Exhibit 4

GASP
GROUP AGAINST SMOG & POLLUTION

June 23, 2022

VIA EMAIL: pubcomment-ees.enrd@usdoj.gov

Assistant Attorney General
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P.O. Box 7611
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RE: D.J. Ref. No. 90–5–2–1–12083
***United States and Allegheny County Health Department v. United States Steel Corporation*, Civil Action No. 2:22–cv–00729–CRE**

To Whom it Concerns:

Kindly accept for consideration the attached comments of the Group Against Smog and Pollution regarding the above-captioned matter.

Very truly yours,

/s/
Ned Mulcahy
Staff Attorney

attachment

COMMENTS OF THE GROUP AGAINST SMOG AND POLLUTION REGARDING THE PROPOSED CONSENT DECREE IN *UNITED STATES and ALLEGHENY COUNTY HEALTH DEPT. v. UNITED STATES STEEL CORP.*, Civil Action No. 2:22-cv-00729-CRE (W.D. Pa.)

I. THE PARTIES MUST DEMONSTRATE THAT THE REMEDIAL MEASURES REQUIRED BY THE CONSENT DECREE WILL REDUCE AIR POLLUTION EMITTED BY THE FACILITY.

A consent decree that settles an action brought to enforce requirements under the Clean Air Act must be "fair, adequate, reasonable, and appropriate under the particular facts."[1] A proposed consent decree "is substantively fair if it incorporates concepts of corrective justice and accountability[.]"[2] To be "adequate, reasonable, and appropriate," such a consent decree must at least address the defendant's misconduct and promote the purpose of the Clean Air Act, namely, to help provide the public with cleaner air to breathe.[3]

The Complaint in this action alleges violations of limitations on visible and fugitive emissions from the BOP Shop, Blast Furnaces, and associated pollution control devices at U.S. Steel's Edgar Thomson Plant in Braddock, Pennsylvania (the "Facility"). Both visible and fugitive emissions consist of particular matter ("PM"). The Complaint also alleges failures to properly maintain and operate certain equipment needed to minimize PM emissions. Accordingly, for the measures required by the Consent Decree to be considered fair, adequate, reasonable, and appropriate, they must address the Facility's PM emissions in a way that provides accountability and promotes the public health and welfare.

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1 *United States v. Hyundai Motor Co.*, 77 F. Supp. 3d 197, 199 (D.D.C. 2015) (quoting *Citizens for a Better Envt. v. Gorsuch*, 718 F.2d 1117, 1126 (D.C. Cir. 1983)).

2 *Id.* (quoting *Envtl. Def. v. Leavitt*, 329 F. Supp. 2d 55, 70 (D.D.C. 2004)).

3 *Id.*, at 200-1; *see also* 42 U.S.C. § 7401(b)(1) (one of four "purposes" of the Clean Air Act is, "to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population.").

a. The Parties must quantify the impact of the "Pre-Settlement Remedial Measures."

It is not clear that the "Pre-Settlement Remedial Measures" listed in Paragraph 14 of the Consent Decree have worked to reduce the Facility's PM emissions. Emissions data that U.S. Steel is required to report to the Pennsylvania Department of Environmental Protection ("DEP") pursuant to 25 Pa. Code § 125.3 for the years 2016 through 2020[4] show that the PM emissions from the Facility's "processes,"[5] presumably including the BOP Shop, Blast Furnaces, and their associated pollution control devices, have fluctuated during that period. Those emissions did not decline in a sustained manner as would be expected if the measures listed in Paragraph 14 were effective at reducing PM emissions:

	PM_{10} Emissions from all Facility Processes (tons per year)	$PM_{2.5}$ Emissions from all Facility Processes (tons per year)	Total PM Emissions from Facility Processes (tons per year)
2016	86.6	38.1	124.7
2017	87.1	40.4	127.5
2018	101.8	55.6	157.4
2019	102.3	54.2	156.5
2020	88.6	41.1	129.7

Of course, there could be other reasons why total PM emissions from the Facility were greater in 2020 (after some of the "Pre-Settlement Remedial Measures" might have been

[4] EPA issued a Notice of Violation for the violations that are at issue in the Complaint on November 9, 2017. Complaint ¶ 10. Thus, it is most likely that U.S. Steel implemented the "Pre-Settlement Remedial Measures after that date. 2020 is the last year for which emission reports are currently available from DEP.

[5] PM emissions from the "combustion units" at the Facility declined significantly between 2016 and 2020.

implemented) than they were in 2016 and 2017 (when the violations being remediated were still occurring). However, there is no way to tell from the Consent Decree itself. The parties to the Consent Decree should explain how (and how much) the "Pre-Settlement Remedial Measures" have reduced the Facility's PM emissions, and thereby demonstrate that those measures serve the purpose of the Clean Air Act.

b. The Plaintiffs must quantify and set deadlines for the expected impact of the remaining / future Compliance Requirements.

The Compliance Requirements contained in Paragraphs 15-56 of the Consent Decree list actions U.S. Steel must undertake, but these provisions fail to set binding emissions reduction targets for the covered processes. The Requirements do not explain what, if any, emission reductions are expected to occur as a result of the new emission controls, monitoring requirements, and maintenance practices. These provisions set out deadlines for studies and reports aimed at achieving "compliance" with operating permit limits and regulations but "compliance" as a target is rendered ineffectual by allowing U.S. Steel to create its own schedule for implementing any recommendations.[6] Essentially, the core Compliance Requirements in the Consent Decree contain no binding emissions reduction requirements *and* no binding dates by which U.S. Steel must operate a fully compliant facility.

As drafted, these terms do not guaranty U.S. Steel will reduce emissions and permanently resolve its alleged misconduct. Allowing U.S. Steel to move toward compliance at its own pace is not a just outcome. Accordingly, these terms are unfair, inadequate, unreasonable, and

[6] *See* Consent Decree, ¶¶ 19(c), 26(c), and 33(c) ("U. S. Steel shall submit to EPA and ACHD . . . [a] schedule for completing the proposed action(s).").

inappropriate. EPA and ACHD must detail how anticipated controls, requirements, and practices will reduce the Facility's PM emissions and thus serve the purpose of the Clean Air Act.

c. The Plaintiffs must demand stronger guarantees of U.S. Steel's performance; prior consent decrees suggest the current Consent Decree is inadequate.

At least one facility in U.S. Steel's Mon Valley Works has been subject to an EPA or ACHD consent order or decree in 40 or more of the past 50 years.[7,8] This does not include miscellaneous enforcement actions for noncompliance that did not rise to level of a settlement. This list also skips instances where regulatory agencies knew there was noncompliance but immediate action did not occur.[9] While some of these cases cover facilities that no longer exist or standards that have been updated multiple times this perpetual cycle of noncompliance and settlement is significant in the present case.

First, it makes clear that 50 years of lawsuits and enforcement actions have not convinced U.S. Steel to voluntarily comply with applicable environmental regulations. Accepting that "courts accord 'broad deference . . . to EPA's expertise in determining an appropriate settlement and to the voluntary agreement of the parties in proposing the settlement,'"[10] either the Court or

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[7] *See* Allegheny Cty. Ct. Com. Pl., Case no. 1550 April Term 1972; W.D. Pa., Civil Action No. 79-709; W.D. Pa., Civil Action No. 91-329; ACHD Consent Order and Agreement of June 1, 2007; ACHD Consent Order and Agreement of March 17, 2008; ACJD Consent Order and Agreement of August 7, 2014; Allegheny Cty. Ct. Com. Pl., Case no. GD-16-4611; ACHD Settlement Agreement and Order of June 27, 2019.

[8] *See also* National Enforcement and Investigations Center, US EPA, *NEIC Inventory of EPA Consent Decrees, Region III*, (August 23, 1983); *see also* National Enforcement and Investigations Center, US EPA, *Multi-Media Noncompliance Profile, Region III*, Table 1 (June 1988) (Table 1 lists "Significant Violators in Air"); *see also* National Enforcement and Investigations Center, US EPA, *Multi-Media Noncompliance Profile Corporate Cross-Regional Identification Program, Region III*, Tables 1, 4, & 5 (December 1990) (Table 1 lists "Noncompliance Sources in Air"; Table 4 lists "Multi-Media"; Table 5 lists "Multi-Regional Listing of Noncompliance Sources").

[9] *See* Office of Enforcement, US EPA, *Air and Water Compliance Summary for the Iron and Steel Industry*, at 231 (October 20, 1977) (Edgar Thomson "Blast Furnace Shop . . . in violation on casthouse fugitive emissions. Not under NOV; No compliance schedule") (Edgar Thomson "BO[P] Shop . . . in violation on fugitives.").

[10] *Hyundai*, at 199 (quoting *United States v. District of Columbia*, 933 F. Supp. 42, 47 (D.D.C. 1996)).

the Plaintiffs must examine these 50 years of history and consider options for stronger, broader, or different approaches.

Second, the present case involves the absurd situation wherein processes and issues EPA and ACHD at least partially addressed decades ago are problems yet again. Specifically, a February 10, 1982, memo addressing "Blast Furnace #1 Cast House Control[s]," reported that baghouse tests were largely successful, but the author went on to note, "[t]here is still a question in my mind as to whether or not the partial cast house emission control system can consistently meet [Consent Decree Visible Emissions] requirements."[11] In addition, a 1981 proposed modification to the 1979 Consent Decree suggested this change to BOP Shop terms: "Defendant shall conduct a study to identify operating and maintenance practices and non-capture techniques which will achieve compliance with the emission limitations in paragraph 4(a)."[12]

Finally, the appearance of U.S. Steel largely ignoring or feigning interest in demands – both legal and public – that it comply with environmental regulations undercuts agency authority and sows seeds of distrust, resentment, and anger in the affected communities. Of course, EPA and ACHD must balance many competing interests when crafting a settlement of violations, but EPA and ACHD must consider the impact of yet another consent decree that lacks absolute, enforceable demands that U.S. Steel meet all its regulatory obligations.

II. THE CONSENT DECREE'S DESCRIPTION OF THE SUPPLEMENTAL ENVIRONMENTAL PROJECT IS INSUFFICIENTLY PARTICULAR, AND THE PROJECT LACKS A STRONG CONNECTION TO THE UNDERLYING VIOLATIONS OF REQUIREMENTS UNDER THE CLEAN AIR ACT

[11] Memorandum and attachments, J. Graham, U.S. Steel, from R. Felt, U.S. Steel, Demonstration of compliance with Mon Valley Consent Decree for USSC-Edgar Thomson Works, Blast Furnace #1 Cast House, EPA Docket ID A-2000-44-II-I-4 (old) / EPA-HQ-OAR-2002-0083-1213 (new), (Feb. 10, 1982).

[12] W.D. Pa., Civil Action No. 79-709, Modification of Consent Decree (May 8, 1981), at 19.

The Consent Decree includes a so-called "ACHD-Only Supplemental Environmental Project" in its Appendix A:

> The Westmoreland Heritage Trail to Great Allegheny Passage Trail Connector Project. U.S. Steel shall provide $750,000 in funding to the Allegheny County Department of Economic Development in support of the creation of a multimodal connection that links the Great Allegheny Passage ("GAP") in Rankin Borough to the Westmoreland Heritage Trail ("WHT") in Trafford Borough through the Turtle Creek Valley. The purpose of the project will be to provide funding for a multimodal connection to communities near U.S. Steel Edgar Thomson Plant (namely Rankin, Braddock, North Braddock, East Pittsburgh, Turtle Creek, Wilmerding, Monroeville, Pitcairn, and Trafford, North Versailles, East McKeesport, and Wall) and that the funding would go towards providing a link from the GAP in Rankin Borough to the WHT in Trafford Borough through the Turtle Creek Valley.

Presumably, this is characterized as an "ACHD-Only" project to get around the restrictions in 28 C.F.R. § 50.28, which generally prohibited the United States from entering into settlements that included supplemental environmental projects ("SEPs"), but which purportedly was rescinded by the Attorney General without the notice or comment required by 5 U.S.C. § 553.[13]

ACHD's January 10, 2018 "Civil Penalty Policy" (HPA # 363)[14] lists five criteria that ACHD is to consider in determining whether to approve a supplemental environmental policy ("SEP") as part of a consent decree or settlement agreement with a party that has violated ACHD's air pollution regulations. Those criteria are:

1. The SEP must improve, protect, or reduce the risk to public health or the environment. In keeping with the multi-media nature of pollution prevention, the SEP need not be air quality-related, as long as an environmental and/or public health benefit can be recognized. While the SEP may provide the violator with some benefits, the project must primarily benefit the public health and/or the environment.

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[13] *See Guidelines and Limitations for Settlement Agreements Involving Payments to Non-Governmental Third Parties,* 87 Fed Reg. 27936, 27938 (May 10, 2022).

[14] A copy of the policy is available at https://www.alleghenycounty.us/uploadedFiles/Allegheny_Home/Health_Department/Programs/Air_Quality/HPA-363-Civil-Penalty-Policy.pdf.

2. The SEP cannot be a project that the violator is legally required to perform by a federal, state, or Department law or regulation or a permit condition. A SEP does not alter a violator's obligation to remedy a violation expeditiously and return to compliance.

3. The SEP should be performed in the same geographic area where the violation occurred unless the SEP is intended to benefit the entire County. The SEP can affect either the facility itself, the surrounding community, or both.

4. There must be a reasonable probability that the SEP will be successful. However, if the agreed-upon SEP is carried out faithfully, the facility will not be penalized if the expected environmental or public health benefits are not realized.

5. The SEP must be incorporated into the terms of a legally enforceable settlement document such as a consent decree or settlement agreement.

The "ACHD-Only" SEP in Appendix A of the Consent Decree does not satisfy the first and fourth criteria above, and may not satisfy the third.

There is no probability that the "ACHD-Only" SEP will be successful and thereby satisfy ACHD's fourth criterion. No one can build a connection to the Great Allegheny Passage (the "GAP") trail in Rankin Borough because the GAP does not pass through Rankin – the trail lies on the opposite side of the Monongahela River from Rankin.[15] Additionally, estimates for the total cost of connecting the Westmoreland Heritage Trail (the "WHT") to the GAP range from nine to twenty-five million dollars.[16] Accordingly, the $750,000 in funding that U.S. Steel would provide pursuant to the Consent Decree is simply not enough to complete the project.

The Consent Decree also does not establish that the SEP would provide environmental or public health benefits and thus meet ACHD's first criterion. It is not clear that any environmental or public health benefits would flow from whatever partial length of the connector

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[15] *See* Interactive Map for planning your GAP trip (gaptrail.org).

[16] Patrick Varine, Study Identifies Potential East Suburb Path to Connect Westmoreland, Allegheny Trails, PITTSBURGH TRIBUNE-REVIEW (March 18, 2022), *available at* Study identifies potential east suburb path to connect Westmoreland, Allegheny trails | TribLIVE.com.

(if any) that U.S. Steel's $750,000 may be sufficient to build, especially given such partial length of trail might not connect to either the WHT or the GAP. Indeed, because the SEP is for funding for the "creation" of the connector, not for its "construction," the $750,000 could be spent on feasibility studies, engineering plans, or the like, without any guarantee that such studies or plans will ever be implemented as even a short length of usable trail. The funding would in such case provide no environmental or public health benefits at all.

Finally, according to ACHD's third criterion, a SEP "should" be performed in the same geographic area where the violation occurred, in this case, Braddock Borough. Because the WHT ends in Trafford, Westmoreland County, it is certainly possible that U.S. Steel's $750,000 could be spent to extend the trail there. However, Trafford is in a different county than the Facility, and lies approximately 5.5 miles as the crow flies from the Facility; it cannot reasonably be said to be the same geographic area as the Facility. Any SEP that is ultimately included in the Consent Decree should secure benefits for the residents of Braddock and the municipalities that border it directly, as those communities bear the brunt of the air pollution, including the illegal air pollution that gave rise to the violations, from the Facility.

III. ACHD SHOULD POST UPDATES AND RELEVANT DOCUMENTS ON ITS WEBPAGE REGARDING U.S. STEEL'S COMPLIANCE WITH THE CONSENT DECREE'S REMEDIAL MEASURES.

The Consent Decree does not require any of the parties to provide updates to the public regarding U.S. Steel's compliance with the Consent Decree's remedial measures. Especially because Braddock and several other nearby communities are environmental justice areas, ACHD should make information regarding U.S. Steel's compliance with the Consent Decree readily available to the public by posting such updates on its website.