

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”) 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 operating permit issued on November 21, 2022 to United States Steel Corporation (“U.S. Steel”) pursuant to Title V of the Clean Air Act, for a by-product coke plant (the “Clairton Coke Works”) located in the City of Clairton, Allegheny County, Pennsylvania (Permit # 0052-OP22) (the “Permit”). GASP requests that EPA object to the Permit because the Clairton Coke Works is not in compliance with applicable requirements under the Clean Air Act and 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).

PETITIONER

The Group Against Smog and Pollution, Inc. (“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.

BACKGROUND

THE TITLE V PERMITTING PROCESS IN ALLEGHENY COUNTY, PENNSYLVANIA

Title V of the Clean Air Act ("Title V") establishes an operating permit program for certain sources of air pollution, including "major sources." Title V requires each state to administer an operating permit program for "major sources," subject to the United States Environmental Protection Agency's ("EPA") approval and oversight of the program.

EPA granted final approval to the Allegheny County Health Department's ("ACHD") Title V permitting program on or about November 1, 2001, and the program became effective on December 17, 2001.

ACHD's Title V permitting program is codified at Sections 2103.01 - 2103.25 of Article XXI of ACHD's Rules and Regulations ("Article XXI") and has been incorporated into Pennsylvania's State Implementation Plan ("SIP"). ACHD's regulations for operating requirements for coke ovens are codified in section 2105.21 of Article XXI and also have been incorporated into Pennsylvania's SIP.

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." 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.

U.S. STEEL'S CLAIRTON COKE WORKS

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.

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.

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 emissions standards in Article XXI, § 2105.21 (the “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).

In response, ACHD did not contend that the Clairton Coke Works was in compliance with the Article XXI, § 2105.21 Emission Standards. Rather, ACHD stated that a Settlement Agreement and Order between it and U.S. Steel dated June 27, 2019, was incorporated into the Permit (but did not assert that the measures required by that Settlement Agreement and Order would yield compliance in the future); 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. ACHD issued the renewal Permit on November 21, 2022.

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)

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. 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 agency showed numerous violations of emissions standards that were unresolved when the permits were issued. 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.

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.

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.

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

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;
- “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; 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.

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.

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

ACHD and U.S. Steel resolved those appeals by a “Settlement Agreement and Order” dated June 28, 2019.

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. With one exception (specifically, the repair of through walls at the facility's Battery 15), those measures were to have been implemented fully by September 1, 2020.

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). The June 28, 2019 Settlement Agreement and Order further provided for the payment of stipulated 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.

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;
- 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;
- 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;
- 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;
- 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; 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.

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

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

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.

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 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.” 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, 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.

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. 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 to occur, it effectively sanctions U.S. Steel’s continuing noncompliance with those standards in violation of 40 C.F.R. § 70.5(c)(8)(iii)(C).

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 Article XXI, §§ 2105.21.a – f and § 2105.21.i. and incorporate that schedule into the Permit.

CONCLUSION

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

Respectfully submitted,

/s/

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