

ACHD. As a result of the pending proceedings, and contemporaneous permitting activities resulting from third-party Petitions to Object Under the Clean Air Act, U.S. Steel – and its Title V Permit – have become a moving target. U.S. Steel, through this Petition, respectfully requests that EPA exercise its authority under Section 505(b)(2) of the Clean Air Act to provide the requested relief and by so doing, ensure that the Clairton Facility Title V permit, and U.S. Steel’s ability to achieve effective review and proper agency oversight thereof, is appropriately preserved. This information and other relevant procedural points are summarized below.

a. The Renewed Permit

The most recent renewal of the Clairton Plant’s Title V Operating Permit was issued by ACHD on November 21, 2022, bearing Title V Permit No. 0052-OP22 (herein, the “Renewed Permit”). A copy of the Renewed Permit is attached hereto as Exhibit 2. U.S. Steel filed a timely Notice of Appeal of the Renewed Permit with ACHD on December 21, 2022 (the “Renewed Permit Appeal”), where it remains pending. A copy of the Renewed Permit Appeal is attached hereto as Exhibit 3. Among other issues, the Renewed Permit Appeal objects to the inclusion of approximately one hundred new emission limits, on the basis that they were established for the first time through the Renewed Permit, and that the limits are legally, factually, and technically incorrect. *See* Exhibit 3.¹ The new emission limits are listed in Table 1, on pages 8–11 of this Petition (hereinafter referred to collectively as the “Challenged Emission Limits”). The Challenged Emission Limits impose short-term (pound per hour) and long-term (ton per year) restrictions on emissions of multiple criteria pollutants for more than thirty (30) different emission units at the Clairton Plant. Notwithstanding their breadth of applicability, the Challenged Emission Limits had not been included in any prior permit issued by ACHD to the Facility.

b. Petitions to Object to the Renewed Permit

On March 6, 2024, two petitions to object to the Renewed Permit were filed with EPA 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(b): one by Environmental Integrity Project, Clean Air Council, and Citizens for Pennsylvania’s Future (the “EIP Petition”), and a second one by the Group Against Smog and Pollution (the “GASP” Petition) (hereinafter referred to collectively as the “Petitions to Object to the Renewed Permit”). Copies of the two Petitions to Object to the Renewed Permit are attached hereto as Exhibits 4 and 5, respectively. EPA issued a single Order dated September 18, 2023, responding to the two Petitions to Object to the Renewed Permit (“Order on Petitions”), a copy of which is attached hereto as Exhibit 6. The Order on Petitions grants in part and denies in part the claims raised in the Petitions to Object to the Renewed Permit.

The Order on Petitions granted Claims A, B, F, G, J, and K of the EIP Petition and Claim I of the GASP Petition, and grants in part and denies in part Claims C, D, and E of the EIP Petition from the Petitions to Object to the Renewed Permit, summarized briefly here:

¹ The Renewed Permit Appeal raised 105 specific objections to the Renewed Permit; among them were objections to the approximately 100 new emission limits referred to herein as the Challenged Emission Limits.

- Claim A: Testing, monitoring or reporting for PM and PM-10 emission limits for Boilers 1, 2, R1, R2, T1, T2. (Granted.)
- Claim B: Testing, monitoring or reporting for CO, VOCs, benzene, HCl, and naphthalene emissions from the Coke Oven Battery C Combustion Stack. (Granted.)
- Claim C: Testing, monitoring or reporting for CO emissions from Coke Oven Battery Combustion Stacks and Boilers. (Granted in part, denied in part.)
- Claim D: Testing, monitoring or reporting for VOC emissions from Coke Oven Battery Combustion Stacks and Boilers. (Granted in part, denied in part.)
- Claim E: Testing, monitoring or reporting for NO_x from Coke Oven Battery Combustion Stacks and Boilers. (Granted in part, denied in part.)
- Claim F: Testing, monitoring or reporting for SO₂ emissions from Coke Oven Battery Combustion Stacks and Boilers during periods of monitor malfunction, breakdown and repair. (Granted.)
- Claim G: Monitoring or testing for PM, SO₂, NO_x and VOC emissions from the Quench Towers. (Granted.)
- Claim J: Testing, monitoring or reporting requirements for Ammonia Flare. (Granted.)
- Claim K: NO_x CEMS for Coke Oven Battery C Combustion Stack. (Granted.)
- Claim I (GASP Petition): Compliance Schedule. (Granted.)

c. *The Amended Permit*

In response to EPA’s Order on Petitions, ACHD reopened and revised the Renewed Permit and issued the Amended Permit (Title V Operating Permit No. 0052-OP22a) to the Clairton Plant on October 10, 2024. Exhibit 1. Accompanying the Amended Permit were the *Summary of Public Comments and Department Responses on the Proposed Issuance of the U.S. Steel Clairton Works Title V Operating Permit No. 0052-OP22a* (the “Amended Permit Comment and Response Document”) (attached hereto as Exhibit 7) and *Allegheny County Health Department, Technical Support Document* dated October 10, 2024 (“Amended Permit Technical Support Document”) (attached hereto as Exhibit 8). U.S. Steel filed a timely Notice of Appeal of the Amended Permit with ACHD on November 7, 2024 (the “Amended Permit Appeal”) (attached hereto as Exhibit 9). The Amended Permit carries over the Challenged Emission Limits established for the first time through the Renewed Permit, even though U.S. Steel’s Renewed Permit Appeal is still awaiting administrative review by the ACHD Hearing Officer, which is a necessary pre-condition to U.S. Steel seeking judicial review in State court. *See Clean Air Act Full Approval of Partial Operating Permit Program; Allegheny County;*

Pennsylvania, 66 Fed. Reg. 55112, 55113 (Nov 1, 2001) (EPA’s approval of Allegheny County’s Title V operating permit program confirms, that after seeking administrative review by the ACHD, a party aggrieved by a permitting action of the Department is entitled to judicial review in State court, in this case, the Pennsylvania Court of Common Pleas.)

In response to the Order on Petitions, the Amended Permit also creates and imposes on the Facility two other new sets of obligations that have never been included in any prior permit for the Clairton Plant. One new set of obligations requires the Facility to install twenty-three (23) new Continuous Emission Monitoring Systems (“CEMS”) with capabilities of measuring an array of pollutants, some of which are largely viewed as incompatible with reliable continuous emission monitoring technologies available on the market today. The other set of new obligations arises from the inclusion of a compliance plan, which includes a broad set of new requirements, the most striking of which is the installation of a technically, practically and economically infeasible back-up power system at the Facility. Neither the petitioners nor ACHD has shown that the compliance plan is warranted, or that the affected sources are out of compliance now or at the time of issuance of the Amended Permit. As set forth herein, U.S. Steel objects to these obligations because they are technically, legally and practically inappropriate, and they are not responsive to the Order on Petitions.²

d. U.S. Steel’s Petition to Object to the Amended Permit

Neither the Challenged Emission Limits, the CEMS requirements, nor the compliance plan obligations, including the back-up power requirement in the Amended Permit, are “applicable requirements” as defined under the CAA and its part 70 implementing regulations and as EPA has consistently interpreted the term for decades. Substantive provisions that are not applicable requirements cannot be imposed through a Title V permit unless they were previously established in a preconstruction or non-Title V operating permit. That was not the case here.

It was also improper for the Department to use the Order on Petitions as a purported basis to create new restrictions and requirements that are well beyond what is responsive to the Order on Petitions. As such, the Amended Permit does not comply with the requirements set forth in part 70, including but not limited to 40 C.F.R. § 70.6. The Amended Permit conditions identified in this Petition are therefore arbitrary and capricious, unreasonable, an abuse of the Department’s discretion, and contrary to law, including the federal CAA, the federal Administrative Procedures Act, 5 U.S.C. § 551 *et seq.*, and its state and local analogs, the Pennsylvania Air Pollution Control Act, 35 P.S. § 4001, *et. seq.* (“APCA”), and Article XXI of ACHD’s Rules and Regulations.³

² U.S. Steel’s Renewed Permit Appeal and Amended Permit Appeal contain a number of additional objections to the Renewed Permit and Amended Permit that are not addressed here, but are nonetheless preserved in its administrative appeals for judicial review.

³ ACHD’s Article XI and XXI Rules and Regulations are attached hereto as Exhibits 10 and 11, respectively, for the purpose of convenience and ease of review.

II. SUMMARY OF GROUNDS FOR PETITION

With the benefit of EPA’s recent regulatory action to clarify once and for all the *Scope of ‘Applicable Requirements’ Under State Operating Amended Permit Programs and the Federal Operating Amended Permit Program*, there can no longer be any doubt that “the Title V operating permit program is a vehicle for compiling air quality control requirements from other CAA programs and for providing conditions necessary to assure compliance with such requirements, but it is not a vehicle for creating or changing applicable requirements from those other programs.” *Applicable Requirements Rule*, 89 Fed. Reg. 1150, 1151 (proposed Jan. 9, 2024) (“*Applicable Requirements Rule*”).⁴ While U.S. Steel agrees with this interpretation, ACHD, by contrast, disregarded this hallmark of the Title V program by issuing the Amended Permit which includes (1) the Challenged Emission Limits; (2) CEMS requirements; and (3) the imposition of a compliance plan that would dictate unreasonable work practice, investigation and reporting requirements, along with an obligation to install “back-up” power for the Coke By-Products Plant and Desulfurization Plant, which is infeasible. Each of these Amended Permit conditions and the specific grounds for U.S. Steel’s objections to such conditions are detailed below. For ease of review, where appropriate, U.S. Steel refers to the three types of Amended Permit conditions collectively in this Petition as the “Objectionable Conditions.”

The Objectionable Conditions are not required or justified by any standard promulgated under Section 111 or Section 112 of the CAA, not listed in any SIP requirement, and they were not established by any categorical or other standard under Article XXI of the Department’s Rules and Regulations. ACHD did not properly establish the Challenged Emission Limits via an installation or operating permit issued to the Facility prior to the Renewed Permit. And in the case of the back-up power requirement, the condition is neither necessary nor appropriate to assure compliance with an applicable requirement. As such, the Objectionable Conditions violate 40 CFR § 70.6(a) because they are not applicable requirements as defined in the CAA.⁵

In justifying its inclusion of the Challenged Emission Limits in the Renewed Permit and now the Amended Permit, ACHD interprets its RACT provision in Article XXI in a manner that is inconsistent with the federal RACT program, not supported by the clear language of Article XXI or past practice of ACHD, and which was not approved by EPA in its delegation of the Title V program to the Department. RACT is a specific term of art under the CAA that allows for permitting agencies to require emission reductions from existing major sources that are located in nonattainment areas in certain circumstances, following a formal process set forth in the CAA that considers the technological and economic feasibility of control measures and resulting reductions. The Department did not perform that analysis here to develop the Challenged Emission Limits, nor would it be appropriate to do so in the context of a Title V permit renewal. The Department has distorted the concept of RACT so as to improperly give itself carte blanche authority to impose any emission limits that the Department wants, at any time and for any

⁴ Although the *Applicable Requirements Rule* is technically “proposed,” EPA makes clear that it “is not proposing any changes to the agency’s longstanding interpretations or policies discussed” therein, because EPA “considers these interpretations and policies to be consistent with, and accurately reflected in, the EPA’s existing regulations in 40 CFR parts 70 and 71.” *Applicable Requirements Rule* at 1152. Accordingly, the Agency’s position as discussed herein is reasonably expected to remain unchanged upon issuance of the *Applicable Requirements Rule* as final.

⁵ Notably, ACHD has not identified any of the Objectionable Conditions as non-federally enforceable conditions under 40 C.F.R. § 70.6(b)(2).

reason. RACT, as set forth in the CAA, and incorporated into Article XXI, does not support the Department's imposition of the Challenged Emission Limits. Further, the Challenged Emission Limits contradict the Department's own previously and appropriately performed RACT evaluations for NO_x, VOC, SO₂, and PM_{2.5} that have been approved by EPA and incorporated into the SIP.

The addition to the Amended Permit of the new CEMS requirements, compliance plan, and the obligation to install back-up power to the Amended Permit are even more egregious: these conditions are wholly new substantive requirements that never appeared in any permit of any type before the Amended Permit. While these requirements purport to respond to EPA's Order on Petition, they do not meet the objectives of the Order on Petition or appropriately respond to EPA's direction to ACHD as set forth therein. Further, the CEMS requirements—even if they were otherwise justified, which they are not—are premature, given that the underlying Challenged Emission Limits on which many of them are based remain non-final pending the completion of judicial review. *See* Exhibit 10, Art. XI, § 1104(D); 42 U.S.C. § 7661a(b)(6). Likewise, the back-up power requirement is not responsive to the Order on Petitions, not an appropriate element of a Compliance Plan, and is not technically, practically or economically feasible. Furthermore, the inclusion of the back-up power requirement demonstrates that ACHD lacks a fundamental misunderstanding of the Clairton Plant's operations and redundancy already in place.

U.S. Steel is mindful of the “resource-related, and practical limitations associated with [EPA's] [T]itle V oversight tools,” including responding to public petitions to object to Title V permits, and that in light of such limitations, the Agency encourages “the use of proper [] avenues of review” at the installation- or operating-permit stage, prior to Title V issuance. *Applicable Requirements Rule* at 1152. Indeed, U.S. Steel would have welcomed a meaningful opportunity to review and discuss with the Department the Objectionable Conditions before the Amended Permit was finalized. But U.S. Steel was denied such opportunity when ACHD unlawfully added the new Challenged Emission Limits directly to the Renewed Permit without ever establishing them through a preconstruction or installation permit or a non-Title V operating permit, without ever supporting the technical or legal justification of the limits, and then compounding that error by carrying them into the Amended Permit. With respect to the new CEMS requirements and the obligation to install back-up power, their inclusion in the Amended Permit appears more like alchemy than lawful Title V permitting.

U.S. Steel may avail itself of two options for seeking review of the Objectionable Conditions in the Amended Permit: (1) file a Notice of Appeal with ACHD pursuant to Art. XXI § 2102.03.h. and Art. XI § 1103 of ACHD's Rules and Regulations and wait for a hearing before the Hearing Officer; and (2) file a petition to object to the Amended Permit with EPA pursuant to section 505(b)(2) of the CAA, 42 U.S.C. § 7661d(b)(2), and 40 C.F.R. § 70.8(d). With respect to the first option, Art. XXI § 2102.03.h of the ACHD Rules and Regulations confirms that a hearing in response to a Notice of Appeal “[s]hall be held before a Hearing Officer,” and Art. XI § 1105.A. adds that “[w]ithin thirty (30) days after receipt of a Notice of Appeal, the Director or Hearing Officer shall give written notice, by mail, to all parties of the time and place of the scheduled hearing.” Exhibit 11, § 2102.03h and Exhibit 10, § 1105.A. Consistent with the Pennsylvania Local Agency Law, 2 Pa.C.S. § 105, Article XI provides that any party aggrieved

by any decision of the Director or Hearing Officer may appeal therefrom to the Court of Common Pleas of Allegheny County. Exhibit 10, Art. XI § 1110. Thus, although judicial review may ultimately be available to U.S. Steel, Article XI contemplates that an administrative process must first be undertaken by the Director or her designated Hearing Officer.⁶

It is with this backdrop that U.S. Steel asks EPA to review this Petition to Object and ultimately grant the claims asserted herein. U.S. Steel objects to the Objectionable Conditions on the basis that they are neither required by, nor compliant with the CAA, are unduly burdensome, excessive and/or not based on sound technical or legal bases or otherwise necessary or consistent with good operating practices. Accordingly, by issuing the Amended Permit, the Department has abused its discretion and acted unreasonably, arbitrarily, capriciously, contrary to fact and law and in a manner not supported by evidence. We request EPA's concurrence by granting the Petition, with instruction to ACHD to issue a revised Amended Permit that excludes the Objectionable Conditions.

III. LEGAL AND FACTUAL ARGUMENTS SUPPORTING OBJECTIONS

ACHD offered two different reasons for issuance of the Amended Permit. *See* Amended Permit Technical Support Document, Exhibit 8, at 2 (“The amendment is a result of U.S. Steel’s appeal of the issued Title V Operating permit and reopening for caused under §2013.15.a. and §2013.25 in response to the US EPA response to Petitions Nos. III-2023-5 and III-2023-6.”)

With respect to the first ground—amendments to address the Renewed Permit Appeal—ACHD only addressed through the Amended Permit a very limited subset of the issues raised by U.S. Steel in the Renewed Permit Appeal. For those appeal issues that ACHD did not modify, including most critically the Challenged Emission Limits, the Department opined that they were “not within the purview of this amendment.” *See* Exhibit 7, Amended Permit Comment and Response Document. U.S. Steel neither understands nor agrees with the Department’s rationale as stated. Indeed, as discussed below, the Department chose to backburner the permit defects that are the most critical to the Facility and on which many of the disputed CEMS requirements are based: i.e., the Challenged Emission Limits. With respect to the second ground—to respond to the Order on Petitions—the new CEMS requirements and compliance plan requirements are neither appropriate nor necessary, and ACHD has failed to substantiate the inclusion of these requirements.

In broad terms, Title V permits must identify and assure compliance with existing applicable requirements—they do not impose new ones. *See* 40 C.F.R. § 70.1(b). ACHD, however, has imposed new conditions in the Permit and Amended Permit in three different areas: (1) the Challenged Emission Limits; (2) Continuous Emission Monitoring Systems requirements; and (3) a compliance plan that includes inappropriate and infeasible requirements, including the obligation to install back-up power. For the reasons discussed below, none of these conditions are appropriately included in the Amended Permit, which violates 40 C.F.R. §70.6(a)(1). Further, ACHD has failed to adequately support their inclusion through the Amended Permit Technical Support Document, and has failed to adequately respond to U.S. Steel’s comments

⁶ Section 1102 defines “Hearing Officer” as “a person or persons other than the Director designated by the Director to preside at hearings or conferences.” Exhibit 10, Art. XI § 1102.

with respect to their inclusion, in clear contravention of 40 C.F.R. §§ 70.7(a)(5) and 70.7(h)(6). U.S. Steel therefore respectfully requests that EPA grant U.S. Steel’s request for EPA objection and direct ACHD to remove the Objectionable Conditions from the Amended Permit.

a. The Challenged Emission Limits

The Challenged Emission Limits—which are solely based on ACHD’s novel misapplication of the concept of Reasonably Available Control Technology (“RACT”)—do not fit within any of the acceptable types of applicable requirements enumerated in 40 C.F.R. §§ 70.2(1)–(13). Specifically, the new RACT limits are not provided for in the applicable implementation plan submitted or approved or promulgated by EPA through rulemaking; they were never included in any term or condition of any preconstruction permits issued pursuant to regulations approved or promulgated through rulemaking under title I, including parts C or D, of the CAA. Furthermore, they are contrary and inconsistent with ACHD’s prior RACT determinations. As explained below, ACHD offered no legally or technically sufficient basis for the requirements, citing only to its “newly found” generalized RACT authority, and in this manner failed to properly respond to U.S. Steel’s comments on the respective drafts of the Renewed Permit and the Amended Permit, and to EPA’s comments in the Order on Petitions.

i. Overview of Challenged Emission Limits

Both the Renewed Permit and Amended Permit have imposed about one hundred entirely new emission limits that comprise the Challenged Emission Limits, as follows:

Table 1: Challenged Emission Limits

Source	Pollutant	Limit	Permit Condition	Amended Permit Condition
Boilers	SO ₂	518.77 tpy	IV.33.g.	IV.34.
Battery 13	PM condensable	2.97 lb/hr; 13.0 tpy	V.C.1.v.; Table V-C-1	V.A.1.v.; Table V-A-1
	NO _x	54.04 lb/hr; 236.71 tpy	V.C.1.v.; Table V-C-1	V.A.1.v.; Table V-A-1
	CO	38.38 lb/hr; 168.08 tpy	V.C.1.v.; Table V-C-1	V.A.1.v.; Table V-A-1
	VOC	1.80 lb/hr; 7.86 tpy	V.C.1.v.; Table V-C-1	V.A.1.v.; Table V-A-1
	SO ₂	61.03 tpy	V.C.1.w.; Table V-C-1a	V.A.1.w.; Table V-A-1a
Battery 14	PM condensable	2.20 lb/hr; 9.64 tpy	V.C.1.x.; Table V-C-2	V.A.1.x.; Table V-A-2
	NO _x	47.13 lb/hr; 206.43 tpy	V.C.1.x.; Table V-C-2	V.A.1.x.; Table V-A-2
	CO	45.29 lb/hr; 198.38 tpy	V.C.1.x.; Table V-C-2	V.A.1.x.; Table V-A-2

Source	Pollutant	Limit	Permit Condition	Amended Permit Condition
	VOC	1.78 lb/hr; 7.80 tpy	V.C.1.x.; Table V-C-2	V.A.1.x.; Table V-A-2
	SO ₂	61.45 tpy	V.C.1.y.; Table V-C-2a	V.A.1.y.; Table V-A-2a
Battery 15	PM condensable	2.20 lb/hr; 9.62 tpy	V.C.1.z.; Table V-C-3	V.A.1.z.; Table V-A-3
	NO _x	58.54 lb/hr; 256.41 tpy	V.C.1.z.; Table V-C-3	V.A.1.z.; Table V-A-3
	CO	24.94 lb/hr; 109.26 tpy	V.C.1.z.; Table V-C-3	V.A.1.z.; Table V-A-3
	VOC	1.69 lb/hr; 7.42 tpy	V.C.1.z.; Table V-C-3	V.A.1.z.; Table V-A-3
	SO ₂	81.77 tpy	V.C.1.aa.; Table V-C-3a	V.A.1.aa.; Table V-A-3a
PEC Baghouse 13-15	SO ₂	32.67 tpy	V.D.1.g.; Table V-D-1	V.B.1.g.; Table V-B-1
PEC Baghouse 13-15 Hot Car	SO ₂	49.10 tpy	V.D.1.i.; Table V-D-2	V.B.1.i.; Table V-B-2
Battery 19	NO _x	272.97 lb/hr; 1195.62 tpy	V.E.1.bb.; Table V-E-1	V.C.1.bb.; Table V-C-1
	CO	135.87 lb/hr; 595.13 tpy	V.E.1.bb.; Table V-E-1	V.C.1.bb.; Table V-C-1
	VOC	3.83 lb/hr; 16.76 tpy	V.E.1.bb.; Table V-E-1	V.C.1.bb.; Table V-C-1
	SO ₂	128.64 tpy	V.E.1.dd.; Table V-E-3	V.C.1.dd.; Table V-C-3
Battery 20	NO _x	272.97 lb/hr; 1195.62 tpy	V.E.1.cc.; Table V-E-2	V.C.1.cc.; Table V-C-2
	CO	135.87 lb/hr; 595.12 tpy	V.E.1.cc.; Table V-E-2	V.C.1.cc.; Table V-C-2
	VOC	3.82 lb/hr; 16.74 tpy	V.E.1.cc.; Table V-E-2	V.C.1.cc.; Table V-C-2
	SO ₂	118.26 tpy	V.E.1.dd.; Table V-E-3	V.C.1.dd.; Table V-C-3
PEC Baghouse 19-20	SO ₂	34.08 tpy	V.F.1.g.; Table V-F-1	V.D.1.g.; Table V-D-1
PEC Baghouse 19-20 Hot Car	SO ₂	60.14 tpy	V.F.1.j.; Table V-F-2	V.D.1.j.; Table V-D-2
B Battery	NO _x	175.56 lb/hr; 768.94 tpy	V.G.1.v.; Table V-G-1	V.E.1.v.; Table V-E-1
	CO	219.21 lb/hr; 961.47 tpy	V.G.1.v.; Table V-G-1	V.E.1.v.; Table V-E-1
	VOC	3.77 lb/hr; 16.51 tpy	V.G.1.v.;	V.E.1.v.;

Source	Pollutant	Limit	Permit Condition	Amended Permit Condition
			Table V-G-1	Table V-E-1
	SO ₂	93.64 tpy	V.G.1.w.; Table V-G-2	V.E.1.w.; Table V-E-2
B Battery PEC Baghouse	SO ₂	32.85 tpy	V.H.1.f.; Table V-H-1	V.F.1.f.; Table V-F-1
C Battery	SO ₂	140.29 tpy	V.I.1.ee; Table V-I-2	V.G.1.ee.; Table V-G-2
C Battery PEC Baghouse	SO ₂	37.89 tpy	V.J.1.g.; Table V-J-1	V.H.1.g.; Table V-H-1
C Battery PEC Hot Car	SO ₂	25.49 tpy	V.H.1.h.; Table V-J-2	V.H.1.h.; Table V-H-2
Quench Tower B	PM	6.87 lb/hr; 30.08 tpy	V.K.1.e.; Table V-K-2	V.I.1.d.; Table V-I-1
	PM10	4.12 lb/hr; 18.05 tpy	V.K.1.e.; Table V-K-2	V.I.1.d.; Table V-I-1
	PM2.5	3.43 lb/hr; 15.04 tpy	V.K.1.e.; Table V-K-2	V.I.1.d.; Table V-I-1
	PM Condensable	2.64 lb/hr; 11.57 tpy	V.K.1.e.; Table V-K-2	V.I.1.d.; Table V-I-1
	VOC	2.24 lb/hr; 9.83 tpy	V.K.1.e.; Table V-K-2	V.I.1.d.; Table V-I-1
	SO ₂	17.91 tpy	V.K.1.e.; Table V-K-2	V.I.1.d.; Table V-I-1
Quench Tower C	SO ₂	21.90 tpy	V.O.1.e.; Table V-O-1	V.M.1.e.; Table V-M-1
Quench Tower 5A	SO ₂	33.11 tpy	V.L.1.i.; Table V-L-1	V.J.1.i.; Table V-J-1
Quench Tower 7A	SO ₂	31.58 tpy	V.M.1.i.; Table V-M-1	V.K.1.i.; Table V-K-1
Desulfurization Plant	PM	0.38 lb/hr; 1.66 tpy	V.P.1.k.; Table V-P-1	V.N.1.k.; Table V-N-1
	PM10	0.37 lb/hr; 1.63 tpy	V.P.1.k.; Table V-P-1	V.N.1.k.; Table V-N-1
	CO	12.28 lb/hr; 53.79 tpy	V.P.1.k.; Table V-P-1	V.N.1.k.; Table V-N-1
	NO _x	0.84 lb/hr; 3.68 tpy	V.P.1.k.; Table V-P-1	V.N.1.k.; Table V-N-1
	VOC	0.99 lb/hr; 4.34 tpy	V.P.1.k.; Table V-P-1	V.N.1.k.; Table V-N-1
	SO ₂	105.12 tpy	V.P.1.k.; Table V-P-1	V.N.1.k.; Table V-N-1
Light Oil Barge Loading	VOC	1.99 lb/hr; 8.74 tpy	V.DD.1.f.;	V.BB.1.f.; Table V-BB-1

Source	Pollutant	Limit	Permit Condition	Amended Permit Condition
			Table V-DD-1	
Boiler No. 1	VOC	0.69 lb/hr; 3.01 tpy	V.GG.1.h.; Table V-GG-1	V.EE.1.h.; Table V-EE-1
	CO	59.90 lb/hr; 262.19 tpy	V.GG.1.h.; Table V-GG-1	V.EE.1.h.; Table V-EE-1
Boiler No. 2	VOC	0.21 lb/hr; 0.93 tpy	V.HH.1.i.; Table V-HH-1	V.FF.1.i.; Table V-FF-1
	CO	37.89 lb/hr; 165.94 tpy	V.HH.1.i.; Table V-HH-1	V.FF.1.i.; Table V-FF-1
Boilers R1 and R2	VOC	0.10 lb/hr; 0.44 tpy	V.II.1.g.; Table V-II-1	V.GG.1.g.; Table V-GG-1
	CO	48.49 lb/hr; 212.01 tpy	V.II.1.g.; Table V-II-1	V.GG.1.g.; Table V-GG-1
Boilers T1 and T2	VOC	0.07 lb/hr; 0.30 tpy	V.JJ.1.h.; Table V-JJ-1	V.HH.1.h.; Table V-HH-1
	CO	12.90 lb/hr; 53.82 tpy	V.JJ.1.h.; Table V-JJ-1	V.HH.1.h.; Table V-HH-1

The Department’s sole basis of alleged authority that it points to for the Challenged Emission Limits is what it calls “RACT.” Except the Department is not referring to precedent and the decades old “Reasonably Available Control Technology” standards grounded in the federal CAA. Instead, ACHD is referring to its own novel and unique interpretation of RACT set forth at Art. XXI § 2103.12.a.2.B, which requires the Department to ensure that “[t]he source complies with all applicable emission limitations established by this Article, or where no such limitations have been established by this Article, RACT has been applied to existing sources with respect to those pollutants regulated by this Article.” *Summary of Public Comments and Department Responses on the Proposed Issuance of the U.S. Steel Clairton Works Title V Operating Permit No. 0052* (“Renewed Permit Comment and Response Document,” attached hereto as Exhibit 12). This new interpretation of Article XXI § 2103.12.a.2.B has taken the regulated community by surprise, as is evident here.

ii. U.S. Steel’s Comments and ACHD Responses Relating to the Challenged Emission Limits

With respect to the Challenged Emission Limits, by letter dated March 15, 2022, (the “Renewed Permit Comment Letter”, attached hereto as Exhibit 13, U.S. Steel first expressly objected to the inclusion of the Challenged Emission Limits in the Renewed Permit. ACHD responded to U.S. Steel’s comments in its Renewed Permit Comment and Response Document.

See Exhibit 12. For ease of reference, U.S. Steel’s comments and ACHD’s responses are set forth in tandem below:

Exhibit 13, U.S. Steel Renewed Permit Comment Letter, at 1–4, general comments ##2, 3.⁷

2. ACHD has exceeded its authority on creating new or revising existing limits and conditions. ACHD improperly created new emission limits and conditions (or revised existing limits and conditions) that are not existing applicable requirements. U.S. Steel objects to the Department’s creation or revision of any and all limits and conditions that are not existing applicable requirements. In particular, with no legal basis and based upon an improper and fatally flawed technical analysis, the Department has created approximately 320 new emission limits, with no sound legal or technical justification by ACHD. (See Table 1 regarding PM, PM10, PM2.5, PM condensable, NOx, CO, VOC, benzene, hexane, H₂S, HCl, and ammonia; Table 2 regarding SO₂; and Table 3 regarding revisions to existing PM limits.) The Title V permit program was designed as a tool to compile all existing applicable permit requirements into one operating permit. The Title V operating permit program does not authorize new substantive applicable requirements, but does require permits to contain monitoring, recordkeeping, reporting, and other compliance requirements to assure compliance by sources with existing applicable requirements. (See, e.g., 57 Fed. Reg. 32250, 32251 (July 21, 1992). The primary purpose of the Title V program is to enable the source, EPA, States, and the public to better understand the applicable requirements to which the source is subject and whether the source is meeting those requirements.

**Table 1.
Emission Units Where Newly Created Unjustified Limits
Require Removal.**

Page # and Emission Unit	Table	New Emission Limits (lb/hr and tpy)
53 - Battery No. 1 Combustion Stack	Table V-A-1	PM condensable, NOx, CO, VOC
54 - Battery No. 2 Combustion Stack	Table V-A-2	PM condensable, NOx, CO, VOC
55 - Battery No. 3 Combustion Stack	Table V-A-3	PM condensable, NOx, CO, VOC

⁷ In addition to these general comments that compile all the Challenged Emission Limits, U. S. Steel also provided specific comments regarding the Challenged Emission Limits in its Renewed Permit Comment Letter. See, e.g., Exhibit 13, Specific Comments 12, 16, 21, 24, 27, 30, 38, 39 and 40. Among these comments, U. S. Steel noted that it is unnecessary and inappropriate for ACHD to have created limits for gaseous pollutants, such as VOC, NOx and CO, from baghouses, which are designed to control particulate matter. See, e.g., Exhibit 13, at 11, cmt. 30. ACHD responded to this comment by indicating that the requested change was made, but clearly it was not, because the limits remained. See Exhibit 12, Renewed Permit Comment and Response Document, at 13, item 36.

Page # and Emission Unit	Table	New Emission Limits (lb/hr and tpy)
69 - Batteries 1, 2 & 3 PEC System Baghouse	Table V-B-1	NOx, CO, VOC
86 - Battery No. 13 Combustion Stack	Table V-C-1	PM condensable, NOx, CO, VOC
86 - Battery No. 14 Combustion Stack	Table V-C-2	PM condensable, NOx, CO, VOC
88 - Battery No. 15 Combustion Stack	Table V-C-3	PM condensable, NOx, CO, VOC
103 - Batteries 13, 14 & 15 PEC System Baghouse	Table V-D-1	NOx, CO, VOC
121 - Battery No. 19 Combustion Stack	Table V-E-1	NOx, CO, VOC
122 - Battery No. 20 Combustion Stack	Table V-E-2	NOx, CO, VOC, benzene, hexane, H2S, ammonia, HCl
137 - Battery 19 & 20 PEC System Baghouse	Table V-F-1	NOx, CO, VOC
155 - Battery B Combustion Stack	Table V-G-1	NOx, CO, VOC
170 - Battery B PEC System Baghouse	Table V-H-1	NOx, CO, VOC
219 – Quench Tower No. 1	Table V-J-1	PM, PM10, PM2.5, PM Condensable, NOx, VOC
219 – Quench Tower B	Table V-J-2	PM, PM10, PM2.5, PM Condensable, NOx, VOC
225 - Quench Tower 5A	Table V-K-1	NOx
232 – Quench Tower 7A	Table V-L-1	NOx
238 – Quench Tower No. 5	Table V-M-1	PM, PM10, PM2.5, PM condensable, NOx, SO2, VOC
238 – Quench Tower No. 7	Table V-M-2	PM, PM10, PM2.5, PM condensable, NOx, SO2, VOC
243 – Quench Tower C	Table V-N-1	Carbon disulfide
251 – SCOT Plant	Table V-O-1	PM, PM10, CO, NOx, VOC, hydrogen sulfide
255 – Keystone Cooling Tower	Table V-P-1	PM, PM10, PM2.5, PM condensable

Page # and Emission Unit	Table	New Emission Limits (lb/hr and tpy)
265 - By-Products Area	Table V-Q-1	VOC and benzene lb/hr; methanol, HCl, hydrogen sulfide, phenol, ammonia
284 – Continuous Barge Unloader 1	Table V-R-1	PM, PM10, PM2.5
285 – Continuous Barge Unloader 2	Table V-R-2	PM, PM10, PM2.5
287 – Pedestal Crane Unloader	Table V-S-1	PM, PM10, PM2.5
289 – Coal Transfer	Table V-T-1	PM, PM10, PM2.5
291 - No. 1 Primary and Secondary Pulverizers and No. 2 Primary and Secondary Pulverizers	Condition V.U.1.b	PM tpy limits
293 – Surge Bins and Bunkers	Table V-V-1	PM, PM10, PM2.5
295 – Coke Transfer (P032)	Table V-W-1	PM, PM10, PM2.5
296 – Coke Transfer (P033)	Table V-W-2	PM, PM10, PM2.5
297 – No. 1 Coke Screening	Table V-X-1	PM, PM10
298 – No. 2 Coke Screening	Table V-X-2	PM, PM10
299 – Boom Conveyor	Table V-Y-1	PM, PM10
301 – Coal and Coke Recycle Screening	Table V-Z-1	PM, PM10
303 – Peters Creek Coke Screening	Table V-AA-1	PM, PM10
310 - Light Oil Barge Loading facility	Table V-CC-1	VOC
334 – Boiler No. 1	Table V-GG-1	CO, VOC, ammonia, hexane, HCl
338 – Boiler No. 2	Table V-HH-1	CO, VOC, ammonia, hexane, HCl
343 – Boiler R1 or Boiler R2	Table V-II-1	CO, VOC, ammonia, hexane, HCl
346 – Boilers T1 or T2	Table V-JJ-1	CO, VOC, ammonia, hexane, HCl
352 – Coal Storage Pile	Table V-OO-1	PM, PM10
353 – Coke Storage Pile – Peters Creek	Table V-PP-1	PM, PM10, PM2.5

Page # and Emission Unit	Table	New Emission Limits (lb/hr and tpy)
354 - Coke Storage Pile-South Yard	Table V-PP-1	PM, PM10, PM2.5
355 - Roadways & Vehicular Traffic	Table V-RR-1	PM, PM10, PM2.5

3. U.S. Steel disagrees with ACHD’s creation of 24 newly created SO₂ tons/year emission limits that were not contained in any existing applicable requirement, including regulations and permits, including SO₂ Installation Permit #0052-I017. The SO₂ Installation Permit did not include tons/year emission limits—as it was not needed for any SIP purposes; and it is inappropriate for ACHD to include a newly created annual limit when U.S. Steel and ACHD agreed upon 30-day rolling average lb/hr SO₂ emission limits—which was approved by U.S. EPA. These 30-day rolling average limits are also in the approved (and effective) SO₂ State Implementation Plan (SIP). There is no basis for the newly created annual limits. Table 2 identifies the unjustified SO₂ limits that require removal before issuance of a final renewed Title V Permit:

**Table 2.
Emission Units Where Newly Created Unjustified SO₂ Limits
Require Removal.**

Page # and Emission Unit	Condition from which SO₂ tpy value should be removed
54 – Battery No. 1 Combustion Stack	Table V-A-1 a
55 – Battery No. 2 Combustion Stack	Table V-A-2a
56 – Battery No. 3 Combustion Stack	Table V-A-3a
69 – Batteries 1, 2 & 3 PEC System Baghouse	Table V-B-1
70 – Batteries 1-3 Hot Car	Table V-B-2
87 - Battery No. 13 Combustion Stack	Table V-C-1 a
88 - Battery No. 14 Combustion Stack	Table V-C-2a
89 - Battery No. 15 Combustion Stack	Table V-C-3a
103 - Batteries 13-15 PEC System Baghouse	Table V-D-1
104 - Batteries 13-15 Hot Car	Table V-D-2
122 - Batteries No. 19, & No.20 Combustion Stack	Table V-E-3
137 - Battery 19 & 20 PEC System Baghouse	Table V-F-1
138 - Batteries 19-20 Hot Car	Table V-F-2
152 - Battery B Combustion Stack	Table V-G-2
170 - Battery B PEC System Baghouse	Table V-H-1

Page # and Emission Unit	Condition from which SO2 tpy value should be removed
190 - C Battery Combustion Stack	Table V-I-2
191 - Battery C PEC System Baghouse	Table V-I-3
191 - C Battery Hot Car	Table V-I-4
219 – Quench Tower 1	Table V-J-1
219 - Quench Tower B	Table V-J-2
225 - Quench Tower 5A	Table V-K-1
232 - Quench Tower 7A	Table V-L-1
243 - C Battery Quench Tower	Table V-N-1
251 - SCOT Plant	Table V-O-1

Exhibit 12, ACHD Renewed Permit Comment and Response Document, at 2–4:

Response: The emissions limits for Operating Permits that come from Installation Permits are authorized under Article XXI, §2102.04.e. All new sources under an Installation Permit are required to meet Best Available Control Technology (BACT) under §2102.04.b. The authority to include these conditions in an operating permit is under §2103.12.a.2.D. For limits not from an Installation Permit, Article XXI requires all sources to meet Reasonably Achievable Control Technology (as defined in Article XXI, §2101.20) under §2103.12.a.2.B. Section 2103.12 is included under the Allegheny County Health Department’s approved Title V operating permit program as well as the Federally Enforceable State Operating Permit (FESOP) program, which was approved by EPA as a revision to the Pennsylvania State Implementation Plan (SIP). See 68 FR 37973. These emissions limits are established in accordance with §2103.12.a.2.B, are applicable requirements as defined by §2101.20, and are concurrently incorporated into the TVOP.

40 CFR Part §70.1(b) says “... While title V does not impose substantive new requirements, ...” Part 70 §70.1(a) also states “...These regulations define the minimum elements required by the Act for State operating permit programs ...” and §70.1(c) states “Nothing in this part shall prevent a State, or interstate permitting authority, from establishing additional or more stringent requirements not inconsistent with this Act. The EPA will approve State program submittals to the extent that they are not inconsistent with the Act and these regulations...” There is no definition or explanation of substantive new requirements. The EPA has approved the Department’s Operating Permit programs for major and minor sources.

Short-term and annual emission limits may be needed as enforceable limits in State Implementation Plan (SIP) submittals. They are needed in modeling for significant impact levels. These limits are needed to determine regulatory applicability (e.g., NSR/PSD, stack testing (§2108.02)).

The commenter also states that the Department created approximately 320 new emission limits, including NO_x, CO & VOC with no sound legal or technical justification. During the 2012 renewal permitting process, the commenter asserted that AP-42 emission factors should not be used to establish limits from a specific source and proposed to remove any new emission limits and all new substantive requirements based upon AP-42 emission factors. Therefore, the Department removed all the AP-42 emission factor-based limits and required the facility to “perform emissions testing and evaluations for NO_x, CO & VOC to develop emission factors that can quantify NO_x, CO & VOC emissions”, and results of the stack testing associated with the renewal permit application were used to set the limits for this permit. In addition, these are not new limits, they are maximum potential emissions associated with the maximum capacity and operation of the source(s) and indicate worst case emissions due to normal operation of the source and do not restrict the permittee’s operations.

Consequently, hourly and annual emission limits are considered by the ACHD to be effective means by which to assure continuous compliance at facilities. The Department believes that it is both feasible and appropriate to include emission limits in U.S. Steel Clairton Coke Works Operating Permit. This has been ACHD’s policy on other EPA-approved Major Source permits, other pre-Article XXI Major Source operating permits, minor source operating permits, and installation permits. ACHD will continue to employ this methodology.

Response: The Department has been issuing operating permits with short- and long-term emission limits for over 20 years to have federally enforceable emission limitations for attainment demonstrations. The SO₂ Installation Permit #0052-1017 was issued with lb/hr limit but the operating permit must have both lbs/hr and tons/yr limits. Therefore, the conditions remain unchanged.

U.S. Steel again raised its objection to the Challenged Emission Limits, by letter dated January 18, 2024, (the “Amended Permit Comment Letter,” attached hereto as Exhibit 14), stating that inclusion of the Challenged Emission Limits in the Amended Permit was unlawful. ACHD responded to U.S. Steel’s comments in its Amended Permit Comment and Response Document. *See* Exhibit 7. U.S. Steel’s comments and ACHD’s responses are again set forth in tandem below:

Exhibit 14, U.S. Steel Amended Permit Comment Letter, at 1–3, general comment ##2, 3:⁸

2. ACHD has exceeded its authority on creating new or revising existing limits and conditions. ACHD improperly created new emission limits and conditions (or revised existing limits and conditions) that are not existing applicable requirements. U. S. Steel objects to the Department’s creation or revision of any and all limits and

⁸ In addition to these general comments that compile all the Challenged Emission Limits, U. S. Steel also provided specific comments regarding the Challenged Emission Limits in its Amended Permit Comment Letter. *See, e.g.*, Exhibit 14, Specific Comments 9, 19, 21, 28, 32, 33, 41, 44, 45, 52, 57, 64, 65, 66, 71, 74, 78, 81, 82, 84, 87, 98, 108, and 117.

conditions that are not existing applicable requirements. In particular, with no legal basis and based upon an improper and fatally flawed technical analysis, the Department has created approximately 100 new emission limits, with no sound legal or technical justification by ACHD. (See Table 1 regarding PM, PM₁₀, PM_{2.5}, PM condensable, NO_x, CO, VOC; and Table 2 regarding SO₂). The Title V permit program was designed as a tool to compile all existing applicable permit requirements into one operating permit. The Title V operating permit program does not authorize new substantive applicable requirements, but does require permits to contain monitoring, recordkeeping, reporting, and other compliance requirements to assure compliance by sources with existing applicable requirements. (See, e.g., 57 Fed. Reg. 32250, 32251 (July 21, 1992)). The primary purpose of the Title V program is to enable the source, EPA, States, and the public to better understand the applicable requirements to which the source is subject and whether the source is meeting those requirements. In addition, Reasonably Available Control Technology (RACT), the only authority proffered by ACHD to support the insertion of the new emission limits, does not authorize the insertion of the new emission limits because: (1) RACT cannot be established through a TVOP renewal; (2) RACT does not apply to CO and PM₁₀, pollutants for which EPA has classified Allegheny County as being in attainment of the National Ambient Air Quality Standards (NAAQS); and (3) the new emission limits contradict ACHD's previously and appropriately performed RACT evaluations for NO_x, VOC, SO₂, and PM_{2.5} that have been approved by EPA and incorporated into the State Implementation Plan. Further, Allegheny County's ambient air monitoring data demonstrates that the County is currently attaining the NAAQS for all criteria pollutants, and therefore, the new emission limits are not necessary for the attainment or maintenance of the NAAQS. Lastly, ACHD created additional PM condensable limits that were never part of the PM_{2.5} SIP process.

**Table 1.
Emission Units Where Newly Created Unjustified Limits
Require Removal.**

Page # and Emission Unit	Table	New Emission Limits (lb/hr and tpy)
60 - Battery No. 13 Combustion Stack	V-A-1	PM condensable, NO _x , CO, VOC
61 - Battery No. 14 Combustion Stack	V-A-2	PM condensable, NO _x , CO, VOC
62 - Battery No. 15 Combustion Stack	V-A-3	PM condensable, NO _x , CO, VOC
93 - Battery No. 19 Combustion Stack	V-C-1	NO _x , CO, VOC
93 - Battery No. 20 Combustion Stack	V-C-2	NO _x , CO, VOC

Page # and Emission Unit	Table	New Emission Limits (lb/hr and tpy)
125 - Battery B Combustion Stack	V-E-1	NO _x , CO, VOC
187 - Quench Tower B	V-I-1	PM, PM10, PM2.5, PM Condensable, VOC
219 - SCOT Plant	V-N-1	PM, PM10, CO, NO _x , VOC
268 - Light Oil Barge Loading facility	V-BB-1	VOC
278 - Boiler No. 1	V-EE-1	CO, VOC
284 - Boiler No. 2	V-FF-1	CO, VOC
290 - Boilers R1 or R2	V-GG-1	CO, VOC
295 - Boilers T1 or T2	V-HH-1	CO, VOC

3. U. S. Steel disagrees with ACHD’s creation of 19 new SO₂ tons/year emission limits that were not contained in any existing applicable requirement, including regulations and permits, including SO₂ Installation Permit #0052-I017. The SO₂ Installation Permit did not include tons/year emission limits—as it was not needed for any SIP purposes; and it is inappropriate for ACHD to include a newly created annual limit when U. S. Steel and ACHD agreed upon 30-day rolling average lb/hr SO₂ emission limits—which was approved by U. S. EPA. These 30-day rolling average limits are also in the approved (and effective) SO₂ State Implementation Plan (SIP). There is no basis for the newly created annual limits, and, as set forth in Comment 2, above, the inclusion of the newly created SO₂ annual limits are not necessary for the attainment or maintenance of the SO₂ NAAQS, as ambient air quality data confirms SO₂ emissions are well below the standards, so much so that ACHD has recently requested that EPA redesignate Allegheny County from nonattainment to attainment. Table 2 identifies the unjustified SO₂ limits that require removal before issuance of a final renewed Title V Permit:

**Table 2.
Emission Units Where Newly Created
Unjustified SO₂ TPY Limits Require Removal.**

Page # and Emission Unit	Table
52 – Boilers - Aggregate	IV.34
61 - Battery No. 13 Combustion Stack	V-A-1a
61 - Battery No. 14 Combustion Stack	V-A-2a
62 - Battery No. 15 Combustion Stack	V-A-3a
75 - Batteries 13-15 PEC System Baghouse	V-B-1
76 - Batteries 13-15 Hot Car	V-B-2

Page # and Emission Unit	Table
94 - Batteries No. 19, & No.20 Combustion Stack	V-C-3
108 - Battery 19 & 20 PEC System Baghouse	V-D-1
109 - Batteries 19-20 Hot Car	V-D-2
126 - Battery B Combustion Stack	V-E-2
139 - Battery B PEC System Baghouse	V-F-1
157 - Battery C Combustion Stack	V-G-2
172 - Battery C PEC System Baghouse	V-H-1
172 - C Battery Hot Car	V-H-2
187 - Quench Tower B	V-I-1
193 - Quench Tower 5A	V-J-1
200 - Quench Tower 7A	V-K-1
211 - Quench Tower C	V-M-1
219 - SCOT Plant	V-N-1

Unfortunately, ACHD did not directly address U.S. Steel’s general comments. Instead, it chose to respond to U.S. Steel’s comments on the Challenged Emission Limits by paraphrasing them in the haphazard fashion shown below. Exhibit 7, Amended Permit Comment and Response Document, at 2, 4–5, 6, 7, 9, 10–11; Comment and Response ##9, 19, 20, 27, 31, 43, 51:

9. COMMENT: Condition IV.34. The condition needs to be revised to remove the proposed SO₂ tpy limit and corresponding footnote. The EPA approved SIP SO₂ Installation Permit did not include tons/year values as emission limitations. There is no basis for the annual limit. Furthermore, the lb/hr SO₂ limits are long-term averages (30 day rolling and 24-hr rolling) and it is inappropriate to derive the tpy value by converting the 30-day rolling average.

RESPONSE: The Department denies the request to remove the limit. The Department retains the right to set both short- and long-term federally enforceable limits under Article XXI, §2103.12.a.2.B. While the lb/hr numbers are “long-term averages”, they may still be used to establish a maximum annual potential-to-emit. Furthermore, this condition was not modified as part of this permit amendment. Therefore, this comment is not within the purview of this amendment.

19. COMMENT: Conditions V.A.1.v, V.A.1.x, V.A.1.z; V.N.1.k; V.bb.1.f. U.S. Steel requests that the new PM condensable, NO_x, CO, and VOC limits be removed from the permit. The Title V permit program was designed as a tool to compile all existing applicable permit requirements into one operating permit. The Title V operating permit program does not authorize new substantive applicable requirements, but does require permits to contain monitoring, recordkeeping, reporting, and other compliance requirements to assure compliance by sources with existing applicable requirements.

RESPONSE: Conditions V.A.1.v, V.A.1.x, V.A.1.z were only amended as part of this permit amendment to clarify the footnote and to include emissions from the combustion stack (see the Technical Support Document) and the other referenced conditions were not changed. Therefore, this comment is beyond the purview of this amendment.

20. COMMENT: Conditions V.A.1.w; V.A.1.y; V.A.1.aa; V.C.1.dd; V.D.1.g, V.D.1.J; V.E.1.w; V.E.6.n; V.F.1.f; V.G.1.ee; V.I.1.d; V.H.1.g & V.H.1.h; V.J.1.i & V.K.1.i, V.M.1.e; V.N.1.k. U.S. Steel requests that the annual emission limit (tons/year) for SO₂ be removed along with the corresponding footnote. The EPA approved SIP SO₂ Installation Permit did not include tons/year values as emission limitations. (1 Commenter)

RESPONSE: See response to comment #9 above. The referenced conditions were not modified as part of this amendment. Therefore, this comment is not within the purview of this amendment.

27. COMMENT: Condition V.B.1.i. U.S. Steel requests that the annual emission limit (tons/year) for SO₂ be removed from Tables V-B-1 and V-B-2. The EPA approved SIP SO₂ Installation Permit did not include tons/year values as emission limitations. The new annual SO₂ emission limit is not necessary in order to attain or maintain the SO₂ NAAQS, as supported by the ambient air quality data measured by ACHD and ACHD's recent request to EPA to redesignate Allegheny County to attainment.

RESPONSE: See responses to comment #9 above and #19 above.

*31. COMMENT: Conditions V.C.1.bb; V.C.1.cc; V.E.1.v. U.S. Steel requests that new NO_x, CO, and VOC limits be removed from the Combustion Stacks. The Title V permit program was designed as a tool to compile all existing applicable permit requirements into one operating permit. The Title V operating permit program does not authorize new substantive applicable requirements, but does require permits to contain monitoring, recordkeeping, reporting, and other compliance requirements to assure compliance by sources with existing applicable requirements. In addition, the corresponding footnote “**NO_x, CO and VOC emissions include combustion stack, soaking, charging, door leaks, lid leaks, offtake leaks, decarbonization” should also be removed, as ACHD properly removed this footnote for Battery Stacks 13-15, as the limits pertain to the combustion stack itself, not fugitive emissions that cannot be tested. (1 Commenter)*

RESPONSE: The footnote has been removed but will be retained in the technical support document. See response to comment #19 above.

43. COMMENT: Condition V.I.1.d. U.S. Steel requests that new PM, PM₁₀, PM_{2.5}, PM condensable, and VOC limits be removed from Table V-I-1 for Quench Tower B. The Title V permit program was designed as a tool to compile all existing

applicable permit requirements into one operating permit. The Title V operating permit program does not authorize new substantive applicable requirements, but does require permits to contain monitoring, recordkeeping, reporting, and other compliance requirements to assure compliance by sources with existing applicable requirements. (1 Commenter)

RESPONSE: This condition was not modified as part of this permit amendment. Therefore, this comment is not within the purview of this amendment.

51. Conditions V.EE.1.h; V.FF.1.i; V.GG.1.g; V.HH.1.h., U.S. Steel requests that new CO and VOC limits be removed. The Title V permit program was designed as a tool to compile all existing applicable permit requirements into one operating permit. The Title V operating permit program does not authorize new substantive applicable requirements, but does require permits to contain monitoring, recordkeeping, reporting, and other compliance requirements to assure compliance by sources with existing applicable requirements.

RESPONSE: See response to comment #19 above. This condition was not modified as part of this permit amendment. Therefore, this comment is not within the purview of this amendment.

iii. EPA Comments on the Challenged Emission Limits in the Order on Petitions

In a series of statements relating to its granting of Claims in the Petitions to Object to the Renewed Permit relating to the need to consider the need for additional monitoring, EPA questioned the very basis on which the limits were set. For example, on page 20 of the Order on Petitions in discussing VOC limits for the Coke Oven Battery Combustion Stacks and Boilers, EPA noted that ACHD indicated that the limits were set such that they would not be exceeded. See Exhibit 6 at 20. Footnote 15 references ACHD's response to U.S. Steel's comment in which ACHD indicated that the limits are "maximum potential emissions associated with maximum capacity. . . and do not restrict the permittee's operations." *Id.* at 20. But then EPA notes that:

The Technical Review Memo associated with the Permit states that the emission limits in question were based on stack tests from 2012, 2014, and 2015. Technical Review Memo [Exhibit 8] at 13-18, 28-30. However, it contains no information to demonstrate that the stack tests are representative of (sic) the units' current and future performance, and it is unclear whether the units' emissions are variable in a way that may not be captured in a single stack test or if there are any operating parameters that may impact emissions between stack tests that should be monitored. Overall, the permit record does not contain enough quantitative technical details to support ACHD's statement that the emission limits were based on the units' "maximum potential emissions."

Id. EPA used almost identical language in the Order on Petitions page 16 in discussing CO limits for the Coke Oven Battery Combustion Stacks and Boilers, on page 23 in discussing NO_x

limits for the Coke Oven Battery Stacks and Boilers, and on page 27–28 in discussing PM, SO₂, NO_x and VOC limits for the Quench Towers. *Id.* at 16, 23, 27–28. As discussed below in the section of this Petition discussing the new CEMS requirement, ACHD did not respond at all to EPA’s questions relating to the technical basis for some of the Challenged Emission Limits.

iv. The Challenged Emission Limits are not final and are therefore subject to EPA’s authority to object pursuant to CAA § 505(b)(2)

The Challenged Emission Limits are among the issues raised in U.S. Steel’s Renewed Permit Appeal and in its Amended Permit Appeal. Because the filing of a Notice of Appeal with ACHD prevents the Department’s underlying action from becoming “final,” and both appeals remain pending, the Renewed Permit and the Amended Permit and Objectionable Conditions therein remain subject to review. Exhibit 10, Art. XI § 1104.D; *see* CAA § 502(b)(6), 42 U.S.C. § 7661a(b)(6), 40 C.F.R. § 70.4(b)(3)(x); *see Clean Air Act Full Approval of Partial Operating Program; Allegheny County; Pennsylvania*, 66 Fed. Reg. 55112, 55113 (November 1, 2001).⁹ “In order to obtain judicial review, section [Art. XI §] 1104(a) [of the ACHD Rules and Regulations] requires that an appellant must first file a notice of appeal to the Director of the ACHD and go through an administrative hearing process.” 66 Fed. Reg. at 55113. On this basis, EPA determined (in the context of evaluating whether to approve ACHD’s own part 70 program) that “[t]he ACHD regulations meet the requirement for initiating judicial review required by 40 CFR part 70.” *Id.*

v. The Challenged Emission Limits are not Applicable Requirements as Defined under Title V of the CAA and part 70

As EPA is aware, the Title V permitting process is largely procedural—it is intended to identify and record existing substantive requirements applicable to regulated sources and assure compliance with these existing requirements in one comprehensive document. *See, e.g., Sierra Club v. Johnson*, 541 F.3d 1257, 1260 (11th Cir. 2008). In imposing the new Challenged Emission Limits directly through the Title V process, ACHD upends this basic principle by unlawfully imposing new emission limits on existing and unmodified sources at the Facility. ACHD did not establish the Challenged Emission Limits through a preconstruction or installation permit, and they are not based on any federal, state, or local categorical requirement required by Article XXI and the CAA programs that ACHD is delegated the authority to administer.

⁹ Section 502(b)(6) of the CAA was added as part of the broader 1990 amendments. In support of the amendment, several senators spoke to the importance of the right to judicial review of permitting actions in State court. Chafee-Baucus, Statement of Senate Managers (Conf. Rep. No. 952, 101st Cong., 2d Sess.), reprinted in 136 Cong. Rec. S16933, S16983 (daily ed. Oct. 27, 1990) (e.g., Section 502(b)(6) is being added to ensure “that existing provisions of law governing the availability of review of final actions on permit applications are in no way limited, and that interested persons who arguably are affected by permit decisions are guaranteed their day in court”, and “fair treatment in the permit process [by providing that] judicial review of final actions by the permitting authority to issue or deny permits shall be available in State court”). The United States Court of Appeals for the 4th Circuit relied on these and other legislative statements in evaluating whether Virginia afforded sufficient judicial review of permits. *Virginia v. Browner*, 80 F.3d 869, 873–77 (4th Cir. 1996).

As noted by EPA, “operating permits required by Title V are meant to accomplish the largely procedural task of identifying and recording existing substantive requirements applicable to regulated sources and to assure compliance with these existing requirements.” See EPA, *White Paper for Streamlined Development of Part 70 Permit Applications*, at 1 (July 10, 1995) (attached hereto as Exhibit 15); see also 40 C.F.R. § 70.1(b) (stating, in relevant part, that “[T]itle V does not impose substantive new requirements...”). “[T]he [T]itle V operating permit program is a vehicle for compiling air quality control requirements from other CAA programs and for providing requirements necessary to assure compliance with such requirements, but not for creating or changing applicable requirements. Put simply, Title V is a catch-all, not a cure-all.” *Applicable Requirements Rule* at 1154; see also *Utility Air Regul. Grp. v. EPA*, 573 U.S. 302, 309 (2014) (“Title V generally does not impose any substantive pollution-control requirements. Instead, it is designed to facilitate compliance and enforcement by consolidating into a single document all of a facility’s obligations under the [CAA]”); *Clean Air Council v. Cnty. of Allegheny*, No. 515 C.D. 2018, 2018 WL 6036820 (Pa. Cmwlth. Nov. 19, 2018) (“The purpose of a Title V operating permit is to incorporate into one document all the requirements that are included in a facility’s existing installation (construction) permits, and any applicable regulatory requirements.”); *Sierra Club*, 541 F.3d at 1260 (“Title V does not generally impose new substantive air quality control requirements” and instead provides for individual operating permits that “contain certain monitoring, record keeping, reporting and other conditions” in one place) (internal citations omitted). In a sense, a Title V permit “is a source-specific bible for Clean Air Act compliance[.]” *Virginia v. Browner*, 80 F.3d 869, 873 (4th Cir. 1996).

The purpose of Title V permits is to identify and to assure compliance with **existing** “applicable requirements” to which the permittee is subject. “It is important to recognize that ‘applicable requirement’ is a legal term of art that is unique to Title V. Its meaning is closely aligned with the primary function of Title V permits: to consolidate and assure compliance with substantive requirements established under other CAA programs.” *Applicable Requirements Rule* at 1154. EPA defines an “applicable requirement” as any of the following, as they apply to emission units at a major source:

- (1) Any standard or other requirement provided for in the... [SIP]... that implements the relevant requirements of the [CAA], including any revisions to [the SIP] promulgated in [40 C.F.R. Part 52];
- (2) Any term or condition of any preconstruction permits issued pursuant to regulations approved or promulgated through rulemaking under title I, including parts C or D, of the [CAA];
- (3) Any standard or other requirement under section 111 of the [CAA], including section 111(d);
- (4) Any standard or other requirement under section 112 of the [CAA], including any requirement concerning accident prevention under section 112(r)(7) of the [CAA];

- (5) Any standard or other requirement of the acid rain program under title IV of the [CAA] or the regulations promulgated thereunder;
- (6) Any requirements established pursuant to section 504(b) or section 114(a)(3) of the [CAA];
- (7) Any standard or other requirement under section 126(a)(1) and (c) of the [CAA];
- (8) Any standard or other requirement governing solid waste incineration, under section 129 of the [CAA];
- (9) Any standard or other requirement for consumer and commercial products, under section 183(e) of the [CAA];
- (10) Any standard or other requirement for tank vessels under section 183(f) of the [CAA];
- (11) Any standard or other requirement of the program to control air pollution from outer continental shelf sources, under section 328 of the [CAA];
- (12) Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under title VI of the [CAA], unless [EPA] has determined that such requirements need not be contained in a title V permit; and
- (13) Any [NAAQS] or increment or visibility requirement under part C of title I of the [CAA], but only as it would apply to temporary sources permitted pursuant to section 504(e) of the [CAA].

40 C.F.R. § 70.2.¹⁰ Thus to be an “applicable requirement” for Title V purposes, “the requirement must be based on the CAA and, more specifically, one of the CAA sections specifically identified in the definition. Requirements that are not based on (*i.e.*, derived from) the CAA are not ‘applicable requirements’ of the CAA with which a Title V permit must assure compliance.” *Applicable Requirements Rule* at 1154.

The Challenged Emission Limits are simply not “applicable requirements” under the CAA. The Challenged Emission Limits were not established in any preconstruction permit, are not based on any New Source Performance Standards (“NSPS”) promulgated pursuant to Section 111 of the CAA, any standard or other requirement promulgated under Section 112 of the CAA, or any other standard or requirement of the CAA. The Department attempts to justify the improper insertion of the Challenged Emission Limits based solely on its authority to impose RACT requirements pursuant to Section 2103.12.a.2.B. *See* Exhibit 12, Renewed Permit Comment and Response Document, at cmt. 1. But RACT is a specific term of art in the CAA that does not authorize or justify the Department’s improper creation of the Challenged Emission Limits, because the Challenged Emission Limits have not been demonstrated to be necessary to

¹⁰ The Department defines an “applicable requirement” as (1) all provisions of Article XXI, (2) all provisions of the CAA and Air Pollution Control Act, (3) all provisions of all regulations approved or promulgated by EPA through rulemaking under the CAA, and (4) all terms and conditions of any permit, license, or order issued pursuant to Article XXI, the CAA, the Air Pollution Control Act, or any regulations approved or promulgated by EPA through rulemaking under the CAA. Exhibit 11, Art. XXI § 2101.20.

attain or maintain the NAAQS. Further, “[i]t is well-established that the NAAQS are not an ‘emission standard or limitation’ as defined in the CAA.” *Cate v. Transcon. Gas Pipe Line Corp.*, 904 F.Supp. 526, 530 (W.D. Va. 1995).

Given EPA’s recent clear articulation in the *Applicable Requirements Rule* of its position that Title V permits are not the intended vehicle for creating new substantive requirements, it is not surprising that EPA previously applied the same rationale in responding to other petitions to object. Responding to a Petition to Object from Cargill, EPA recognized that notwithstanding the fact that neither the CAA nor EPA’s regulations limit states’ authority to establish more stringent permitting requirements (as explained earlier), EPA agrees with the Petitioner that there are some limitations on the extent to which Title V permits can or should be used to establish new requirements. The Title V permitting program was designed primarily as a tool to aid implementation and enforcement of—and compliance with—existing CAA requirements, not as a program to establish new substantive requirements on a source. *See* 40 C.F.R. § 70.1(b); *In re Cargill Inc.*, Order on Petition No. VII-2022-9, 13 (2023).¹¹ Indeed, reviewing courts have repeatedly held that “[t]itle V does not generally impose new substantive air quality control requirements.” *See, e.g., Sierra Club v. Johnson*, 541 F.3d 1257, 1260 (11th Cir. 2008) (citations omitted; cleaned up); *Appalachian Power Co. v. EPA*, 208 F.3d 1015, 1028 (D.C. Cir. 2000) (holding that EPA’s Periodic Monitoring Guidance impermissibly broadened the part 70 regulations by imposing substantive modifications). Instead, it provides for individual operating permits that “contain monitoring, record keeping, reporting, and other conditions” in one place. *Id.* (citations omitted); *Env’t Integrity Project v. EPA*, 969 F.3d 529, 536 (5th Cir. 2020). Furthermore, EPA has gone on record with its disbelief that Congress intended Title V to be a forum for the State to establish any additional requirements that would become federally enforceable. The primary purpose of the Title V permitting program is to assure that subject sources comply with all requirements of the Act. *Operating Permit Program; Proposed Rule*, 56 Fed. Reg. 21712, 21729 (May 10, 1991); *see also* 40 C.F.R. § 70.6(b)(2).

EPA must grant this Petition, because allowing delegated permitting authorities to establish substantive new requirements in a Title V permit, particularly emission limits with no clear authority, creates an impermissible risk for permittees and an inability to appropriately predict the costs and burdens of regulatory requirements. Essentially, Title V permitting would revert to the pre-1990 permitting era, when “regulators and industry were left to wander through this regulatory maze in search of the emission limits and monitoring requirements that might apply to a particular source. Congress addressed this confusion in the 1990 Amendments by adding Title V of the Act...” *Applicable Requirements Rule* at 1153 (quoting *Sierra Club v. EPA*, 536 F.2d 673, 674 (D.C. Cir. 2008)). EPA must insert itself into the permitting process in this case to preclude such a potential future outcome.

¹¹ EPA conducted an evaluation of ACHD’s Title V program in August 2017 as part of EPA’s routine oversight of state/local permitting activities. On May 29, 2018, EPA sent to ACHD’s Air Quality Program the final report for the Title V program evaluation (the “Air Program Report”), which is attached hereto as Exhibit 16. Among the recommended improvements identified by EPA in the Air Program Report was “more strategic integration of the multiple permit types so as to not delay Title V permit issuance”, rather than ACHD’s historic approach of prioritizing installation permits over Title V renewals. Exhibit 16, at 1–4. EPA’s audit findings confirm EPA’s interpretation that in implementing a Title V permit program, installation permits and Title V renewals are distinct; *i.e.*, Title V permits integrate multiple types of previously-issued permits, such as installation permits, but Title V permits do not take the place of installation permits.

vi. ACHD Has Unlawfully Established Limits for PM Condensable Emissions from Coke Oven Batteries 13-15 and Quench Tower B

ACHD has unlawfully established hourly and annual limits for PM Condensable emissions from Battery, 13, Battery 14, Battery 15, and Quench Tower B, at conditions V.C.1.v, V.C.1.x, V.C.1.z and V.K.1.e and Tables V-C-1, V-C-2, V-C-3, and V-K-2 of the Amended Permit and Renewed Permit. *See Exhibits 1 and 2.* PM Condensable is not a regulated pollutant under the Clean Air Act as defined under 40 C.F.R § 70.2. PM Condensable is regulated only as a fraction of PM10 and PM2.5, and it is not itself subject to any applicable requirement established under the Clean Air Act or Article XXI as defined under 40 C.F.R. §70.2 or Art. XXI §2101.20. *See Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers (PM2.5): Amendment to the Definition of “Regulated NSR Pollutant” Concerning Condensable Particulate Matter*, 77 Fed. Reg. 65107 (Oct. 25, 2012). It is simply not appropriate for ACHD to have included PM Condensable emission limits in the Renewed Permit or Amended Permit, and ACHD’s decision to do so was without legal or technical basis. In addition, ACHD failed to provide a reasoned basis for their inclusion or appropriate response to comment on U.S. Steel’s objections to these limits, as required by 40 C.F.R. §70.7(a)(5) and §70(h)(6). U.S. Steel respectfully requests that EPA require ACHD to remove these limits.

vii. ACHD’s Proffered RACT Authority is Legally Incorrect and Contrary to the Clean Air Act

Article XXI § 2101.20 defines RACT as “any air pollution control equipment, process modifications, operating and maintenance standards, or other apparatus or techniques which may reduce emissions and which the Department determines is available for use by the source affected in consideration of the necessity for obtaining the emission reductions, the social and economic impact of such reductions, and the availability of alternative means of providing for the attainment and maintenance of the NAAQS’s. (sic)” Exhibit 11, Art. XXI § 2101.20. Prior to issuing an operating permit, the Department is required, in relevant part, to ensure that (1) the source or air pollution control equipment was constructed or modified in compliance with all terms and conditions contained in all applicable installation permits and (2) the source complies with all applicable emission limitations and applicable requirements, including RACT, all applicable NSPS, existing and new source MACT standards, GACT standards, applicable NESHAP requirements. Exhibit 11, Art. XXI § 2103.12.a.2.

To the extent that ACHD relies on RACT, as set forth in Article XXI, to justify the Challenged Emission Limits, the permitting record does not appropriately reflect this justification of ACHD’s authority for the new Challenged Emission Limits. Further, RACT does not support the imposition of the new Challenged Emission Limits because they are inconsistent with the definition of RACT as set forth in the CAA and in Article XXI, inconsistent with the procedures set forth in the CAA and Article XXI for establishing RACT, and have not been demonstrated to be necessary to attain or maintain the NAAQS. “It is well-established that the NAAQS are not an ‘emission standard or limitation’ as defined in the CAA.” *Cate v. Transcon. Gas Pipe Line Corp.*, 904 F.Supp. 526, 530 (W.D. Va. 1995). Even if the Challenged Emission

Limits were required for NAAQS attainment, which they are not, “[w]hen it comes to imposing permit conditions designed to ensure that an area achieves compliance with the NAAQS, the Department must normally proceed in accordance with the federal/state SIP process for attaining the NAAQS that is set forth in the federal [CAA]... [and] [i]t will generally not be appropriate to attempt to bypass or ignore that process, cherry-pick a standard out of context, and impose permit conditions outside of or in advance of the federally mandated process.” *Berks Cnty. v. DEP*, 2012 EHB 23, 26–27, 2012 WL 1108235 at *3 (March 16, 2012).

RACT is a specific term of art codified by Congress in the CAA. *See Sierra Club v. EPA*, 972 F.3d 290, 294 (3d. Cir. 2020) (“[RACT] is a term of art at the foundation of the EPA’s decision-making...”). Specifically, states that are in nonattainment of the NAAQS or located in the ozone transport region are required by the CAA to include in their SIPs provisions that “provide for the implementation of all reasonably available control measures as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of [RACT]) and shall provide for attainment of the [NAAQS].”¹² *See* 42 U.S.C. §§ 7502(c)(1), 7511c(b)(1)(B). RACT is not defined in the CAA but has been interpreted by EPA to mean “the lowest emission limit that a particular source is capable of meeting by the application of technology that is reasonably available considering technological and economic feasibility.” *Sierra Club*, 972 F.3d at 294; *see also* Allegheny County Portion of the Pennsylvania RACT II SIP Revision for the 1997 and 2008 8-Hour Ozone NAAQS, at 4 (April 23, 2020) (attached hereto as Exhibit 17). “RACT is a technology-forcing standard designed to induce improvements and reductions in pollution for existing sources.” *Sierra Club*, 972 F.3d at 294.

Each time EPA promulgates a new NAAQS, promulgates new control technology guidelines, or finds that an applicable implementation plan is substantially inadequate to attain the NAAQS, the CAA requires states to revise their SIP to implement RACT. *See, e.g.*, 42 U.S.C. §§ 7410(k)(5) and 7511a(b)(2). “RACT for a particular source is determined on a case-by-case basis, considering the technological and economic circumstances of the individual source.” *Federal Implementation Plan Addressing RACT Requirements for Certain Sources in Pennsylvania*, 87 Fed. Reg. 53382, 53387 (Aug. 31, 2022). States implement RACT for existing sources in two ways—either by the promulgation of categorical regulations establishing presumptive RACT requirements for certain categories of existing sources, or through source-specific evaluations, referred to as case-by-case determinations. *See, e.g.*, Exhibit 11, Art. XXI § 2105.08. To conduct a RACT analysis, the permitting authority is required to first identify all technologically feasible controls, considering the source’s process and operating procedures, raw materials, physical plant layout, and other site-specific conditions. *State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990*, 57 Fed. Reg. 18070, 18073 (April 28, 1992); *see also Sierra Club*, 972 F.3d at 295. Then, the permitting authority must evaluate whether each technologically feasible control is economically feasible, considering the cost of reducing emissions and the difference in costs between the particular source and other similar sources that have implemented emission reductions. *Sierra*

¹² EPA has interpreted “reasonably available,” as used in the terms “reasonably available control measures” and “RACT,” to mean only control technologies that advance attainment, such that if the imposition of control technologies would not hasten achievement of the NAAQS, no control technologies may be necessary to implement RACT. *Nat. Res. Def. Council v. EPA*, 571 F.3d 1245, 1253 (D.D.C. 2009).

Club, 972 F.3d at 295. Therefore, in a proper RACT analysis, for each source, the permitting authority will select a control technology that is reasonably available, considering technological and economic feasibility, and then identify the lowest emission limit that the particular source is capable of achieving by application of that technology (*i.e.*, that a plant operator applying the selected technology is capable of achieving economically and technologically). *See, e.g., Federal Implementation Plan Addressing RACT Requirements for Certain Sources in Pennsylvania*, 87 Fed. Reg. at 53387.

Typically, source-specific RACT requirements are incorporated into a preconstruction permit, accompanied by a review memo that summarizes the RACT evaluations performed, which are then submitted to EPA for incorporation into the SIP. *See Berks Cnty.*, 2012 EHB at 26-27, 2012 WL 1108235, at *3 (stating that “[w]hen it comes to imposing permit conditions designed to ensure that an area achieves compliance with the NAAQS, the Department must normally proceed in accordance with the federal/state SIP process for attaining the NAAQS that is set forth in the federal [CAA]. . . . There may be special circumstances that warrant disregard of SIP planning, but if . . . the Department deviate[s] from otherwise clearly applicable federal and state standards and procedures for setting permit limits for a particular facility, it must carefully explain and justify such deviation both factually and legally.”). ACHD gave no such explanation in the Response to Comment Document or Technical Support Document for the Renewed Permit or the Amended Permit and did not follow any of the well-understood procedural and evaluative steps typically associated with RACT that have long been recognized by EPA and courts alike. “A SIP must satisfy Reasonably Available Control Technology (‘RACT’) requirements,” and “[T]o be RACT-compliant, an implementation plan must satisfy technological and economic feasibility.” *Keystone-Conemaugh Projects LLC v. EPA*, 100 F.4th 434, 440 (3d Cir. 2024) “Technological feasibility concerns the application of an emission reduction method to a particular source and ‘consider[s] the source’s process and operating procedures, raw materials, physical plant layout. . . .’” *Id.* “Economic feasibility is ‘largely determined by evidence that other sources in a source category have in fact applied the control technology in question. . . .’” *Id.* (citation omitted). ACHD did no such analysis and made no such showing here. Instead, ACHD takes the incorrect position that a general statement of RACT in Article XXI takes on a more expansive scope and application than it is elsewhere applied, including with respect to its own typical RACT procedures, and would allow for the creation of a hundred new emission limits out of whole cloth.¹³

¹³ In an order denying U.S. Steel’s Motion for Summary Disposition in the Renewed Permit Appeal (attached hereto as Exhibit 18), which remains pending, ACHD’s outgoing Hearing Officer opined that wholly new emission limits included in the permit in the name of RACT constitute “applicable requirements” within the meaning of Article XXI and part 70 and therefore it was not impermissible for ACHD to impose these limits for the first time in a Title V permit. *See* Exhibit 18, at 18–19. U.S. Steel disagrees with the Hearing Officer’s analysis because ACHD’s creation of new emission limits in a Title V permit under the guise of an expanded RACT authority that exceeds far beyond the practical, legal and well understood meaning of RACT, cannot be upheld. Indeed, the mere citation to generalized language in Article XXI that would allow for the imposition of substantive new limits in a Title V permit does not satisfy the definition of applicable requirement, and runs afoul of ACHD’s constitutional duty to provide due process and fair notice to permittees of the regulatory obligations that may apply. Importantly, the Hearing Officer’s decision did not address whether ACHD engaged in a proper RACT analysis in setting the Challenged Emission Limits. *See* Exhibit 18 at 30.

Section 2103.12.a.2.B of the ACHD Rules and Regulations, relating to operating permits, and its analogous provision found in Section 2102.04.b.5, relating to installation permits, do not support an assertion that the Challenged Emission Limits are RACT. These sections can only reasonably be interpreted as ensuring that the Department implements RACT in a manner consistent with the CAA. ACHD is delegated limited authority under the CAA by EPA and therefore is required to implement RACT requirements in Allegheny County consistent with how EPA implements those requirements. And while ACHD asserts that it may be more stringent than EPA, there is nothing either in EPA's approval of ACHD's Title V program or the history of ACHD's application of these requirements that would support ACHD's assertion that such stringency was intended in the language of Article XXI. For example, in issuing its approval of ACHD as a delegated Title V authority, EPA specifically called out certain aspects of ACHD's program that differed from part 70 in "scope and stringency" but were determined nonetheless to be consistent with part 70; neither RACT nor the establishment of new emission limits in a Title V permit were among these differences. *See Clean Air Act Full Approval of Partial Operating Permit Program; Allegheny County; Pennsylvania*, 66 Fed. Reg. 55112, 55113 (Nov. 1, 2001). Likewise, there is nothing in EPA's approval of ACHD's Federally Enforceable State Operating Permit Program that mentions RACT at all. *Id.* Moreover, the Pennsylvania Air Pollution Control Act, pursuant to which ACHD has also been delegated authority to implement its air regulatory program, provides at Section 4.2 that actions under the APCA to meet the NAAQS generally "shall be no more stringent than those required under the Clean Air Act[.]" 35 P.S. § 4.2.

Perhaps most importantly, the plain language of the RACT definition in Article XXI dictates that emission limits or other standards proffered as RACT must demonstrate that the limits are necessary and appropriate for attainment and maintenance of the NAAQS. RACT is defined as "any air pollution control equipment, process modifications, operating and maintenance standards, or other apparatus or techniques which may reduce emissions and which the Department determines is available for use by the source affected in consideration of the necessity for obtaining the emission reductions, the social and economic impact of such reductions, and the availability of alternative means of providing for the *attainment and maintenance* of the NAAQS's (sic)." Exhibit 11, Art. XXI § 2101.20 (emphasis added). In other words, RACT must provide for the attainment or maintenance of the NAAQS via the identification of air pollution control equipment, process modifications, operating and maintenance standards or other apparatus or techniques. On its face, this language is entirely consistent with the requirements of the CAA, and the manner in which ACHD has previously and properly applied RACT to existing sources. In fact, ACHD has promulgated specific regulations establishing presumptive RACT requirements for major sources of NO_x and VOC emissions, and reasonably available control measure requirements for specific types of operations that emit PM and PM₁₀ to ensure compliance with the CAA. *See, e.g.*, Exhibit 11, Art. XXI §§ 2104.02, 2105.06, 2105.08, and 2105.21. ACHD's own RACT regulations further support that RACT, as defined and incorporated into Article XXI, was intended to ensure that ACHD was complying with its obligations under the CAA. Exhibit 11, *compare* Art. XXI § 2103.12.a.2.B (stating "where no such limitations have been established by this Article, RACT has been applied to existing sources...") *with* § 2105.06.a (stating "[t]his Section applies to all major sources of [NO_x] or VOCs..., for which no applicable emission limitations have been established by regulations under this Article.").

1. The Challenged Emission Limits are Not RACT

As noted above, source-specific RACT requirements are typically incorporated into a preconstruction permit, accompanied by a review memo that summarizes the RACT evaluations performed, which are then submitted to EPA for incorporation into the SIP. *See, e.g.*, Exhibit 17, Allegheny County Portion of the Pennsylvania RACT II SIP Revision for the 1997 and 2008 8-Hour Ozone NAAQS. Here, the Department did no such thing with the Challenged Emission Limits. Instead, the Department attempted to justify the inclusion of the new emission limits by blankly stating they are RACT. *See* Exhibit 12, Renewed Permit Comment and Response Document, at cmt. 1. The Department’s attempt was improper, unlawful, contrary to the CAA, and arbitrary and capricious. As set forth above, RACT is a specific CAA requirement that applies in NAAQS nonattainment areas and requires a robust evaluation of technologically and economically feasible control technologies. *See* 42 U.S.C. § 7502(c)(1). Not only are the Challenged Emission Limits not necessary to attain or maintain the NAAQS, as demonstrated by the County’s ambient air data collected since 2019, the Challenged Emission Limits are also not derived from any categorical RACT rulemaking, and have not been established via the source-specific analysis set forth above. *See* Allegheny County Health Department, 2021 Air Quality Annual Review: The Process of Progress at 11 (attached hereto as Exhibit 19) (stating that “Allegheny County has measured in attainment for all NAAQS”). Instead, the Department has interpreted its authority under Section 2103.12(a)(2)(B) to allow it to impose RACT conditions beyond those required by the CAA and without performing the required analysis.

Even if that is correct, which it is not, the Challenged Emission Limits do not comport with ACHD’s regulatory standards, because for each pollutant for which the Department created a Challenged Emission Limit, the Department had previously performed RACT evaluations and determined that the Challenged Emission Limits were not necessary in order to attain and maintain the NAAQS.

a. Allegheny County’s NAAQS Attainment Status

First and foremost, Allegheny County is in attainment of the CO and PM₁₀ NAAQS, and therefore the Department cannot use any argument of non-attainment as a basis for imposing the Challenged Emission Limits. *See Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Carbon Monoxide Second Limited Maintenance Plan for the Pittsburgh Area*, 79 Fed. Reg. 17054 (March 27, 2014); *Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Redesignation of the Liberty Borough PM₁₀ Nonattainment Area to Attainment*, 68 Fed. Reg. 53515 (Sept. 11, 2003). On September 8, 1998, EPA finalized its determination that the Liberty Borough area, where the Facility is located, had attained the PM₁₀ NAAQS. *See Determination of Attainment of the Air Quality for PM-10 in the Liberty Borough, Pennsylvania Area*, 63 Fed. Reg. 47493 (Sept. 8, 1998). On November 6, 1991, EPA determined that Allegheny County, excluding areas referred to as the Central Business District and other high density areas, was in attainment of the CO NAAQS. *See Designation of Areas for Air Quality Planning Purposes*, 56 Fed. Reg. 56694 (Nov. 6, 1991). On November 12, 2002, EPA approved the redesignation of the remaining portion of Allegheny County to an attainment area for the CO NAAQS. *See Approval and Promulgation of Air Quality*

Implementation Plans; Designation of Areas for Air Quality Planning Purposes; Pennsylvania; Redesignation of the Allegheny County Carbon Monoxide Nonattainment Area and Approval of Miscellaneous Revisions, 67 Fed. Reg. 68521 (Nov. 12, 2002). Since EPA’s redesignations, the Department has been submitting maintenance plans to demonstrate continued attainment of the PM10 and CO NAAQS. *See Air Plan Approval; Pennsylvania; Liberty Borough Area Second 10-Year PM₁₀ Limited Maintenance Plan*, 88 Fed. Reg. 62293 (Sept. 11, 2023); *Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Carbon Monoxide Second Limited Maintenance Plan for the Pittsburgh Area*, 79 Fed. Reg. 17054 (Mar. 27, 2014). At no time in submission of these maintenance plans has the Department indicated that the Facility is causing Allegheny County to fall out of attainment status for these pollutants, indeed because the Facility is not doing so.

Second, the Department has formally requested that EPA redesignate Allegheny County as being in attainment of the PM_{2.5} and SO₂ NAAQS, which is currently pending before EPA. *See Allegheny County Health Department, Revision to the Allegheny County Portion of the Pennsylvania State Implementation Plan: Redesignation Request and Maintenance Plan for the Allegheny, PA SO₂ Nonattainment Area for the 2010 NAAQS (September 26, 2023) (the “SO₂ Redesignation Request”)* (attached hereto as Exhibit 20); *Allegheny County Health Department, Revision to the Allegheny County Portion of the Pennsylvania State Implementation Plan: Redesignation Request and Maintenance Plan for the Liberty-Clairton, PA and Allegheny County, PA PM_{2.5} Nonattainment Areas for the 1997/2006/2012 NAAQS (September 22, 2022) (the “PM_{2.5} Redesignation Request”)* (attached hereto as Exhibit 21).¹⁴ Both requests demonstrate that RACT does not require further reductions in emissions to attain and maintain the NAAQS—including no further restrictions on emissions from the Facility that are proposed in the Challenged Emission Limits, for a Facility that was operating when ACHD submitted its requests to EPA, and which has operated in the County for decades. *See Exhibits 20 & 21.*

With respect to SO₂, on or about October 3, 2017, ACHD, through PADEP, submitted a SIP revision for the purpose of providing for attainment of the 2010 SO₂ NAAQS for the Allegheny County nonattainment area, including, in relevant part, the restrictions in SO₂ emissions and other requirements established in the installation permit for the Facility. *Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Attainment Plan for the Allegheny, Pennsylvania Nonattainment Area for the 2010 Sulfur Dioxide Primary National Ambient Air Quality Standard*, 83 Fed. Reg. 58206 (Nov. 19, 2018). On November 19, 2018, EPA proposed to approve ACHD’s SIP revision, including the RACT and reasonably available control measure analysis performed for the Facility. *Id.* at 58207, 58214, Table 3. In doing so, EPA determined that the 30-day and 24-hour supplemental SO₂ emission limits on the boilers (aggregated) and batteries, and the 1-hour emission limits on the PEC baghouses, quench towers, and battery hot cars “were appropriately set in accordance with EPA’s 2014 SO₂ Nonattainment Guidance and are sufficient for the Allegheny [County] Area to attain the 2010 SO₂ NAAQS.”

¹⁴ On April 1, 2024, ACHD submitted a letter to the Pennsylvania Department of Environmental Protection requesting a partial withdrawal of the Redesignation Request, pertaining specifically to the 2012 PM_{2.5} NAAQS. ACHD explained in the letter that the withdrawal seeks to address any public confusion that may result from the promulgation of the new 2024 PM_{2.5} NAAQS, but that the information set forth in the Redesignation Request continues to be applicable. *See Letter from Geoff Rabinowitz, Deputy Director, Allegheny County Bureau of Environmental Health Department, to Nick Lazor, Director, PADEP Bureau of Air Quality, attached hereto as Exhibit 22.*

Id. at 58215. On April 23, 2020, EPA approved ACHD’s SIP revision, including, in relevant part, ACHD’s analysis of RACT and reasonably available control measures, and the enforceable emission limitations and control measures for the Facility. *Air Plan Approval; Pennsylvania; Attainment Plan for the Allegheny Pennsylvania Nonattainment Area for the 2010 Sulfur Dioxide Primary National Ambient Air Quality Standard*, 85 Fed. Reg. 22593 (April 23, 2020). On or about September 26, 2023, ACHD submitted a SIP revision to EPA requesting that EPA redesignate Allegheny County as being in attainment of the 2010 SO₂ NAAQS. *See* Exhibit 20, SO₂ Redesignation Request. Furthermore, EPA has not promulgated a new SO₂ NAAQS that would require the Department to reevaluate RACT for the Facility, as established in Installation Permit No. 0052-I017, or revise the SO₂ tons per year emission limits that were previously included in the 2012 TVOP based on RACT. To the contrary, EPA has determined that the prior RACT determinations for the Facility, along with the other reasonably available control measures implemented by the Department, are sufficient to ensure attainment of the NAAQS; so much so that the Department has requested that EPA redesignate Allegheny County to attainment.¹⁵

With regard to PM_{2.5}, in 2019, as part of ACHD’s SIP submittal of its attainment of the 2012 PM_{2.5} NAAQS to EPA, ACHD did an analysis to determine if reasonable or additional controls were available, with consideration of technological and economic feasibility, for control of PM_{2.5} and precursors SO₂ and NO_x for different point source categories and specific facilities, including the Facility. *See* Allegheny County Health Department, Revision to the Allegheny County Portion of the Pennsylvania State Implementation Plan, Attainment Demonstration for the Allegheny County, PA PM_{2.5} Nonattainment Area, 2012 NAAQS, at 41 (September 12, 2019) (attached hereto as Exhibit 23). ACHD determined, after this evaluation, that the Facility met RACT requirements for PM_{2.5}, that there were no feasible controls that would advance the attainment date, and that the implemented control technology represents reasonably available (or better) control technology. *Id.* at 45. On May 14, 2021, EPA approved the Department’s reasonably available control measure evaluation finding that additional controls were not required to demonstrate attainment. *Air Plan Approval; Pennsylvania; Allegheny County Area Attainment Plan for the 2012 Fine Particulate Matter National Ambient Air Quality Standard*, 86 Fed. Reg. 26388, 26395 (May 14, 2021). On or about September 22, 2022, the Department submitted a SIP revision to EPA requesting that EPA designate Allegheny County as being in attainment of the 1997, 2006, and 2012 PM_{2.5} NAAQS. *See* Exhibit 21, PM_{2.5} Redesignation Request.

¹⁵ In addition, any obligations that the Department had to implement RACT requirements for SO₂ were suspended at the time that EPA determined that the County attained the SO₂ NAAQS. *See Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Determinations of Attainment of the 1997 Annual Fine Particulate Standards for the Liberty-Clairton Nonattainment Area*, 78 Fed. Reg. 63881, 63881 (Oct. 25, 2013) (stating that EPA’s “‘clean data determination’ suspends the requirement for [a nonattainment area] to submit an attainment demonstration, reasonably available control measures (RACM), reasonable further progress (RFP), and contingency measures related to attainment of the ... NAAQS for so long as the area continues to attain the ... NAAQS.”); *see also Air Plan Approval; Pennsylvania; Attainment Plan for the Allegheny Pennsylvania Nonattainment Area for the 2010 Sulfur Dioxide Primary National Ambient Air Quality Standard*, 85 Fed. Reg. 22593 (Apr. 23, 2020) (finding that Allegheny County attained the SO₂ NAAQS); Exhibit 19, Allegheny County Health Department, 2021 Air Quality Annual Review: The Process of Progress, at 19 (stating that Allegheny County has measured in attainment of the SO₂ NAAQS).

Lastly, the Department has performed multiple RACT evaluations for VOC and NOx emissions from the Facility and, in each review, determined that the Challenged NOx and VOC Emission Limits were not required to attain the ozone NAAQS. *See* Letter from Timothy J. Novack, P.E., Allegheny County Health Department to William C. Graeser, U.S. Steel (Jan. 2, 1997) (enclosing RACT approval)(attached hereto as Exhibit 24); Allegheny County Health Department, Reasonable Available Control Technology (RACT II) Determination for U.S. Steel Clairton Plant (Apr. 24, 2020) (attached hereto as Exhibit 25). Most recently, in response to the Department’s promulgation of RACT III, on or about December 22, 2022, the Facility submitted an evaluation to the Department. *See* Letter from Kurt Barshick, U.S. Steel to JoAnn Truchan, P.E., Allegheny County Health Department (Dec. 22, 2022) (attached hereto as Exhibit 26). Specifically, for each source where the Facility determined that a case-by-case analysis was necessary, the Facility analyzed all available NOx and VOC control technologies. Then, for those sources, the Facility eliminated technologically infeasible options, ranked the remaining control technologies based on effectiveness, and selected RACT for each source.

Nothing about the Facility’s operations has changed since those prior RACT evaluations, such that a new RACT evaluation or new emission limits would be necessary or appropriate. The new NOx and VOC Challenged Emission Limits were not established because of any EPA determination that would require the reevaluation of RACT, are contrary to the prior RACT determinations for the Facility, were established without a technological and economic feasibility analysis, and imposed without any determination that the NOx and VOC emission limits were necessary to attain or maintain the NAAQS. Further, the Department has not included the Challenged Emission Limits as part of any SIP revision, which is required for the implementation of RACT. Finally, Allegheny County has measured ambient air concentrations below the ozone NAAQS in recent years, further demonstrating that the NOx and VOC emission limits were not necessary to attain the NAAQS. Exhibit 19, Air Quality Annual Review: The Process of Progress, at 11.

For the foregoing reasons, the Challenged Emission Limits are unlawful. The inclusion of the Challenged Emission Limits in the Renewed Permit and Amended Permit is arbitrary, capricious, and contrary to law because they are not based on applicable requirements. ACHD’s justification that the Challenged Emission Limits are RACT fails because Allegheny County is in attainment of the NAAQS for CO and PM10; and the “new RACT” limits conflict with performed proper RACT evaluations for NOx, VOCs, PM2.5, and SO₂, which did not establish or require applicable emission limits. In addition, ACHD has not offered a robust technical justification for the Challenged Emission limits. U.S. Steel respectfully requests that EPA grant its request to object to the Challenged Emission Limits and direct ACHD to remove them from the Amended Permit.

b. Continuous Emission Monitoring System Requirements

In the Amended Permit, the Department has imposed brand-new continuous emission monitoring system requirements (“CEMS”) on every coke battery and on Boiler Nos. 1 and 2. The specific conditions of the Amended Permit requiring CEMS at these sources are shown below:

Source	Challenged Emission Limits (by Pollutant)	CEMS (by Pollutant)	CEMS Condition in Amended Permit
Battery Nos. 13, 14, and 15	PM condensable, NO _x , CO, VOC, SO ₂	NO _x , CO, SO ₂	V.A.6.o.
Battery Nos. 19 and 20	NO _x , CO, VOC, SO ₂	NO _x , CO, SO ₂	V.C.6.p.
Battery B	NO _x , CO, VOC, SO ₂	CO, SO ₂	V.E.6.o.
Battery C	SO ₂	CO, VOC, SO ₂	V.G.6.p.
Boiler Nos. 1 and 2	CO, VOC	PM, CO, SO ₂	V.EE.6.b. and V.FF.6.b.

The requirement to install CEMS is not based on any applicable requirement. In many cases, in fact, ACHD is requiring CEMS to monitor the Challenged Emission Limits. ACHD does not have the authority to conjure limits which are not applicable requirements and are not appropriate for inclusion in a Title V permit. ACHD lacks the authority to go even further and require U.S. Steel to install CEMS to continuously monitor emissions to meet those improper and unjustified limits.

U.S. Steel objected to the new CEMS requirements on this basis when ACHD first proposed adding CEMS into the Amended Permit. The Amended Permit Comment and Response Document memorializes ACHD’s responses to U.S. Steel’s concerns. *See* Exhibit 7, Amended Permit Comment and Response Document, at 6, 9, 12, cmts. 26, 41, 57. ACHD justified the CEMS at Batteries 13, 14, 15, 19, 20 and B as follows: “With a lack of sufficient parametric monitoring, CEMS are required to demonstrate continuous compliance.” *Id.* at cmt. 26. With respect to Battery C, ACHD stated: “The SO₂ CEMS shall be used to continuously measure SO₂ emissions, including during monitoring malfunctions or breakdowns. U.S. Steel has not provided other means of demonstrating continuous compliance and CEMS provide the most accurate method.” *Id.* at cmt. 41. To justify the CEMS on Boiler Nos. 1 and 2, ACHD merely points to these earlier statements. *Id.* at cmt. 57.

i. U.S. Steel Comments and ACHD Responses Relating to CEMS

With respect to the CEMS, U.S. Steel expressly objected to the new CEMS requirements in the Amended Permit Comment Letter, raising that they lacked a technically sound basis and—in particular where CEMS are required to monitor in connection with a Challenged Emission Limit—in excess of ACHD’s authority. ACHD responded to U.S. Steel’s comments in the Amended Permit Comment and Response document. U.S. Steel’s comments and ACHD’s responses are shown below:

Exhibit 14, U.S. Steel Amended Permit Comment Letter, at 12, 14, 16, 18, 25, and 30; comments ##27, 40, 51, 62, 96, and 106:

27. On pages 72-73, U. S. Steel requests that Condition V.A.6.o be removed since the new NO_x and CO emissions limits are unjustified. Therefore, the requirement to add NO_x and CO CEMS is also unjustified since this condition is predicated on the new emission limits, of which U. S. Steel previously appealed. RATA requirements are also missing from the proposed permit. It is also overly

burdensome to require NO_x and CO testing every 2 years, in addition to the operation of NO_x and CO CEMS. The new testing requirement should be removed because (1) the new emission limits are unjustified, and (2) CEMS are being proposed for the source. The proposed timeline for the CEMS is also unreasonable.

40. On pages 104-105, U. S. Steel requests that Condition V.C.6.p be removed since the new NO_x and CO emissions limits are unjustified. Therefore, the requirement to add NO_x and CO CEMS is also unjustified since this condition is predicated on the new emission limits, of which U. S. Steel previously appealed. RATA requirements are also missing from the proposed permit. It is also overly burdensome to require NO_x and CO testing every 2 years, in addition to the operation of NO_x and CO CEMS. The new testing requirement should be removed because (1) the new emission limits are unjustified, and (2) CEMS are being proposed for the source. The proposed timeline for the CEMS is also unreasonable.

51. On pages 135-136, U. S. Steel requests that Condition V.E.6.o be removed since the new CO emission limits is unjustified. Therefore, the requirement to add CO CEMS is also unjustified since this condition is predicated on the new emission limit, of which U. S. Steel previously appealed. RATA requirements are also missing from the proposed permit. It is also overly burdensome to require CO testing every 2 years, in addition to the operation of CO CEMS. The new testing requirement should be removed because (1) the new emission limit is unjustified, and (2) CEMS are being proposed for the source. The proposed timeline for the CEMS is also unreasonable.

62. On pages 169-170, U. S. Steel requests that Condition V.G.6.p be removed, as U. S. Steel already complies with the SO₂ SIP/ SO₂ Installation Permit via H₂S grain loading calculation, so a SO_x CEMS is unreasonable. As noted by a third party vendor, for VOC CEMS, the instruments are highly sensitive to particulate, and moisture and general contamination and routinely need servicing in applications other than clean, natural gas type exhaust. Furthermore, there is a single manufacturer of the instrument that provides a non-methane, non-ethane result. There is also potential for a methane excluding analyzer to attribute compounds not defined as VOC to VOC emission totals. It is also overly burdensome to require both VOC and CO CEMS, as CO could be used as a surrogate for VOCs (incomplete combustion). RATA requirements are also missing from the proposed permit. It is also overly burdensome to require CO and VOC testing every 2 years, in addition to the operation of CO and VOC CEMS. The proposed timeline for the CEMS is also unreasonable. U.S. Steel proposes to calculate CO and VOC emissions based on emission factors in lieu of CEMS.

96. On page 281, U. S. Steel requests that Condition V.EE.6.b be removed since the new CO emissions limit is unjustified, the underlying SO₂ Installation Permit did not require SO₂ CEMS (and U. S. Steel complies with SO₂ using an H₂S grain loading calculation), nor did any underlying permits require a CEMS for PM. It is unclear what the sample conditioning system would look like, as SO₂ sampling is

notoriously difficult on a process stream at process temperatures containing high concentrations of water vapor. As noted by a third party vendor, PM CEMS are less common in real world application and are notoriously problematic due to sensitivities to the environment (e.g., heat, dust and moisture sensitive). In addition to environmental sensitivity, PM CEMS are also sensitive to source gas variability and require greater maintenance than most criteria pollutant analyzers. PM CEMS are subject to correlation testing 40CFR60, Appendix B, Performance Specification 11 – which requires the source/facility to alter operations in order to generate exhaust during correlation testing of distinct particulate matter concentrations. Exhaust particulate may need to be increased by utilizing a spiking vendor to introduce particulate in order to generate the distinct particulate matter concentrations, which can be a costly measure. Therefore, the requirement to add CEMS is also unjustified. RATA requirements are also missing from the proposed permit. It is also overly burdensome to require CO, SO₂, and PM testing every 2 years, in addition to the operation of CO, SO₂, and PM CEMS. The new CO testing requirement should be removed because (1) the new emission limit is unjustified, and (2) CEMS are being proposed for the source. The proposed timeline for the CEMS is also unreasonable.

106. On pages 287-288, U. S. Steel requests that Condition V.FF.6.b be removed since the new CO emissions limit is unjustified, the underlying SO₂ Installation Permit did not require SO₂ CEMS (and U. S. Steel complies with SO₂ using an H₂S grain loading calculation), nor did any underlying permits require a CEMS for PM. It is unclear what the sample conditioning system would look like, as SO₂ sampling is notoriously difficult on a process stream at process temperatures containing high concentrations of water vapor. As noted by a third party vendor, PM CEMS are less common in real world application and are notoriously problematic due to sensitivities to the environment (e.g., heat, dust and moisture sensitive). In addition to environmental sensitivity, PM CEMS are also sensitive to source gas variability and require greater maintenance than most criteria pollutant analyzers. PM CEMS are subject to correlation testing 40 CFR 60, Appendix B, Performance Specification 11 – which requires the source/facility to alter operations in order to generate exhaust during correlation testing of distinct particulate matter concentrations. Exhaust particulate may need to be increased by utilizing a spiking vendor to introduce particulate in order to generate the distinct particulate matter concentrations, which can be a costly measure. Therefore, the requirement to add CEMS is also unjustified. RATA requirements are also missing from the proposed permit. It is also overly burdensome to require CO, SO₂, and PM testing every 2 years, in addition to the operation of CO, SO₂, and PM CEMS. The new CO testing requirement should be removed because (1) the new emission limit is unjustified, and (2) CEMS are being proposed for the source. The proposed timeline for the CEMS is also unreasonable.

As it did with the Challenged Emission Limits, ACHD put U.S. Steel's comments into the agency's own words, shortening and combining its comments as memorialized below.

Exhibit 7, Amended Permit Comment and Response Document, at 6, 9, and 12; comments and responses #26, 41, and 57:

26. *COMMENT: Conditions V.A.6.o; V.C.6.p; V.E.6.o. U.S. Steel requests that the condition be removed since the new NOX and CO emissions limits are unjustified. Therefore, the requirement to add NOX and CO CEMS is also unjustified since this condition is predicated on the new emission limits, of which U.S. Steel previously appealed. RATA requirements are also missing from the proposed permit. It is also overly burdensome to require NOX and CO testing every 2 years, in addition to the operation of NOX and CO CEMS. The new testing requirement should be removed because (1) the new emission limits are unjustified, and (2) CEMS are being proposed for the source. The proposed timeline for the CEMS is also unreasonable. (1 Commenter)*

RESPONSE: With a lack of sufficient parametric monitoring, CEMS are required to demonstrate continuous compliance. RATA requirements are not currently in the permit because the CEMS does not exist, and when the CEMS installation is confirmed with the Department, the RATA requirements will be incorporated, and U.S. Steel shall use the CEMS to demonstrate continuous compliance the limits.

41. *COMMENT: Condition V.G.6.p. U.S. Steel requests that the condition be removed, as U.S. Steel already complies with the SO₂ SIP/ SO₂ Installation Permit via H₂S grain loading calculation, so a SO_x CEMS is unreasonable. RATA requirements are also missing from the proposed permit. It is also overly burdensome to require CO and VOC testing every 2 years, in addition to the operation of CO and VOC CEMS. The proposed timeline for the CEMS is also unreasonable. U.S. Steel proposes to calculate CO and VOC emissions based on emission factors in lieu of CEMS. (1 Commenter)*

RESPONSE: The SO₂ CEMS shall be used to continuously measure SO₂ emissions, including during monitoring malfunctions or breakdowns. U.S. Steel has not provided other means of demonstrating continuous compliance and CEMS provide the most accurate method. RATA requirements are not currently in the permit because the CEMS does not exist, and when the CEMS installation is confirmed with the Department, the RATA requirements will be incorporated, and U.S. Steel shall use the CEMS demonstrate continuous compliance with the limits.

57. *COMMENT: Conditions V.EE.6.b; V.FF.6.b. U.S. Steel requests that the condition be removed since the new CO emissions limit is unjustified, the underlying SO₂ Installation Permit did not require SO₂ CEMS (and U.S. Steel complies with SO₂ using an H₂S grain loading calculation), nor did any underlying permits require a CEMS for PM. RATA requirements are also missing from the proposed permit. It is also overly burdensome to require CO, SO₂, and PM testing every 2 years, in addition to the operation of CO, SO₂, and PM CEMS. The new CO testing requirement should be removed because (1) the new emission limit is*

unjustified, and (2) CEMS are being proposed for the source. The proposed timeline for the CEMS is also unreasonable.

RESPONSE: See responses to comments #26 and #41 above.

ii. The Order on Petition does not support the CEMS requirements

ACHD claims the CEMS conditions are responsive to EPA's Order on Petitions. However, the Order on Petitions does not require the installation of CEMS technology on sources at the Facility. To the contrary, EPA ordered ACHD to reevaluate the monitoring and testing requirements for specific sources and either revise the Renewed Permit and/or the permit record to ensure that it contains sufficient testing and monitoring to assure compliance with the emission limits contained in the Permit. In issuing the Renewed Permit in November 2022, ACHD had correctly determined that CEMS were not needed and that stack testing was sufficient in order to assure compliance with the emission limitations. Nothing has changed at the Facility since November 2022 that would justify the inclusion of CEMS in the Amended Permit.

In the Amended Permit, ACHD added conditions requiring CEMS for multiple pollutants on all battery stacks at the Facility. However, the Amended Permit Technical Support Document does not provide any technical analysis or factual support that is new or otherwise responsive to the Order on Petitions or which otherwise supports the requirements to install and certify CEMS. The Order on Petitions directed ACHD to five factors that permitting authorities can consider to determine appropriate monitoring requirements:

(1) the variability of emissions from the unit in question; (2) the likelihood of a violation of the requirements; (3) whether add-on controls are being used for the unit to meet the emission limit; (4) the type of monitoring, process, maintenance, or control equipment data already available for the emission unit; and (5) the type and frequency of the monitoring requirements for similar emission units at other facilities.

Exhibit 6, Order on Petition, at 9 (citation omitted). The Amended Permit Technical Support Document supports that at least three of these factors provide no support whatsoever for CEMS. Specifically, in many cases ACHD determined that the likelihood of violation is low, that stack testing is sufficient to assure compliance with emission limits, that fuel use can often be used for continuous parametric monitoring, and that other coke batteries in the Allegheny County and the United States demonstrate compliance with emission limits without CEMS; as such, CEMS are not required or appropriate.¹⁶ The below chart summarizes ACHD's determinations (or lack thereof) on these issues for each CEMS:

¹⁶ As for factors (1) and (3), ACHD concludes for every unit that emissions are variable and fails to include information about add-on controls. With respect to variability, as noted above, ACHD did not respond to EPA's questions about the prior stack tests and whether they reflect maximum emissions from the source.

Source	CEMS (by pollutant)	How likely is a violation of an emissions limit?	Can fuel use be used for continuous parametric monitoring?	Do other facilities use CEMS for this pollutant?
Battery Nos. 13, 14, and 15	NO _x	Significantly low (13, 14); low (15).	Yes.	No.
	CO	Significantly low (13); low (14, 15).	Yes.	No.
	SO ₂	Low (13, 14, 15).	No, gas sampling is used.	No, they sample gas for H ₂ S, which this Facility already does as well.
Battery Nos. 19 and 20	NO _x	Low.	Yes.	No.
	CO	Significantly low.	Yes.	No.
	SO ₂	Low.	No, gas sampling is used.	No, they sample gas for H ₂ S, which this Facility already does as well.
Battery B	CO	Low.	Yes.	
	SO ₂	Low.	No, gas sampling is used.	No, they sample gas for H ₂ S, which this Facility already does as well.
Battery C	VOC	No determination made by ACHD.	No determination made by ACHD.	No.
	CO	No determination made by ACHD.	Yes.	No.
	SO ₂		No, gas sampling is used.	No, they sample gas for H ₂ S, which this Facility already does as well.
Boiler Nos. 1 and 2	PM	Very low.	No determination made by ACHD.	No determination made by ACHD.
	CO	No determination made by ACHD.	No determination made by ACHD.	No determination made by ACHD.
	SO ₂	No determination made by ACHD.	No, gas sampling is used.	No, they sample gas for H ₂ S, which this Facility already does as well.

As this chart demonstrates, the Technical Support Document and its application of the factors EPA directed ACHD to consider in the Order on Petitions continues to support ACHD's original determination that CEMS are not needed. Requiring the facility to install CEMS and conduct periodic testing is overly burdensome, duplicative, and unnecessary. ACHD has failed to meet the requirements of the Order on Petitions, and of 40 C.F.R. § 70.7(h)(6) and § 70.7(a)(5) to adequately respond to comment and provide technical and legal justification for the imposition of these requirements. Further, in many cases, ACHD is requiring CEMS to monitor the unjustified, unlawful Challenged Emission Limits that are the subject of the still-pending Renewed Permit Appeal. U.S. Steel respectfully requests that EPA grant U.S. Steel's request for an objection to the Amended Permit on this basis.

iii. Where the CEMS requirements are based on Challenged Emission Limits, they are unlawful and premature

As noted above, the Challenged Emission Limits are under appeal, and therefore are not final. *See* 42 U.S.C. §7661a(b)(6) and Art. XI, §1104.D. U.S. Steel maintains that the Challenged Emission Limits are arbitrary, capricious, an abuse of discretion, and unsupported by any applicable legal authority, and therefore any corresponding monitoring, recordkeeping, and/or reporting requirements intended to demonstrate compliance with such limits are similarly unlawful. In short, the Order on Petitions may not require that ACHD consider or impose enhancement to monitoring conditions relating to an underlying standard that is not an applicable requirement. To do so would not comport with 40 C.F.R. § 70.6(a)(3)(i). *See, e.g.*, Exhibit 6, Order on Petitions, at 31 (denying claim to enhance monitoring requirements for coke battery bypass stacks “[s]ince the Petitioners have not identified an applicable requirement for which monitoring is necessary.”) Moreover, ACHD failed to substitute the technical basis for the underlying limits as requested by EPA in the Order on Petition relative to VOC and CO limits for the Coke Oven Battery Combustion Stacks. *See* Exhibit 6, Order on Petitions, at 16, 20. Interestingly, ACHD admits in the Technical Support Document for the Amended Permit that other coke oven batteries in the country do not have emission limits for NO_x, VOC and CO. *See* Exhibit 8, Amended Permit Technical Support Document, at 10, 30. This is a striking admission that substantiates U.S. Steel’s objections to the Challenged Emission Limits. At a minimum, through the Amended Permit, the imposition of new CEMS requirements for the Challenged Emission Limits was premature; U.S. Steel should not be required to take on the expense, administrative burden and compliance risk of new CEMS, which are complex systems to install and operate, without first being entitled to review the legality of the underlying limits which those CEMS are intended to monitor.

iv. ACHD did not make the requisite showing that CEMS are technically appropriate and feasible

ACHD’s failure to justify the technical feasibility of the new CEMS requirements contravenes the requirements of 40 C.F.R. §§ 70.7(h)(6) and 70.7(a)(5). Even for those CEMS that are not related to Challenged Emission Limits, including the CO and VOC CEMS for Battery C, and the PM and SO₂ CEMS for Boiler Nos. 1 and 2, the Amended Permit TSD (and the chart above) demonstrates that ACHD did not undertake the requisite analysis as directed by the Order on Petitions. For example, for the CO and VOC CEMS for Battery C, the Amended Permit TSD finds that emissions are variable and then lists the CEMS requirements. *See* Exhibit 8, Amended Permit Technical Support Document, at 32–34. For the CO CEMS, the TSD also specifically states that parametric continuous monitoring of CO can be accomplished by monitoring fuel use. *Id.* at 33. This insubstantial analysis does not in any way support ACHD’s conclusion that CEMS are necessary.

Further, ACHD’s analysis is devoid of any discussion of the cost, operational success, or availability of this technology. For VOC CEMS, the instruments are highly sensitive to particulate, moisture, and general contamination and therefore routinely need servicing when used in applications other than clean, natural gas type exhaust. There is only a single manufacturer of the instrument that provides a non-methane, non-ethane result. There is also

potential for a methane excluding analyzer to attribute compounds not defined as VOC, to VOC emission totals. It is also overly burdensome to require both VOC and CO CEMS for C Battery, as CO could be used as a surrogate for VOCs (incomplete combustion). Additionally, the CEMS requirements duplicate other Amended Permit conditions that accomplish the same compliance goals. For example, it is overly burdensome and unnecessary to require VOC and CO testing every 2 years in addition to the operation of CO and VOC CEMS, particularly when ACHD has not even determined whether there is any likelihood of violation of these limits. For CO, ACHD has also acknowledged that there are other, presently available methods for continuous compliance.

With respect to the new CEMS requirements for Boiler Nos. 1 and 2, the requirement to add SO₂ CEMS is improper as no underlying permit required SO₂ CEMS and U.S. Steel already complies with the SO₂ SIP and SO₂ Installation Permit limits through a H₂S grain loading calculation. The Amended Permit Technical Support Document and the chart above acknowledge that the H₂S grain loading calculation is the method of monitoring for emissions compliance at similar emissions units. *See* Exhibit 8, Amended Permit Technical Support Document. It is unclear what the sample conditioning system would look like, as SO₂ sampling is notoriously difficult on a process stream at process temperatures containing high concentrations of water vapor.

Similarly, no underlying permits required CEMS for PM. PM CEMS are less common in real world application and are notoriously problematic due to sensitivities to the environment (e.g., heat, dust and moisture sensitive). In addition to environmental sensitivity, PM CEMS are also sensitive to source gas variability and require greater maintenance than most criteria pollutant analyzers. PM CEMS are subject to correlation testing 40 CFR 60, Appendix B, Performance Specification 11—which requires the source/facility to alter operations in order to generate exhaust during correlation testing of distinct particulate matter concentrations. Exhaust particulate may need to be increased by utilizing a spiking vendor to introduce particulate in order to generate the distinct particulate matter concentrations, which can be a costly measure. It is also overly burdensome and unnecessary to require PM and SO₂ testing every 2 years in addition to the operation of CEMS for those pollutants.

ACHD acknowledges the likelihood of a violation of the PM emission limits is very low and made no determination with respect to SO₂, but nonetheless determined that CEMs are needed. On the contrary, ACHD's own analysis demonstrates that CEMS are wholly unnecessary. U.S. Steel respectfully requests that EPA grant its request for an objection on this claim.

c. Compliance Plan Requirements

ACHD's most significant error in responding to the Order on Petitions with the Amended Permit is its insertion into the Amended Permit of a "compliance plan" that requires that U.S. Steel to undertake a broad range of purported compliance activities, including an obligation to install back-up power. ACHD objects to these requirements on the bases set forth herein, and respectfully asks EPA to require ACHD to remove them from the Amended Permit.

i. Compliance Plan Work Practices

The Order on Petitions was clear that “a compliance schedule is not necessary if a violation is intermittent, not ongoing, and has been corrected before the permit is issued.” Exhibit 6, at 37. ACHD has not demonstrated that a compliance plan is appropriate here, or that its initial determination that a compliance plan was not necessary when it issued the Renewed Permit, was incorrect. Indeed, despite the broad and conclusory language inserted into the Amended Permit related to prior enforcement orders, ACHD has not demonstrated that any alleged violations are ongoing, that they rise to the level of requiring a compliance plan, or that the purported compliance measures inserted into the Amended Permit are appropriate. Indeed, the compliance plan cannot be used as a blank slate for the creation of new and ongoing permit obligations that have no basis in applicable requirements for the Facility. To do so, as ACHD did here, runs afoul of 40 C.F.R §70.1(b) and fails to meet the objectives of 40 C.F.R. §70.5(c)(8)(iii)(C), which envisions an enforceable “sequence of actions with milestones, leading to compliance.”

On this basis, U.S. Steel objects to the requirements of Condition IV.36.f of the Amended Permit, relating to work practice standards for charging operations. U.S. Steel commented on these requirements, and objected to their inclusion on the basis that they stem from Occupational Safety and Health Administration requirements found at Title 29, Subtitle B, Chapter XVII, Part 1910, Subpart Z, § 1910.1029. *See* Amended Permit, Exhibit 1, at 55–56. ACHD does not have the authority to implement or regulate OSHA’s requirements, and OSHA regulations cannot be the legal basis for conditions for the Amended Permit that is issued under the authority of the CAA and APCA. While ACHD has deleted the OSHA citation in the Amended Permit, it made no changes to the language of the Condition and did not insert new legal authority to justify the Condition. In the Amended Permit Comment and Response Document, ACHD blankly asserts that the Condition is RACT—it is not (which may be why ACHD has not in fact cited to Article XXI, §2103.12.a.2.B. in this Condition). *See* Exhibit 7, at 3.

U.S. Steel also objects to the requirements of Condition IV.26.j. of the Amended Permit, which would purport to require U.S. Steel to “investigate all opacity exceedances that occurred in the 12-month period prior to the issuance of this permit and create and implement a plan to eliminate future exceedances” for the combustion stacks for all coke oven batteries. *See* Exhibit 1, Amended Permit, at 58. This requirement is entirely unreasonable, and is a disproportionate response to allegations of past non-compliance. As ACHD is aware, U.S. Steel is best-in-class with its operation of Continuous Opacity Monitoring Systems (“COMS”); a condition that would purport to require the elimination of opacity exceedances that are continuously monitored is infeasible and entirely inconsistent with real world operations. Further, a requirement to go back and conduct an investigation of every COMS-monitored exceedance over the course of the past year would be unduly burdensome, excessive, and would serve no purpose toward compliance. ACHD can neither expect nor require 100% compliance; indeed, U.S. Steel maintained 99.8% compliance in 2023; and has maintained 99.84% compliance year-to-date in 2024 as measured by its COMS, which underscores the impropriety of the imposition of a compliance plan on this basis.

ii. Back-up Power Requirement

The compliance plan includes a requirement to install back-up power to “avoid loss of power to control equipment.” Exhibit 1, at 58–59, Section IV.36.k. The requirement that ACHD install “back-up generators” to power the main axial compressors” is technically flawed, infeasible, raises serious safety concerns, and imposes inordinate, unnecessary cost on the Facility. Moreover, this was not even an issue that the Petitions commented upon or that the non-profit petitioners requested, but instead appears to be something that ACHD inserted into the Amended Permit entirely on its own and without any justification or technical support.

As a prelude to its imposition of the back-up power requirement, ACHD sent a letter to U.S. Steel dated October 3, 2023 (attached hereto as Exhibit 27), informing U.S. Steel that certain allegedly “unresolved and/or ongoing non-compliance” at the Facility would require a Compliance Plan, including in pertinent part purported “repeated outages affecting the availability of pollution control equipment. Exhibit 27, at 2. By letter dated October 20, 2023 (attached hereto as Exhibit 28), U.S. Steel asked ACHD for clarification of “the unit(s) and specific outage(s) that are referred to in this item.” Exhibit 28, at 2. By responsive letter also dated October 20, 2023 (attached hereto as Exhibit 29) ACHD responded as follows: “Regarding outages affecting the availability of pollution emission control equipment, U.S. Steel is fully aware of repeated outages, such as the outages in July 2022 and August 2023, that have occurred and resulted in the availability of Clairton Coke Works’ Control Rooms to treat coke oven gas (“COG”). During such outages, U.S. Steel has burned untreated COG that exceeds H₂S grain limits. U.S. Steel has in its possession information regarding those issues.” Exhibit 29, at 2. U.S. Steel provided ACHD with additional information related to its request for Compliance Plan, by letter dated October 31, 2023 (attached hereto as Exhibit 30). In that letter, U.S. Steel explained that any outages at the Facility during the prior several years had been separate, unrelated and isolated events, that equipment was brought back online in each case as soon as it was practical and safe to do so, and that all relevant pollution control equipment was operational at the time the Renewed Permit was issued. *See* Exhibit 30 at 9.

1. U.S. Steel’s Comments and ACHD’s Responses Relating to Back-Up Power Requirement

After ACHD proposed inclusion of the “back-up power” requirement as part of the Amended Permit compliance plan, U.S. Steel included a lengthy objection to this requirement in its comments. Specifically, U.S. Steel stated:

U.S. Steel requests that the condition be removed, as installation of ‘backup generators’ will not be sufficient to maintain operation of the main axial compressors in the event of a power outage or interruption. The recent power outages lasted for a few hours before power was restored, followed by several days to get the plant back on-line and stable. For example, in August 2023, the rate limiting step was No. 1 Control Room waiting for steam because the Boilers tripped; in July of 2022, No. 2 Control Room was down for an extended period because the vacuum machines stuck after they tripped. Backup generators would not have helped No. 1 Control Room following the fire because the fault that

occurred was in the switchgear itself. Going through and preparing the plant to be restarted and the process of restarting the plant (including purging, re-establishing media flows, and even longer-term tasks such as dealing with issues such as stuck machines, etc.) has historically been what takes time, not the restoration of power itself. If the loss of power is due to an issue with Clairton's internal power infrastructure (e.g., the #1 EDC 5kV tie cell fire), backup generators would not make a difference. It would be unreasonable to start up an emergency generator without thoroughly investigating the source of the fault and have something go to ground, causing further damage to operations and a longer re-start period. Problem is not with reliability of grid, but with the time required to troubleshoot and correct source of fault, then re-start operation of the facility. In addition, the proposed time frame for construction on this scale is not feasible, as the secondary power source would include a new powerhouse and extensive infrastructure upgrades, and procurement of equipment would take at least a year, without consideration of the required engineering.

Exhibit 7, Amended Permit Comment and Response Document, at cmt. 15. U.S. Steel further offered:

U.S. Steel requests that the condition be removed, as installation of 'backup generators' will not be sufficient to maintain operation of all Control Rooms in the event of a power outage or interruption. ACHD has a fundamental misunderstanding of the high voltage electricity required to operate the Plant. The Control Room equipment at the Clairton Plant uses a sizeable amount (on average 35 – 40 MW/hr of 69kV) of high voltage electricity that cannot be supplied by a 'backup generator.' The support facilities that are required to run the processes (boilers for process steam, water pumps to feed boiler, and chemical recovery processes, AXI compressors that will remove the gas from the batteries) are key to the safe operation of the Plant. This requested Condition is unreasonable, as backup generators are not sufficient to power the Clairton Plant if there is a power outage or interruption.

Id. at cmt. 16. ACHD's response to these comments is cavalier and superficial. Specifically, ACHD stated:

Considering the age, history and familiarity with the operations, U.S. Steel is capable of identifying a lasting solution to the cause of the power loss in the control equipment to avoid extended periods of uncontrolled emissions. U.S. Steel may provide an alternative solution to restore power to the control room within 3 hours of an outage. Therefore, the condition remains. The condition has been revised to require a means of backup power rather than specify generators.

Id. at cmts. 15 and 16. Notably, ACHD did not explain what it meant by an "alternative solution to restore power to the control room within 3 hours of an outage" and this language does not appear in the Amended Permit.

iii. The Order on Petitions did not require a Compliance Plan, let alone one requiring that the Facility would never lose power

The Order on Petitions was clear that “a compliance schedule is not necessary if a violation is intermittent, not ongoing, and has been corrected before the permit is issued.” Exhibit 6 at 37. With this direction in mind, there is no support for a compliance schedule to require that the Facility never loses power. This requirement is inappropriate, infeasible and unnecessary. Indeed, the Order on Petitions does not mention power outages at all, and neither does the GASP Petition claim on which the new Compliance Plan is based. Instead, both the GASP Petition and the Order on Petitions focused on asserted compliance issues related to Art. XXI § 2105.21, governing emissions from charging, coke over door areas, charging port lids, offtake piping, pushing, soaking, and visible emissions from battery combustion stacks. *See* Exhibit 6, Order on Petitions, at 35. Indeed, footnote 3 of the GASP Petition expressly stated that “GASP does not contend that the Permit must incorporate a compliance schedule for the Clairton Coke Works’ violations of section 2105.21.g. and 2015.21.h. standards.” *See* Exhibit 5, GASP Petition, at 2, n.3. Section 2105.21.h. governs flaring of coke oven gas; thus, to the extent that the back-up power requirement is intended to address the flaring of untreated coke gas, it is clear that neither the GASP Petition nor the Order on Petitions was intended to address this issue.

There is no support for the compliance schedule to prevent power loss. First, an unanticipated loss of power at the Facility is not a violation of any applicable regulation or permit condition.¹⁷ Second, power losses from lightning strikes, fires, or unanticipated interruptions to the electric utility power that is provided to the Facility are not ongoing, nor do they need correction. Third, the Facility has operated for decades with very few power losses or other significant outages. Since the December 24, 2018 outage—which was caused by a fire and was not power-related—there have been only three instances of unanticipated power loss to the Facility, the longest lasting approximately three and a half hours. Indeed, ACHD’s response to comment, which summarily dismissed U.S. Steel’s concerns, demonstrates ACHD’s lack of understanding or appreciation of the magnitude or impacts of such a requirement. As such, ACHD failed to substantiate any legal or technical basis for the backup power requirement, in clear contravention of 40 C.F.R. §§ 70.7(a)(5) and 70.7(h)(6).

1. The back-up power requirement is technically impossible, has no basis in fact or law, and would create safety risks for equipment and U.S. Steel workers

The backup power requirement inserted into the Amended Permit is technically impossible, has no basis in fact or law, would create a safety risk to equipment and personnel and is not responsive to the Order on Petitions. As U.S. Steel pointed out in its comments on the draft Amended Permit, ACHD has a fundamental misunderstanding of the high voltage electricity required to operate the Control Rooms at the Facility, which operate the equipment

¹⁷ U.S. Steel is required by permit and federal coke battery rules to maintain bypass/bleeder stacks on the coke batteries with flares equipped with continuous pilot flames for use in circumstances when the axial compressors are down. The flares achieve the required minimum destruction efficiencies mandated by federal and permitted standards and are a reasonable, permitted option for controlling coke oven gas during outage periods. *See* Exhibit 1, Amended Permit Conditions V.A.1.a., V.A.1.b., V.C.1.a., V.C.1.b., V.E.1.a., V.E.1.b., V.G.1.o., and V.G.1.v.

that processes and treats the coke oven gas generated at the Facility, and offers only a superficial and uninformed response to U.S. Steel's comment on this condition in the proposed permit. See Exhibit 7, Amended Permit Comment and Response Document, at 4–5 (“Considering the age, history and familiarity with operations, U.S. Steel is capable of identifying a lasting solution to the cause of a wholly unanticipated and unpreventable power loss in the control equipment to avoid extended periods of uncontrolled emissions”). Indeed, if there was a solution to the cause of power loss, U.S. Steel would identify it—but there is not. In addition, ACHD's characterization of these periods as causing “uncontrolled emissions” is incorrect and inappropriate.

Simply, the Control Rooms use a sizeable amount (on average 35–40 MW/hr of 69kV) of high voltage electricity that cannot be supplied by a back-up generator. There is no back-up generator or set of generators that could feasibly or safely be deployed in the first instance to preempt a power trip to the Control Rooms and associated equipment; this is simply impossible. Further, and most importantly, it is not possible to install back-up power generation that would prevent the conditions that lead to restart processes in the Control Rooms. The operational conditions and procedures that must be followed as a result of a power outage cannot be remedied by a faster restoration of power because they are set into motion at the moment of the initial electrical trip - typically a fault. An established process is required in each circumstance to troubleshoot and correct source of fault, and then restart operation of the Control Rooms.

Even if installation of back-up power could be implemented to more quickly restore power to the Control Rooms after a trip or fault, U.S. Steel cannot, for safety reasons, override an electrical fault without thorough investigation of the cause. It would be unreasonable and unsafe to restart operations on emergency power without thoroughly investigating the source of the fault and repairing or isolating the fault, in order to avoid further damage to operations, a longer restart period, and unsafe working conditions for Facility personnel. To do so would put in jeopardy the safety of the Control Rooms' processes, the electrical and physical integrity of equipment, and, most importantly, the Facility's workers. Fundamentally, even if U.S. Steel were able to install such back-up power (which would almost equate to having its own power plant on site), having such back-up power would not have changed the process of restarting the Coke By-Products Plant and Desulfurization Plant for the three incidents that occurred in the last several years. Furthermore, U.S. Steel already has much redundancy for power as well as control equipment—but for reasons explained above—such redundancy does not alter the restart process when an outage occurs.

To the extent that the Department's imposition of the back-up power requirement is intended to avoid excess emissions during shutdown events, the burden of the requirement outweighs its purported benefit. For many decades, the Facility has operated with very few power losses. Since the December 24, 2018 outage—which was caused by a fire and was not power-related—there have been three instances of power loss, the longest lasting approximately three and a half hours. In addition, U.S. Steel is required by permit and federal coke battery rules to maintain bypass/bleeder stacks on the coke batteries with flares equipped with continuous pilot flames for use in circumstances when the Coke By-Products Plant is not available. While these flares are only used during emergency operating conditions, the flares achieve the required minimum destruction efficiencies mandated by federal and permitted standards and are a

reasonable, permitted option for controlling coke oven gas when the axial compressors in the Control Rooms are unavailable. Finally, the Facility is not, and was not at the time of issuance of the Renewed Permit” out of compliance which is the legal prerequisite to require a compliance plan. Essentially, ACHD’s requirement is that U.S. Steel needs to demonstrate that a breakdown will never occur.

Finally, in addition to the requirement being technically infeasible, the timeframe for installation of the back-up power source cannot be met. Exhibit 1, Amended Permit, at 59, Condition IV.36.k.3,. As discussed in U.S. Steel’s comments to ACHD, installation of a secondary power source would include a new powerhouse and extensive infrastructure upgrades. Procurement of needed equipment is likely to take at least a year, without any consideration of the necessary engineering. At a minimum, even if backup power were appropriate and feasible—which it is not—a minimum of three years would be needed to implement any such backup power, consistent with the timeline generally afforded under the CAA.

For the reasons discussed above, U.S. Steel requests that the Agency grant its request for an objection to the backup power and to direct ACHD to remove Condition IV.36.k. from the Amended Permit.

2. The back-up power requirements are an attempt by ACHD to do an end-run around a Federal Consent Decree

In addition to the reasons set forth above, the backup power requirement constitutes a circumvention of the lengthy substantive negotiated resolution reflected in the Consent Decree and Order entered in *PennEnvironment, Inc. v. U.S. Steel Corp.*, No. 19-484, at Doc. 227 (W.D. Pa. Mar. 26, 2024) (the “Federal Consent Decree”) (attached hereto as Exhibit 31). ACHD intervened and was a party to the Federal Consent Decree. As required by the Clean Air Act, the United States reviewed and found the Consent Decree acceptable and notified U.S. Steel, Plaintiffs and ACHD that it had no objections to the Consent Decree.

Under the Federal Consent Decree, U.S. Steel agreed to pay a substantial civil penalty, an additional settlement payment, and to spend millions of dollars to make upgrades to critical infrastructure and improve Facility systems in order to improve operations performance, consistency, and technically feasible system redundancy during outage periods, including such periods that affect the axial compressors in the Control Rooms. U.S. Steel also agreed to a schedule for stipulated penalties in the case of a shutdown or bypass of the Control Rooms that results in excess SO₂ emissions from the coke batteries. U.S. Steel negotiated with Plaintiffs and the Department in good faith to resolve the allegations associated with outage periods. Now the Department seeks to impose new conditions in the Amended Permit beyond what it agreed to in the Federal Consent Decree, amounting to an attempted end-run around the parties’ agreement in a manner that would impose safety risks, operational impossibilities, and senseless and exorbitant cost on the Facility. Accordingly, the imposition of Condition IV.36.k. is unreasonable, an abuse of the Department’s discretion, arbitrary and capricious, and contrary to law, including the CAA, APCA, and Article XXI.

Therefore, for this additional reason, U.S. Steel requests that the Agency grant its request for an objection to the backup power compliance plan and to direct ACHD to remove Condition IV.36.k. from the Amended Permit.

d. The Objectionable Conditions are within EPA’s scope of review for a Title V petition to object

As discussed above, the Objectionable Conditions are not “applicable requirements” as that term is defined under Article XXI, the CAA and the part 70 implementing regulations. EPA has the authority to object to the Permit in response to this petition based on the fact that ACHD incorporated the Objectionable Conditions without properly establishing the basis for the Challenged Emission Limits, the CEMS requirements, the compliance plan, or the back-up power obligation. As such, ACHD has not complied with its obligations under part 70.

Further, EPA’s own recent *Applicable Requirements Rule* confirms that its Title V oversight authority is properly invoked in circumstances in which applicable requirements are established either in full or in part for the first time through the Title V permitting process. *Applicable Requirements Rule* at 1154, 1158. That is what ACHD has attempted to do here, which subjects the Objectionable Conditions to EPA review. In such cases, EPA explains, the applicable requirements are properly within the scope of EPA oversight authority through the Title V petition process. *Id.* at 1152. By way of example, EPA oversight would extend to the case- or unit-specific details of an applicable requirement appearing for the first time in a Title V permit and the specific Title V content of certain self-implementing standards contained in SIPs. *Id.* at 1157.

e. ACHD’s Title V permitting program does not comport with the terms on which EPA’s approval is conditioned because judicial review is not available

While U.S. Steel filed a timely Notice of Appeal of the Amended Permit on November 7, 2024,¹⁸ U.S. Steel’s ability to proceed with its appeal has been thrust into doubt by the absence of an Allegheny County Health Department Hearing Officer—who recently resigned his position. It is estimated that it will be a number of months before a replacement is hired and onboarded such that new hearings may be scheduled and proceed.

The ACHD Hearing Officer issued an order dated November 18, 2024 (attached hereto as Exhibit 32), the day before this Petition was filed, staying the proceedings in U.S. Steel’s Amended Permit Appeal. The order stated that the “stay shall affect the underlying permit conditions that are the subject of the dispute in US Steel’s appeal and the scheduling of future proceedings, including the filing of dispositive motions, discovery, and a hearing date.” As such, as of the date of this filing, effectiveness of the Objectionable Conditions and other conditions in the Amended Permit that U.S. Steel challenged are temporarily stayed.

¹⁸ ACHD’s Rules and Regulations governing Amended Permit appeals state that “[a]ll actions of the Department shall become final thirty (30) days after receipt of written notice or issuance if no appeal has been perfected under the provisions of this Section.” Exhibit 10, Art. XI § 1104.D. U. S. Steel filed a timely Notice of Appeal of the Amended Permit pursuant to Art. XXI § 2102.03.h. and Art. XI § 1103.

Based on U.S. Steel’s own experience, when the current Hearing Officer’s predecessor stepped down as Hearing Officer in October 2022, it took ACHD several months to hire and complete onboarding of a replacement. Throughout that period, proceedings pending before the ACHD remained stagnant, and parties seeking judicial review of objectionable actions by the Department were left without procedural recourse. Using recent history as our guide, U.S. Steel reasonably expects the Hearing Officer’s position to remain vacant for a minimum of several months, with meaningful additional time needed for training and initiation to the wide variety of matters, including complex air permitting and enforcement matters pending before ACHD. Indeed, in addition to air matters, the Hearing Officer will hear appeals from Department actions relating to food safety, housing, plumbing and solid waste. Regardless of an individual’s past employment, the ACHD Rules and Regulations are unique to Allegheny County and will therefore demand a period of extensive onboarding. In addition, the unique nature of U.S. Steel’s operations and the complexities of the CAA make it a difficult task for the would-be new Hearing Officer to gain sufficient knowledge on an expedited basis to fairly and completely step into these pending matters. Accordingly, in the absence of a Hearing Officer, U.S. Steel and other interested parties are effectively deprived of their fundamental right to pursue judicial review as established under the CAA, the APCA, and ACHD’s own Rules and Regulations.

While the ACHD Hearing Officer’s recent November 18, 2024 Order provided some reprieve, in that the Order stayed the effectiveness of the Objectionable Conditions during the vacancy of the Hearing Officer position, the administrative appeal and judicial review process required by the CAA has nevertheless been put on an indefinite hold. *See* Chafee-Baucus Statement of Senate Managers (Conf.Rep. No. 952, 101st Cong., 2d Sess.), reprinted in 136 Cong. Rec. S16933, S16983 (daily ed. Oct. 27, 1990) (in the context of the addition of section 502(b)(6) to the CAA in 1990, Senatorial session comments recognize that “[c]ompanies . . . want to get on with their business in conformity with an operating permit” and may need “to seek court orders compelling the permit authority to act.”). Consistent with this comment that informed the need for judicial review, U.S. Steel needs certainty and feasibility from its Title V permit. Because ACHD is not currently meeting its obligations to provide judicial review under section 502(b)(6) of the CAA and the federal part 70 permit regulations nor the administrative process set forth in ACHD’s Rules and Regulations, it is important that EPA ensures that the petition process remedies errors made in the Amended Permit, as set forth herein.

Section 502(b) of the CAA sets forth the “minimum elements of a [Title V] permit program to be administered by any air pollution control agency.” 42 U.S.C. § 7661a(b). Critical to the current Petition is the requirement that an air pollution control agency’s Title V program include, in relevant part, “[a]dequate, streamlined, and reasonable procedures for . . .expeditious review of permit actions, including applications, renewals, or revisions, and including an opportunity for judicial review in State court of the final permit action by the applicant, any person who participated in the public comment process, and any other person who could obtain judicial review of that action under applicable law.” *Id.* at § 7661a(b)(6). The federal regulations establishing requirements for state Title V permit programs build on the statutory language, stating that any state that wants to administer its own Title V program must submit, among other information, a demonstration of adequate legal authority to “[p]rovide an opportunity for judicial review in State court of the final permit action by the applicant, any person who participated in the public participation process provided pursuant to § 70.7(h) of this

part [addressing public notice and comment procedures], and any other person who could obtain judicial review of such actions under State laws.” 40 C.F.R. § 70.4(b)(3)(x).

The Commonwealth of Pennsylvania sought and was granted in 1996 EPA’s full approval to administer its own part 70 permit program. *See Clean Air Act Full Approval of Partial Operating Permit Program; Allegheny County; Pennsylvania*, 66 Fed. Reg. 5512, 55113 (Nov. 1, 2001) (citing 61 Fed. Reg. 39597) (Aug. 26, 1996)). The Pennsylvania Department of Environmental Protection’s (“PADEP”) program governed Title V permitting in Allegheny County until EPA ultimately approved a separate partial program for Allegheny County in 2001. *See id.* at 55113. EPA’s approval of Allegheny County’s program was necessarily conditioned on the County’s demonstration that its program would include the required elements set forth in CAA section 502(b) and 40 C.F.R. § 70.4(b), including providing an opportunity for judicial review of a final permit action. As noted above in the Introduction, ACHD’s Rules and Regulations establish the right of a permit applicant to seek review of a final permit action before the Hearing Officer, Exhibit 11, Art. XXI § 2102.03.h.2.B., but also require ACHD’s “Director or Hearing Officer [to] schedule a full evidentiary hearing to determine any material or substantial issue of fact raised in any Notice of Appeal filed under the provisions of Section 1104 of [Article XI].” Exhibit 10, Art. XI § 1105.A. EPA’s approval of Article XXI indicated its determination that these procedures would ultimately satisfy the statutory obligation to provide an opportunity for judicial review of a final permit action. But in practice, ACHD is providing no such opportunity at this time.

Art. XI § 1105.A. purports to permit either the Director of the ACHD or the Hearing Officer to schedule a hearing in response to a Notice of Appeal, but Art. XXI § 2102.03.h.2.B. clarifies that only the Hearing Officer may preside over such a hearing. *See* Exhibits 10 and 11. Accordingly, if ACHD does not have a Hearing Officer, as is currently the case, then a permittee like U.S. Steel who has filed a Notice of Appeal of a final permit action, has no opportunity to pursue its appeal. At this juncture, therefore, ACHD’s administration of its part 70 operating permit program no longer conforms to the terms on which EPA’s approval thereof was based. In this way, ACHD’s program does not comply with the CAA, the part 70 permit program regulations, applicable provisions of the Pennsylvania SIP, and ACHD’s own Rules and Regulations. As a practical matter, this failure harms U.S. Steel because U.S. Steel will not have an opportunity for judicial review as contemplated by the Clean Air Act unless and until the Hearing Officer renders a decision and U.S. Steel is able to appeal that decision to the Allegheny Court of Common Pleas, in accordance with §1110 of Article XI and CAA §7661a(b)(6). U.S. Steel was made aware of the ACHD’s Hearing Officer’s impending departure during the last week of October 2024, whereas the public comment period on the Amended Permit closed on January 18, 2024. Prior to learning that the Hearing Officer position would be vacant for an unspecified period, and that the current Hearing Officer had been directed to stop issuing any rulings in any cases at least a month prior to his specified end date, U.S. Steel did not have any basis to believe that its currently pending appeals, including without limitation of the Amended Permit, would not proceed through administrative review by the ACHD in the normal course and within a reasonable timeframe.

IV. U.S. STEEL'S PETITION TO OBJECT IS TIMELY

In accordance with 40 C.F.R. §§ 70.8(d) and 70.12(b), this Petition is timely filed. EPA's 45-day review period for the Amended Permit commenced on August 7, 2024, and expired on September 20, 2024. *See Title V Operating Permit Public Petition Deadlines*, EPA, <https://www.epa.gov/caa-permitting/title-v-operating-permit-public-petition-deadlines> (Oct. 30, 2024). Based upon the best available information, EPA did not object to the Amended Permit during the 45-day review period. The 60-day period for filing a public petition to object to the Amended Permit therefore commenced on September 21, 2024, and ends on November 19, 2024. *Id.* EPA's Title V Petition website currently directs for petitions to be filed via email to titleVpetitions@epa.gov. The email transmitting U.S. Steel's Petition to EPA bears the date and time of submittal, thereby demonstrating the timeliness of the filing.

V. CONCLUSION

For the foregoing reasons, U.S. Steel requests that the Administrator grant the Petition.

DATED: November 19, 2024

Respectfully submitted,



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TABLE OF EXHIBITS

1. Clairton Amended Permit No. 0052-OP22a, issued by the Allegheny County Health Department on October 10, 2024, to U.S. Steel's Clairton Plant located at 400 State Street Clairton, Pennsylvania
2. Clairton Renewed Permit No. 0052-OP22, issued by ACHD on November 21, 2022
3. Notice of Appeal of the Renewed Permit No. 0052-OP22 filed with ACHD on December 21, 2022
4. Environmental Integrity Project Petition to Object to Renewed Permit No. 0052-OP22 ("EIP Petition")
5. Group Against Smog and Pollution Petition to Object to Renewed Permit No. 0052-OP22 ("GASP Petition")
6. EPA Order on EIP and GASP Petitions dated September 18, 2023 ("Order on Petitions")
7. *Summary of Public Comments and Department Responses on the Proposed Issuance of the U.S. Steel Clairton Works Title V Operating Permit No. 0052-OP22a* ("Amended Permit Comment and Response Document")
8. Technical Support Document for Permit No. 0052-OP22a dated October 10, 2024 ("Amended Permit Technical Support Document")
9. Notice of Appeal of Amended Permit No. 0052-OP22a filed with ACHD on November 7, 2024
10. Allegheny County Health Department, Rules and Regulations, Article XI – Hearings and Appeals
11. Allegheny County Health Department, Rules and Regulations, Article XXI – Air Pollution Control
12. *Summary of Public Comments and Department Responses on the Proposed Issuance of the U.S. Steel Clairton Works Title V Operating Permit No. 0052* ("Renewed Permit Comment and Response Document")
13. U.S. Steel Renewed Permit Comment Letter dated March 15, 2022
14. U.S. Steel Amended Permit Comment Letter dated January 18, 2024
15. EPA, *White Paper for Streamlined Development of Part 70 Permit Applications* dated July 10, 1995

16. Allegheny County Health Department, Air Quality Program Final Report dated May 29, 2018
17. Allegheny County Portion of the Pennsylvania RACT II SIP Revision for the 1997 and 2008 8-Hour Ozone NAAQS dated April 23, 2020
18. Hearing Officer's Order Denying U.S. Steel's Motion for Summary Disposition dated September 4, 2024
19. Allegheny County Health Department, 2021 Air Quality Annual Review: The Process of Progress
20. Allegheny County Health Department, Revision to the Allegheny County Portion of the Pennsylvania State Implementation Plan: Redesignation Request and Maintenance Plan for the Allegheny, PA SO₂ Nonattainment Area for the 2010 NAAQS dated September 26, 2023 (the "SO₂ Redesignation Request")
21. Allegheny County Health Department, Revision to the Allegheny County Portion of the Pennsylvania State Implementation Plan: Redesignation Request and Maintenance Plan for the Liberty-Clairton, PA and Allegheny County, PA PM_{2.5} Nonattainment Areas for the 1997/2006/2012 NAAQS dated September 22, 2022 (the "PM_{2.5} Redesignation Request")
22. Letter from Geoff Rabinowitz, Deputy Director, Allegheny County Bureau of Environmental Health Department, to Nick Lazar, Director, PADEP Bureau of Air Quality dated April 1, 2024
23. Allegheny County Health Department, Revision to the Allegheny County Portion of the Pennsylvania State Implementation Plan, Attainment Demonstration for the Allegheny County, PA PM_{2.5} Nonattainment Area, 2012 NAAQS dated September 12, 2019
24. Letter from Timothy J. Novack, P.E., Allegheny County Health Department to William C. Graeser, U.S. Steel dated Jan. 2, 1997
25. Allegheny County Health Department, Reasonable Available Control Technology (RACT II) Determination for U.S. Steel Clairton Plant dated Apr. 24, 2020
26. Letter from Kurt Barshick, U.S. Steel to JoAnn Truchan, P.E., Allegheny County Health Department regarding RACT III Submission dated December 22, 2022
27. Letter from Allason Holt, ACHD to Kurt Barshick, U.S. Steel regarding need for Compliance Plan dated October 3, 2023
28. Letter from Mark Jeffrey, U.S. Steel to Allason Holt, ACHD requesting clarification of Compliance Plan requirements dated October 20, 2023

29. Letter from Allason Holt, ACHD to Matt DeLibero, U.S. Steel providing clarification of Compliance Plan dated October 20, 2023
30. Letter from Mark Jeffrey, U.S. Steel to Allason Holt, ACHD providing ACHD with additional Compliance Plan information dated October 31, 2023
31. *PennEnvironment, Inc. v. United States Steel Corporation*, No. 19-484, Doc. 227 (W.D. Pa. Mar. 26, 2024)
32. Hearing Officer's Order Staying Proceedings and Permit Conditions dated November 18, 2024