Permits that do not comply with the Clean Air Act or requirements thereunder.”<sup>14</sup>

40 C.F.R. § 70.6(c)(3) requires that every Title V Operating Permit contain “[a] schedule of compliance consistent with § 70.5(c)(8) of this part.” 40 C.F.R. § 70.5(c)(8)(iii)(C) provides that “sources that are not in compliance with all applicable requirements at the time of permit issuance” must include compliance schedules in their applications for Title V Operating Permits. The Administrator has granted a petition requesting an objection to a Title V Operating Permit when the petition identified violations of an emission standard based on an “Administrative Order” issued to the facility that was not resolved at the time of permit issuance.<sup>15</sup> Similarly, the Administrator has objected to Title V Operating Permits for facilities when those permits did not incorporate compliance schedules where notices of violation from the permitting

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<sup>13</sup> 42 U.S.C. § 7661d(b)(1) (emphasis added).

<sup>14</sup> *New York Pub. Interest Research Group v. Whitman*, 321 F.3d 316, 334 (2d Cir. 2003).

<sup>15</sup> *See In the Matter of Owens-Brockway Glass Container, Inc.*, 2021 EPA CAA Title V LEXIS 5, \*78-82 (May 10, 2021); *see also New York Pub. Interest Research Group v. Johnson*, 427 F.3d 172, 182 (2d Cir. 2005) (stating “[w]here a source is non-compliant, the permit must include a compliance schedule”).

agency showed numerous violations of emissions standards that were unresolved when the permits were issued.<sup>16</sup> The Administrator has explained that a compliance schedule will be unnecessary for a facility with a demonstrated history of non-compliance only when:

(i) the facility has returned to compliance; (ii) the violations were intermittent, did not evidence on-going noncompliance, and the source was in compliance at the time of permit issuance; or (iii) the [permitting agency] has opted to pursue the matter through an enforcement mechanism and will reopen the permit upon a consent agreement or court adjudication of the noncompliance issues.<sup>17</sup>

Section 70.5(c)(8)(iii)(C) also specifies what a compliance schedule for a non-compliant facility must contain. Thus, each such compliance schedule:

shall include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements for which the source will be in noncompliance at the time of permit issuance. This compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject. Any such schedule of compliance shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based.<sup>18</sup>

As explained below, the Clairton Coke Works has been continuously out of compliance with Article XXI, § 2105.21 Emission Standards for years and was not in compliance with those standards when ACHD issued the Permit. The remedial measures required by the June 27, 2019, Settlement Agreement and Order referenced in the Permit

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<sup>16</sup> See *In the Matter of Valero Refining Co.*, 2005 EPA CAA Title V LEXIS 10, \*33-39 (March 15, 2005); *In the Matter of Tesoro Refining & Marketing Co.*, 2005 EPA CAA Title V LEXIS 9, \* 35-42 (March 15, 2005).

<sup>17</sup> *Tesoro*, at \*41-42.

<sup>18</sup> 40 C.F.R. § 70.5(c)(8)(iii)(C).

have been implemented but have not achieved compliance. Thus, the Permit does not incorporate a compliance schedule “leading to compliance” with the Article XXI, § 2105.21 Emission Standards, as required by 40 C.F.R. §§ 70.5(c)(8)(iii)(C) and 70.6(c)(3). Consequently, EPA must object to the Permit.

**A. The Clairton Coke Works is not in Compliance with Article XXI, § 2105.21 Emission Standards**

The Clairton Coke Works was not in compliance with all applicable Article XXI, § 2105.21 Emission Standards when it applied to renew its Title V Operating Permit in September 2016 and has continued to be out of compliance with those standards.

Several months before U.S. Steel applied to renew the Clairton Coke Works’ Title V Operating Permit, U.S. Steel and ACHD entered into a “Consent Judgment” in the Court of Common Pleas of Allegheny County, Pennsylvania, relating to numerous violations of Article XXI, § 2105.21 Emission Standards at the facility that were alleged to have occurred at the facility between March 24, 2009, and March 24, 2016.<sup>19</sup>

Although U.S. Steel performed the remedial measures required by the 2016 Consent Judgment, Clairton Coke Works did not come into compliance with the Article XXI, § 2105.21 Emission Standards.<sup>20</sup> Accordingly, on June 28, 2018, ACHD issued “Enforcement Order #180601.” Enforcement Order # 180601 fined U.S. Steel \$1,091,950 for violations of Article XXI, § 2105.21 Emission Standards that occurred at

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<sup>19</sup> See Consent Judgment, GD-16-004611, ¶ 19 (C.P. Allegheny March 24, 2016) (APP 44).

<sup>20</sup> See Enforcement Order #180601, ACHD Air Quality Program, ¶¶ 6-32 (June 28, 2018) (describing violations of standards that occurred between March 2016 and April 2018) (APP 71-75).

the Clairton Coke Works during the third and fourth calendar quarters of 2017 and the first calendar quarter of 2018,<sup>21</sup> and required U.S. Steel to undertake other measures aimed at achieving compliance.<sup>22</sup>

Because the facility's violations of Article XXI, § 2105.21 Emission Standards continued after ACHD issued Enforcement Order #180601, ACHD issued additional orders in the following months:

- “Administrative Order #181002,” issued on October 31, 2018, fined U.S. Steel \$ 613,716 for 169 (more or less) violations of Article XXI, § 2105.21 Emission Standards that occurred at the Clairton Coke Works in the second quarter of 2018;<sup>23</sup>
- “Enforcement Order #190305,” issued on March 29, 2019, fined U.S. Steel \$ 707,568 for 204 (more or less) violations of Article XXI, § 2105.21 Emission Standards that occurred at the Clairton Coke Works in the third and fourth quarters of 2018;<sup>24</sup> and
- “Enforcement Order #190501,” issued on May 10, 2019, fined U.S. Steel \$ 337,670 for 110 (more or less) violations of Article XXI, § 2105.21 Emission Standards that occurred at the Clairton Coke Works in the first quarter of 2019.<sup>25</sup>

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<sup>21</sup> See *id.*, ¶¶ 33-75 (imposing monetary penalties for violations of Art. XXI, § 2105.21 emission standards) (APP 75-89).

<sup>22</sup> See *id.*, ¶ 81 (APP 91-94).

<sup>23</sup> See Administrative Order # 181002, attached to Letter from Dean DeLuca, Enforcement Chief, ACHD Air Quality Program, to Michael S. Rhoads, Plant Manager, U.S. Steel Clairton Coke Works (October 31, 2018) (APP 102-4).

<sup>24</sup> See Enforcement Order # 190305, attached to Letter from Dean DeLuca, Enforcement Chief, ACHD Air Quality Program, to Michael Rhoads, U.S. Steel Clairton Coke Works (March 29, 2019) (APP 111-13).

<sup>25</sup> See Enforcement Order # 190501, attached to Letter from Dean DeLuca, Enforcement Chief, ACHD Air Quality Program, to Michael Rhoads, U.S. Steel Clairton Coke Works (May 10, 2019) (APP 121-23).



Orders #181002, #190305, and #190501 only imposed monetary penalties; they did not require U.S. Steel undertake any work aimed at achieving reduced emissions or compliance with Article XXI, § 2105.21 Emission Standards.<sup>26</sup>

U.S. Steel appealed each of Enforcement Orders # 180601, #190305, and #190501 and Administrative Order #181002 in a timely manner.<sup>27</sup>

ACHD and U.S. Steel resolved those appeals by a “Settlement Agreement and Order” dated June 28, 2019.<sup>28</sup> The June 28, 2019, Settlement Agreement and Order required U.S. Steel to take certain measures presumably aimed at reducing the Clairton Coke Works’ emissions of air pollution.<sup>29</sup> With one exception (specifically, the repair of through walls at the facility’s Battery 15),<sup>30</sup> those measures were to have been implemented fully by November 1, 2021.<sup>31</sup>

The June 28, 2019, Settlement Agreement and Order also required U.S. Steel to pay \$ 2,732,504 for the violations of Article XXI, § 2105.21 Emission Standards that occurred between July 1, 2017 and March 31, 2019 (those violations had been the subjects of Enforcement Orders #180601, #181002, #190305, and #190501).<sup>32</sup> The June 28, 2019 Settlement Agreement and Order further provided for the payment of stipulated

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<sup>26</sup> See Administrative Orders #181002, #190305, and #190501, *supra*.

<sup>27</sup> See Settlement Agreement and Order between ACHD and U.S. Steel, at 3-7 (June 28, 2019) (APP 128-32).

<sup>28</sup> See *id.* (APP 126-57).

<sup>29</sup> See ¶ 8 (APP 137-40).

<sup>30</sup> There is nothing to suggest that the repair of Battery 15’s through walls will affect the compliance rate of any of the other batteries in the Clairton Coke Works.

<sup>31</sup> See *id.*, ¶ 8.H (APP 139).

<sup>32</sup> See *id.*, ¶ 9 (APP 140-41).

penalties by U.S. Steel to ACHD for any future violations of Article XXI, § 2105.21 Emission Standards, with the amount of such stipulated penalties to be based on the number and severity of such violations and assessed by ACHD on a quarterly basis.<sup>33</sup>

The measures undertaken pursuant to the June 28, 2019, Settlement Agreement and Order did not achieve compliance with the Article XXI, § 2105.21 Emission Standards. Because the Clairton Coke Works has continued to violate those standards, ACHD has made six separate demands to date for stipulated penalties to U.S. Steel pursuant to the June 28, 2019 Settlement Agreement and Order. Each of these six demand letters was based on violations of all of § 2105.21.a (charging emissions), § 2105.21.b (emissions from coke oven door areas); § 2105.21.c (emissions from charging port lids); § 2105.21.d (emissions from offtake piping); § 2105.21.e (pushing emissions); § 2105.21.f (visible emissions from battery combustion stacks); and § 2105.21.i (soaking emissions):

- By letter dated January 14, 2020, ACHD demanded the payment of stipulated penalties in the amount of \$ 743,625.00 for 674 (more or less) violations of Article XXI, § 2105.21 Emission Standards that occurred in the second and third calendar quarters of 2019;<sup>34</sup>
- By letter dated May 28, 2020, ACHD demanded the payment of stipulated penalties in the amount of \$ 361,400.00 for 333 (more or less) violations of Article XXI, § 2105.21 Emission Standards that occurred in the fourth calendar quarter of 2019 and the first calendar quarter of 2020;<sup>35</sup>

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<sup>33</sup> See *id.*, ¶ 14 (APP 145-47).

<sup>34</sup> See Letter from Shannon Sandberg, ACHD Air Quality Acting Enforcement Chief, to Michael Rhoads, U.S. Steel Corp. (Jan. 14, 2020) (APP 158-59).

<sup>35</sup> See Letter from Shannon Sandberg, Air Quality Manager, ACHD Air Quality Program Compliance and Enforcement Section, to John R. Michaud, U.S. Steel Corp. (May 28, 2020) (APP 167-68).

- By letter dated March 12, 2021, ACHD demanded the payment of stipulated penalties in the amount of \$ 383,450.00 for 401 (more or less) violations of Article XXI, § 2105.21 Emission Standards that occurred in the second, third, and fourth calendar quarters of 2020;<sup>36</sup>
- By letter dated June 4, 2021, ACHD demanded the payment of stipulated penalties in the amount of \$ 201,500.00 for 198 (more or less) violations of Article XXI, § 2105.21 Emission Standards that occurred in the first calendar quarter of 2021;<sup>37</sup>
- By letter dated March 2, 2022, ACHD demanded the payment of stipulated penalties in the amount of \$ 859,300.00 for 676 (more or less) violations of Article XXI, § 2105.21 Emission Standards that occurred in the second, third, and fourth calendar quarters of 2021;<sup>38</sup> and, most recently,
- By letter dated November 8, 2022, ACHD demanded the payment of stipulated penalties in the amount of \$ 458,225.00 for 249 (more or less) violations of Article XXI, § 2105.21 Emission Standards that occurred in the first calendar quarter of 2022.<sup>39</sup>

Notably, a chart that ACHD attached to its November 8, 2022 demand letter shows that U.S. Steel's rates of compliance with Article XXI, § 2015.21.a (charging emissions), § 2105.21.e (pushing emissions), and § 2105.21.i (soaking emissions) has worsened since the June 28, 2019 Settlement Agreement and Order went into effect, while the rates of compliance with Article XXI, § 2105.21.b (emissions from coke oven doors), § 2105.21.c

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<sup>36</sup> See Letter from Shannon Sandberg, Air Quality Manager, ACHD Air Quality Program Compliance and Enforcement Section, to Michael Rhoads, U.S. Steel Corp. (March 12, 2021) (APP 189-90).

<sup>37</sup> See Letter from Shannon Sandberg, Air Quality Manager, ACHD Air Quality Program Compliance and Enforcement Section, to Michael Rhoads, U.S. Steel Corp. (June 4, 2021) (APP 223-24).

<sup>38</sup> See Letter from Shannon Sandberg, Air Quality Manager, ACHD Air Quality Program Compliance and Enforcement Section, to Michael Rhoads, U.S. Steel Corp. (March 2, 2022) (APP 248-49).

<sup>39</sup> See Letter from Allason Holt, Program Manager - ACHD Compliance and Enforcement Program, to Michael Rhoads, U.S. Steel Corp. (Nov. 8, 2022) (APP 280-81).

(emissions from charging port lids), and § 2105.21.d (emissions from offtake piping) have remained more or less the same.<sup>40</sup>

The semi-annual compliance reports for the Clairton Coke Works for the period January 1 through June 30, 2022, confirm that violations of Article XXI, § 2105.21 Emission Standards occurred at all batteries during that period, excepting Battery 15, which was idle during the first half of 2022.<sup>41</sup>

**B. The June 28, 2019, Settlement Agreement and Order Does Not Qualify as a Compliance Schedule Under 40 C.F.R. § 70.5(c)(8)(iii)(C) Because it the Measures it Requires Have Been Implemented But Have Not Led to Compliance With Article XXI, § 2105.21 Emission Standards**

A schedule of compliance for a Title V facility must “include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements for which the source will be in noncompliance at the time of permit issuance.”<sup>42</sup> Further, such measures must be “supplemental to” and “not sanction noncompliance with” existing requirements.

The Permit incorporates by reference the June 28, 2019, Settlement Agreement and Order, which includes an enforceable sequence of actions with milestones. However,

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<sup>40</sup> See *id.* (APP 308).

<sup>41</sup> See Letter from Kurt A. Barshick, General Manager, U.S. Steel Mon Valley Works, to Allason Holt, ACHD Division of Air Quality (July 28, 2022), at 5-6 (identifying violations at Batteries 1, 2, and 3) (APP 314-15), at 10 (identifying violations at Batteries 13 and 14) (APP 319), at 15-16 (identifying violations at Batteries 19 and 20) (APP 324-25), and at 20 (identifying violations at Battery B) (APP 329); Letter from Kurt A. Barshick, General Manager, U.S. Steel Mon Valley Works, to Allason Holt, ACHD Division of Air Quality (July 28, 2022) (identifying violations at Battery C) (APP 332-33).

<sup>42</sup> 40 C.F.R. § 70.5(c)(8)(iii)(C).

U.S. Steel was required to complete all of those remedial measures (excepting only repair of Battery 15's oven through walls) by November 1, 2021.<sup>43</sup> As outlined above, despite having performed the remedial measures required by the June 28, 2019, Settlement Agreement and Order, all of the batteries at the Clairton Coke Works continue to be out of compliance with Article XXI, §§ 2105.21.a – f and § 2105.21.i, as evidenced by the six penalty demands ACHD has made since that agreement and order took effect, as well as the violations that U.S. Steel identified for the first half of 2022 in its semi-annual compliance reports.<sup>44</sup> Accordingly, because the measures required by the June 28, 2019, Settlement Agreement and Order have been implemented and have not achieved compliance with the Article XXI, § 2105.21 Emission Standards, the agreement and order does not qualify as a schedule of measures that will lead to compliance with those standards. Indeed, to the extent that the June 28, 2019, Settlement Agreement and Order allows violations of the Article XXI, § 2105.21 Emission Standards to continue, it effectively sanctions U.S. Steel's continuing noncompliance with those standards in

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<sup>43</sup> See Settlement Agreement and Order between ACHD and U.S. Steel, ¶ 8 (June 28, 2019) (APP 137-40). The Settlement Agreement and Order provides that U.S. Steel shall have until February 1, 2024, to repair "all battery oven through walls for Battery 15." See *id.*, ¶ 8.H (APP 139).

<sup>44</sup> ACHD's penalty demands are not merely an "early step" in the enforcement process that do not establish ongoing violations. Rather, they are the products of on-site compliance evaluations conducted by ACHD, U.S. Steel, and a contractor and are final agency actions subject to appeal by U.S. Steel. Compare Letter from Allason Holt, Program Manager - ACHD Compliance and Enforcement Program, to Michael Rhoads, U.S. Steel Corp. (Nov. 8, 2022) (stating "[t]he stipulated penalties were calculated pursuant to Section IX, SOA from the violations observed by the Department's Coke Oven Process Technicians and Method 303 contractor, and including data reported by U.S. Steel, at your company's Clairton Plant") (APP 280) with *In the Matter of United States Steel Corp. – Granite City Works*, 2011 EPA CAA Title V LEXIS 2, \*91-92 (Jan. 31, 2011) (determining that a compliance schedule was not required despite notices of violations that were issued to a facility after publication of a draft Title V Operating Permit for the facility, where the notices of violation were not final agency actions subject to appeal and were characterized by the Administrator as "an early step in the process of determining whether or not a violation has, in fact, occurred").

violation of 40 C.F.R. § 70.5(c)(8)(iii)(C).<sup>45</sup> Further, ACHD has not taken legal action against U.S. Steel to require it to undertake any new measures aimed at achieving compliance, and has not asserted that it plans any such action.<sup>46</sup>

The Permit does not comply with all requirements of the Clean Air Act because it lacks a schedule consistent with 40 C.F.R. § 70.5(c)(8)(iii)(C), in violation of 40 C.F.R. § 70.6(c)(3). Thus, the Administrator must object to the Permit. The Administrator should direct ACHD to develop a new schedule of enforceable remedial measures that will lead to compliance with the Article XXI, § 2105.21 Emission Standards and incorporate that schedule into the Permit.

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<sup>45</sup> 40 C.F.R. § 70.5(c)(8)(iii)(C) requires that a “schedule of compliance shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based.”

<sup>46</sup> See ACHD Air Quality Program, Summary of Public Comments and Department Responses on the Proposed Issuance of the U.S. Steel Clairton Works Title V Operating Permit No. 0052, at 24-25 (APP 39-40).

**CONCLUSION**

For the foregoing reasons, the Administrator must object to the Permit.

Respectfully submitted,

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DATED: March 6, 2023