

Exhibit 3



June 23, 2022

Sent via Email

Assistant Attorney General
United States Department of Justice
Environment and Natural Resources Division
P.O. Box 7611
Washington, DC 20044-7611
pubcomment-ees.enrd@usdoj.gov

**Re: PennFuture's Comments on U.S. Steel Edgar Thomson Consent Decree
United States and Allegheny County Health Department v. United States Steel Corporation, D.J. Ref. No. 90-5-2-1-12083**

Dear Assistant Attorney General:

Citizens for Pennsylvania's Future ("PennFuture") submits the following comments on behalf of the organization and its members on the proposed consent decree lodged on May 17, 2022 by the Department of Justice with the United States District Court for the Western District of Pennsylvania in *United States and Allegheny County Health Department v. United States Steel Corporation*, Civil Action No. 2:22-cv-00729-CRE, and put out for public comment in the Federal Register on May 24, 2022.

PennFuture is a Pennsylvania-statewide environmental organization dedicated to leading the transition to a clean energy economy in Pennsylvania and beyond. PennFuture strives to protect our air, water, and land, and to empower citizens to build sustainable communities for future generations. A main focus of PennFuture's work is to improve and protect air quality across Pennsylvania through public outreach and education, advocacy, and litigation.

The United States, on behalf of the United States Environmental Protection Agency ("EPA"), and the Allegheny County Health Department (the "Department" or "ACHD") jointly filed this lawsuit under the Clean Air Act against U.S. Steel Corporation ("U.S. Steel") for alleged violations at the Edgar Thomson steel mill in Braddock, Allegheny County, Pennsylvania. The United States reserves the right to withdraw or withhold its consent if the comments regarding the consent decree disclose facts or considerations indicating that the proposed consent decree is inappropriate, improper, or inadequate. *See* Proposed Consent Decree ¶ 121; 28 C.F.R. § 50.7(b)(1); 42 U.S.C. § 7413(g).

PennFuture supports EPA's efforts in bringing this litigation against U.S. Steel Edgar Thomson for its violations of the Clean Air Act. PennFuture believes that EPA enforcement is

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needed here to hold U.S. Steel accountable and to bring this facility into compliance. PennFuture remains concerned about the sufficiency of the civil penalty amount, the proposed Supplemental Environmental Project, and the need for public transparency, and believes EPA and the Department can do more to strengthen this proposed consent decree.

I. The United States and the Department have failed to demonstrate that the proposed civil penalty is adequate.

The Complaint initiating this litigation alleges that U.S. Steel violated the Allegheny County portion of Pennsylvania's Clean Air Act State Implementation Plan ("SIP"), the National Emission Standards for Hazardous Air Pollutants for Integrated Iron and Steel Manufacturing Facilities, and the Clean Air Act Title V Permit for U.S. Steel's Edgar Thomson Steel Plant facility. Proposed Consent Decree ¶ A. The Clean Air Act requires the consideration of a variety of factors in determining the penalty amount for any violation of the statute, including the size of the business, the economic impact of the penalty on the business, compliance history, good faith efforts to comply, the duration and seriousness of the violation, and the economic benefit of noncompliance. *See* 42 U.S.C. § 7413(e)(1). The Allegheny County Health Department Article XXI Air Pollution Control Rules and Regulations similarly require the consideration of a variety of factors in assessing the amount of a penalty, including the harm to public health, damage to the air, soil, water, or other natural resources, the economic benefit of noncompliance, the size of the facility, the deterrence of future violations, the compliance history, and the nature, frequency, severity, and duration of the violation. *See* Article XXI, § 2109.06.b.1.

Here, the proposed consent decree requires U.S. Steel to pay a civil penalty of \$1.5 million to the United States and the Department. Proposed Consent Decree ¶ 8. The proposed consent decree does not provide information on how the civil penalty amount was reached or how the penalty assessment factors required by the Clean Air Act and Article XXI were considered in reaching the \$1.5 million figure. However, consideration of the required penalty assessment factors leads to the conclusion that \$1.5 million is not an adequate penalty amount. U.S. Steel's poor history of noncompliance and the economic benefit it derived from failing to maintain and operate equipment to minimize emissions alone weigh in favor of a higher penalty. For example, the proposed consent decree lists a series of pre-settlement remedial measures that U.S. Steel has undertaken since EPA issued the Notice of Violation in 2017 to address the alleged violations. *See* Proposed Consent Decree ¶ 14. By not performing these upgrades previously, U.S. Steel likely enjoyed an economic benefit from this delayed compliance. It is also unlikely that the \$1.5 million penalty will be sufficient to deter future violations or to have an economic impact on U.S. Steel given the size of U.S. Steel and its demonstrated history of noncompliance in the face of repeated fines from the Department. The United States and the Department have failed to demonstrate that the proposed civil penalty amount is adequate in consideration of the required penalty assessment criteria, and a higher penalty should be considered.

II. The Department has failed to demonstrate that the proposed Supplemental Environmental Project is adequate.

The proposed consent decree provides that the civil penalty of \$1.5 million will be divided equally between the United States and the Department. Proposed Consent Decree ¶¶ 8-10, 12. While U.S. Steel is directed to pay the United States \$750,000 directly, the Department has opted for the entirety of its \$750,000 to be directed towards a Supplemental Environmental Project (“SEP”). Proposed Consent Decree ¶¶ 9, 12. “In lieu of receiving payment, ACHD agrees that U.S. Steel shall satisfy the ACHD civil penalty by providing funding in the amount of \$750,000 to the Allegheny County Department of Economic Development, which ACHD has approved as a Supplemental Environmental Project” Proposed Consent Decree ¶ 12. The Allegheny County Department of Economic Development will receive the \$750,000 in support of the creation of a multimodal connection to link the Great Allegheny Passage in Rankin Borough to the Westmoreland Heritage Trail in Trafford Borough through Turtle Creek Valley. Proposed Consent Decree, Appendix A. The purpose of the project “will be to provide funding for a multimodal connection to communities near U.S. Steel Edgar Thomson Plant.” Proposed Consent Decree, Appendix A.

A Supplemental Environmental Project is a project that may be included in a consent decree or settlement agreement and may mitigate all or a portion of the civil penalty. *See* ACHD Air Quality Program Civil Penalty Policy (January 2018) at 5-6. Under the Department’s own guidance, an approved SEP “must improve, protect, or reduce the risk to public health or the environment.” *Id.* at 5. Although the SEP is not required to relate specifically to air quality, due to “the multi-media nature of pollution prevention”, an environmental and/or public health benefit must be recognized. *Id.* The Department will determine the amount of penalty mitigation from a SEP based the following six criteria, as well as factors specific to the violator and the enforcement action: (1) the SEP will provide “significant, quantifiable benefits to public health or the environment”; (2) the SEP will provide environmental or public health benefits to communities disproportionately exposed to pollution; (3) the SEP was “developed with active solicitation and consideration of community input”; (4) the SEP will further innovative processes, technologies, or methods to improve public health or the environment; (5) the SEP will reduce emissions in one or more mediums; and (6) the SEP will develop or implement pollution prevention techniques or practices to reduce the generation of a pollutant. *Id.* at 6. Generally, the Department will require the violator to pay a monetary penalty amount as part of a settlement that includes a SEP. *Id.* at 7. However, the Department has discretion to allow a 100 percent mitigation of the penalty amount “if the SEP will provide an exceptional public health or environmental benefit.” *Id.* at 7.

Here, the Department has failed to demonstrate that the SEP provides adequate public health or environmental benefits sufficient to mitigate the penalty amount as proposed. Although multi-modal trail projects may generally provide community benefits, neither U.S. Steel nor the Department have shown that this SEP will improve, protect, or reduce the risk to public health or the environment, as required by the Department’s own SEP policy. *See* ACHD Air Quality Program Civil Penalty Policy (January 2018) at 5. Additionally, U.S. Steel’s \$750,000 contribution to the SEP will mitigate the full amount of the civil penalty due to the Department

under the proposed consent decree. However, this SEP does not meet the six criteria used by the Department for determining the amount of penalty mitigation and it will not provide “an exceptional public health or environmental benefit”, which the Department requires to allow a 100 percent mitigation of the penalty amount. *See id.* at 6-7. Further, a feasibility study report for the proposed connector trail project published by Allegheny County earlier this year estimated that the cost of creating the trail would be between \$9 million and \$25 million. Allegheny County, *County Publishes Turtle Creek Connector Trail Feasibility Study Report* (March 18, 2022) <https://alleghenycounty.us/News/2022/6442477471.aspx>. This means that U.S. Steel’s SEP contribution will do little to fund the overall project, with no guarantee that the project will be fully funded or completed in the near future.

The proposed consent decree is the result of alleged violations of the Clean Air Act by U.S. Steel at the Edgar Thomson facility. Proposed Consent Decree ¶ A. The Complaint filed in this action alleged violations of opacity limits, failure to prevent fugitive emissions, failure to maintain and operate equipment to minimize emissions, and failure to comply with the operations and maintenance plan. *See* Complaint ¶¶ 50-67, *United States v. U.S. Steel Corp.*, No. 2:22-cv-00729-CRE (May 17, 2022), ECF No. 1. These are alleged violations of the Clean Air Act which result in emissions of harmful air pollutants that negatively impact the public health and environment of the surrounding communities. Any SEP used to mitigate the resulting civil penalty in the consent decree must improve, protect, or reduce the risk to public health or the environment. The proposed SEP does not provide exceptional public health or environmental benefits sufficient to justify the mitigation of the full penalty amount due to the Department. Further, PennFuture is not aware of the Department actively soliciting or considering community input on the proposed SEP. The public who has been directly impacted by the alleged violations must have an active say in any project that is proposed to mitigate all or a portion of the civil penalty.

III. Increased public transparency is needed.

The proposed consent decree requires the completion of various studies, audits, and reports, including studies of air pollution control measures, evaluations of emissions, reports of recommended improvements to ensure compliance with applicable regulations, and a maintenance practices audit to analyze operation and maintenance practices for emissions controls with an accompanying report of recommendations. *See, e.g.*, Proposed Consent Decree ¶¶ 15-35, 48-56. While PennFuture is encouraged by these requirements for future improvements and increased compliance efforts, PennFuture believes the public should have an opportunity to access these studies and reports without the burden of frequently submitting formal Freedom of Information Act or Right to Know requests. The neighboring communities impacted by emissions from Edgar Thomson deserve to know what steps are being taken to curb emissions and to bring this facility into compliance. The Department should ensure these documents are readily accessible to the public. The Department should also engage in community outreach, such as periodic informational meetings, to provide updates directly to the impacted communities on the progress under the consent decree.

We appreciate the opportunity to submit these comments on the U.S. Steel Edgar Thomson Consent Decree, *United States and Allegheny County Health Department v. United States Steel Corporation*, D.J. Ref. No. 90-5-2-1-12083. Please contact the undersigned if you have any questions or wish to discuss these comments.

Sincerely,



Angela Kilbert
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