

BEFORE THE ALLEGHENY COUNTY HEALTH DEPARTMENT

**542 FOURTH AVENUE
PITTSBURGH, PA 15219**

**ATI FLAT ROLLED PRODUCTS
HOLDINGS, LLC**

v.

**ALLEGHENY COUNTY HEALTH
DEPARTMENT**

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**In re: Appeal of Administrative Order for
Compliance Issued to Harsco Metals and
ATI Flat Rolled Products Holdings,
LLC**

PETITION FOR STAY

Pursuant to Article XI of the Rules and Regulations of the Allegheny County Health Department (“ACHD”), Appellant ATI Flat Rolled Products Holdings, LLC (“ATI”) has appealed and hereby requests a stay of the ACHD Administrative Order for Compliance dated May 29, 2018 (“Order”) in its entirety throughout the pendency of this appeal. A copy of the Order appears as Exhibit A to the enclosed Notice of Appeal. Consistent with Section 1111 of Article XI of the ACHD Rules and Regulations, this submission sets forth the reasons for which a stay is requested.

A. Background

1. ATI owns and operates a specialty materials (including stainless steel) manufacturing facility located at 100 River Road, Brackenridge, PA, 15014 (“Brackenridge Facility”). Exhibit B, ¶ 2. Harsco Metals (“Harsco”) owns and operates a slag processing facility located at Federal St. Gate #10, Natrona, PA 15065 (“Natrona Facility”). Exhibit B, ¶ 4. The Order was issued to both ATI and Harsco, but the citizen complaints which gave rise to the Order do not relate to the Brackenridge Facility. Id.

processing slag generated by companies other than ATI. Id. The Natrona Facility and Brackenridge Facility each have their own air operating permit authorizations. Id. Each facility is responsible for its own compliance with applicable environmental requirements. Id.

5. According to the Order, “ACHD has determined that Harsco and ATI are in violation of Article XXI, §§ 2105.49 and 2101.11.a.3, b.1, and c, relating to the deposition episodes noted [in the introductory narrative to the Order].” Exhibit A, p. 2. The Order denies the compliance plan submitted by Harsco on June 5, 2017, “on the basis that it is inadequate to assure compliance with the ACHD regulations,” and directs Harsco and ATI to submit a revised compliance plan by June 30, 2018. Id. Pursuant to the Order, the revised compliance plan must “eliminate all fallout particulate which has impacted neighboring residential communities.” Id. (emphasis in original). The Order directs Harsco to “implement the compliance plan within twenty (20) days of approval” by ACHD. Id. Furthermore, the Order requires that “[w]ithin 120 days after the implementation of the compliance plan, Harsco shall submit a report detailing the effectiveness of the compliance plan.” Id.

6. Upon receipt of Harsco’s report, the Order contemplates that ACHD will “determine whether the compliance plan is effective in eliminating all particulate deposition in impacted neighboring residential communities.” Exhibit A, p. 2 (emphasis in original). If ACHD “determines that the compliance plan is ineffective in eliminating deposition,” the Order further contemplates that “Harsco and ATI may be subject to the remedies available” to ACHD pursuant to Article XXI § 2109.03.a (Enforcement Orders). Id. The Order specifically notes that such remedy may include forcing “Harsco to cease operations at the Natrona Facility.” Id. Additionally, the Order provides that a “failure to comply with this Order within the times specified herein is a violation of Article XXI giving rise to the remedies provided by Article XXI

§ 2109.02 [(Remedies)] including civil penalties of up to \$25,000 per violation per day.” Id. The final paragraph of the Order indicates that “ACHD will consider all violations that occur during the compliance period as repeat violations which will result in increased penalties based on ATI and Harsco’s compliance history.” Id. at pp. 2-3.

B. Standard of Review

7. Section 1111 of Article XI of the ACHD Rules and Regulations dictates that the ACHD Director or Hearing Officer may grant a stay of proceedings based on consideration of certain “factors including, but not limited to, the following:

- a. Irreparable harm to the petitioner;
- b. The likelihood of the petitioner prevailing on the merits; and
- c. The likelihood of injury to the public or other parties, such as the permittee in third-party appeals.”

Article XI § 1111.C.

C. Irreparable Harm to ATI

8. ATI seeks a stay of the Order in its entirety during the pendency of the appeal to preserve its ability to adjudicate the merits of the Order. Absent a stay, the deadlines in the Order preclude ATI from fully exercising its right to appeal and may subject ATI to an enforcement action including civil penalties, thus causing immediate and irreparable harm.

9. As a threshold matter, Paragraph 2 of the Order requires ATI and Harsco to submit to ACHD a revised compliance plan by June 30, 2018, after which the Order establishes a series of additional deadlines. Exhibit A, p. 2. Importantly, the Order indicates that ACHD expects this compliance plan to eliminate *all* fallout particulate deposition which has impacted neighboring residential communities. Id. This standard is unattainable given the nature of the

operations at the Natrona Facility and the timeframe established by the Order. Exhibit B, ¶ 8. Harsco must implement the compliance plan “within twenty (20) days of approval” by ACHD. Exhibit A, p. 2. Harsco must submit a report addressing the effectiveness of the plan “[w]ithin 120 days after the implementation of the compliance plan.” Id. These deadlines are impracticable, unreasonable and impossible to meet considering ACHD’s directive to eliminate all fallout particulate.

10. Furthermore, the Order states that a failure to comply “within the times specified herein” gives rise to liability for civil penalties of up to \$25,000 per violation per day. Exhibit A, p. 2 (citing Article XXI § 2109.02). Absent a stay, ATI will be forced to comply with the Order and possibly become subject to an enforcement action including penalties for any alleged noncompliance before ATI can fully exercise its appeal rights.

11. Harsco has implemented measures to reduce fugitive dust in response to ACHD’s investigation and continues to evaluate possibilities for additional control. Exhibit B, ¶ 9. It is ATI’s understanding that, at the time of this appeal, Harsco is installing for evaluation a water spray system at the Natrona Facility, and that installation and implementation of the full-scale system cannot begin before August 2018. Id. ACHD declined to extend the June 30, 2018 deadline in the Order for compliance plan submission to provide additional time for evaluation of other corrective measures. Id. Even if a compliance plan can be submitted by the deadline of June 30, 2018, it is unreasonable and potentially infeasible to implement the compliance plan within 20 days (and therefore comply with the Order) if ACHD immediately approves the plan. For example, if ACHD approves the compliance plan on July 2, 2018, the 20-day deadline will pass before installation of the water spray system begins.

12. While ATI certainly appreciates ACHD's interest in responding to citizen complaints, there was no need for ACHD to issue an order with such short-term deadlines. ACHD has been investigating alleged fallout particulate emissions from the Natrona Facility for years. Exhibit B, ¶ 5. Harsco and ATI have been cooperating in that investigation for years. *Id.* The Order was altogether unexpected and, at least in terms of timing, is inconsistent with how ACHD has approached this matter in the past. *Id.*

13. Ultimately, absent a stay, the deadlines in the Order will come and go before ATI has an opportunity to adjudicate the merits of the Order. This eliminates ATI's ability to effectively challenge the Order and risks exposure to liability in an enforcement action including possible civil penalties. This constitutes immediate and irreparable harm to ATI.

D. Likelihood of ATI Prevailing on the Merits

14. A stay is appropriate because ATI is likely to succeed on the merits in this action. According to the Order, "ACHD has determined that Harsco and ATI are in violation of Article XXI, §§ 2105.49 and 2101.11.a.3, b.1, and c." Exhibit A, p. 2. Paragraph 2 of the Order requires the development of a compliance plan to "eliminate all fallout particulate." *Id.* (emphasis in original). The Order also contemplates that ACHD will "determine whether the compliance plan is effective in eliminating all particulate deposition." *Id.* (emphasis in original). However, the cited regulations, *i.e.*, Article XXI, §§ 2105.49 and 2101.11.a.3, b.1, and c, do not impose a total prohibition on all fugitive emissions.

15. Section 2105.49 requires "[t]he person responsible for a source of fugitive emissions" to "take all reasonable actions to prevent fugitive air contaminants from becoming air-borne," and then offers examples of such actions. Article XXI § 2105.49(a). Section 2101.11, in relevant part, generally prohibits emissions which "[m]ay reasonably be anticipated

to endanger the public health, safety, or welfare,” “the release of air contaminants into the open air,” “air pollution,” and a “public nuisance.” Article XXI § 2101.11.a.3, b.1, and c. Thus, the regulations cited in the Order do not act as a complete ban on fugitive particulate emissions. In fact, § 2105.49 contemplates that fugitive emissions may occur and requires the person responsible to “take all reasonable actions” to minimize them, not eliminate them.

16. It is technically infeasible to eliminate all fallout particulate emissions from stainless steel slag operations like the one conducted at the Natrona Facility. Exhibit B, ¶ 8. The processing of stainless steel slag naturally results in an unavoidable condition called “falling slag,” in which cooled fines (particulate matter) become entrained in steam. *Id.* Particulate matter emissions will almost certainly be generated from this process. *Id.* Such emissions may remain on site or travel off site depending on factors such as wind patterns. *Id.* It is therefore impossible to meet ACHD’s “eliminate all fallout particulate” standard. *Id.*

17. As a practical matter, ATI does not own, operate or exercise control over the slag operations which are the focus of the Order. Exhibit B, ¶ 7. Although ATI has cooperated in good faith with ACHD and Harsco during the investigation, ATI has not accepted responsibility for the activities that gave rise to the citizen complaints. Consistent with Article XXI § 2105.49(a), ATI has taken actions to prevent fugitive emissions in the areas surrounding the Natrona Facility which are under ATI control, including truck washing and street sweeping. Exhibit B, ¶ 10. But ultimately ATI cannot and does not dictate how emissions are controlled from the slag processing activities at the Natrona Facility. *Id.*

18. ACHD expects the compliance plan to eliminate *all* fallout particulate deposition, an impossible task that is not required by law. Meanwhile, ATI is not even responsible for the

alleged dust deposition that is the subject of the Order. Given that ATI is likely to succeed on the merits of its appeal, a stay is appropriate.

E. Likelihood of Injury to the Public or Other Parties

19. The requested stay would advance rather than harm the public interest. The public interest is supported by ensuring that ACHD cannot issue an administrative order that is unsupported by law and imposes compliance deadlines that will pass before there is an opportunity to adjudicate the merits of such an order. ACHD should not have unbridled power to issue an unlawful and unreasonable order and then effectively preclude the recipient's right to appellate review. The primary purpose of such review is to serve as a check on the agency's authority. Granting this request for a stay would give ATI the opportunity to exercise its rights and adjudicate the merits before possibly being subjected to an enforcement action such as a penalty assessment for any alleged noncompliance.

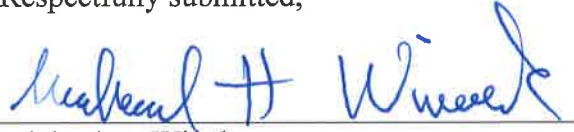
20. Preventing ACHD from enforcing the Order does not result in serious or immediate danger to the public health and welfare. In contrast, as noted above, denying a stay would risk causing an immediate and irreparable harm to ATI. Furthermore, even if the Order is stayed, ATI will remain subject to other applicable requirements imposed by environmental permits and regulations aimed at protecting the public health and welfare.

F. Conclusion

21. The Order imposes obligations in a manner and timeframe that presents immediate and irreparable harm to ATI. ATI is likely to succeed on the merits if given a fair opportunity to adjudicate them. Staying the Order would advance rather than harm the public interest. For these reasons, ATI requests a stay of the Order in its entirety while this action is pending.

22. ATI is willing to participate in an evidentiary hearing concerning this Petition for Stay if the ACHD Director or Hearing Officer believes that such hearing would be beneficial.

Respectfully submitted,



Michael H. Winek, Esq.
Mark K. Dausch, Esq.
Meredith Odato Graham, Esq.
Babst, Calland, Clements and Zomnir, P.C.
Two Gateway Center
Pittsburgh, PA 15222
(412) 394-5400



Date

Counsel for ATI Flat Rolled Products Holdings, LLC

EXHIBIT B

Declaration of Deborah L. Calderazzo

BEFORE THE ALLEGHENY COUNTY HEALTH DEPARTMENT

**542 FOURTH AVENUE
PITTSBURGH, PA 15219**

ATI FLAT ROLLED PRODUCTS HOLDINGS, LLC)	In re: Appeal of Administrative Order for Compliance Issued to Harsco Metals and ATI Flat Rolled Products Holdings, LLC
)	
v.)	
)	
ALLEGHENY COUNTY HEALTH DEPARTMENT)	

DECLARATION OF DEBORAH L. CALDERAZZO

1. My name is Deborah L. Calderazzo and I am over eighteen years of age. I am competent to make this declaration. The facts herein are of my personal knowledge and are true and correct. I make this Declaration pursuant to 18 Pa. Cons. Stat § 4904 under penalty of perjury.

2. I am employed by ATI Flat Rolled Products Holdings, LLC (“ATI”) as the Director, EH&S, responsible for Environmental matters for the specialty materials (including stainless steel) manufacturing facility located at 100 River Road, Brackenridge, PA, 15014 (“Brackenridge Facility”). I have worked at the Brackenridge Facility for twenty-eight (28) years. I have a Master of Science degree in Engineering from the University of Pittsburgh and a Master of Science degree in Environmental Management from Duquesne University. I have personal knowledge of the matters contained herein and authority to execute this declaration on behalf of ATI.

3. On May 30, 2018, I received on behalf of ATI by electronic mail a copy of the administrative order for compliance (“Order”) issued by the Allegheny County Health Department (“ACHD”) which is the subject of this appeal.

4. The Order was also issued to Harsco Metals (“Harsco”). Harsco owns and operates a slag processing facility located at Federal St. Gate #10, Natrona, PA 15065 (“Natrona Facility”). The citizen complaints which gave rise to the Order do not relate to the Brackenridge Facility.

5. ACHD has been investigating citizen complaints regarding alleged particulate matter emissions from the Natrona Facility for at least the last several years. ATI has been involved in communications with ACHD whenever information has been made available to ATI concerning citizen complaints. Otherwise, Harsco has taken the lead in addressing ACHD’s concerns regarding the emissions from its operations at the Natrona Facility. Both ATI and Harsco have cooperated with ACHD during the ongoing investigation. The Order was altogether unexpected and, at least in terms of timing, is inconsistent with how ACHD has approached this matter in the past.

6. ACHD previously issued a Notice of Violation/Settlement Offer (“NOV”) to ATI and Harsco dated March 24, 2017, based on dust deposition observed in the Opal Court neighborhood. I responded to the NOV on behalf of ATI in June 2017 by requesting that ACHD withdraw the NOV with respect to ATI, because ATI does not dictate how Harsco operates the Natrona Facility. See Attachment 1. ATI has no readily available record of ACHD responding to this request.

7. The Natrona Facility and Brackenridge Facility are two separate and independently-controlled facilities. Although Harsco leases from ATI the property on which the Natrona Facility is situated, Harsco owns the slag processing equipment it uses and the materials it handles. ATI exercises no operational control over Harsco’s day-to-day operations. The Natrona Facility processes slag generated at the Brackenridge Facility and ATI grants Harsco the

exclusive right to process and sell all processed steel slag. ATI purchases scrap generated at the Natrona Facility, but also purchases scrap from other sources not associated with Harsco. There is no contractual provision which precludes Harsco from processing slag generated by companies other than ATI. The Natrona Facility and Brackenridge Facility have their own air operating permit authorization. Each facility is responsible for its own compliance with applicable environmental requirements.

8. It is technically infeasible to eliminate all fallout particulate emissions from stainless steel slag operations like the one conducted at the Natrona Facility. The processing of stainless steel slag naturally results in an unavoidable condition called “falling slag,” in which cooled fines (particulate matter) become entrained in steam. Particulate matter emissions will almost certainly be generated from this process. Such emissions may remain on site or travel off site depending on factors such as wind patterns. It is therefore impossible to meet ACHD’s “eliminate all fallout particulate” standard.

9. Harsco has implemented measures to reduce fugitive dust in response to ACHD’s investigation and continues to evaluate possibilities for additional control. It is my understanding that, at the time of this appeal, Harsco is installing for evaluation a water spray system at the Natrona Facility, and that installation and implementation of the full-scale system cannot begin before August 2018. It is also my understanding that ACHD declined a request to extend the June 30, 2018 deadline in the Order for compliance plan submission to provide additional time for evaluation of other corrective measures.

10. ATI takes seriously its obligations under applicable environmental laws, including applicable provisions of the ACHD Rules and Regulations. ATI has taken actions to prevent fugitive emissions in the areas surrounding the Natrona Facility which are under ATI control,

including truck washing and street sweeping. But ultimately ATI cannot and does not dictate how emissions are or are not controlled from the slag processing activities at the Natrona Facility.

11. I declare under penalty of perjury that the foregoing is true and correct.

By:  _____

Date: 6/28/18

Attachment 1

Correspondence from Deborah L. Calderazzo to Dean DeLuca
June 5, 2017

From: Calderazzo, Deborah
Sent: Monday, June 05, 2017 3:27 PM
To: Dean DeLuca (Dean.DeLuca@AlleghenyCounty.US)
Cc: McAndrews, Lauren
Subject: ATI Notice of Violation/Settlement Offer dated March 24, 2017

Hi Dean,

This email is to follow-up our telephone conversation regarding the ATI Notice of Violation/Settlement Offer dated March 24, 2017 alleging fugitive emissions violations from the Natrona Harsco site. We are respectfully requesting that the Department withdraw the subject ATI Notice of Violation/Settlement Offer. ATI does not dictate how Harsco operates their facility. It continues to be our expectation that Harsco operate in accordance with their operating permits and all applicable laws and regulations.

As discussed, ATI was not the source of the alleged fugitive emissions and depositions on Opal Court. Further, ATI neither "caused or assisted in the fugitive emissions by requiring Harsco to conduct operations during inopportune times when emissions from the Harsco operations were more likely to cause deposition in the Opal Court neighborhood."

Accordingly, we appreciate the Department's consideration to withdraw the NOV/Settlement Offer issued to ATI. We are not submitting a Compliance Plan as it is our expectation and understanding that Harsco will be submitting a Plan to the Department by the end of business today.

Thanks very much. Take care.



Deborah L. Calderazzo
Director, Environmental Affairs
100 River Road
Brackenridge, PA 15014
(724) 226-5947

BEFORE THE ALLEGHENY COUNTY HEALTH DEPARTMENT

**542 FOURTH AVENUE
PITTSBURGH, PA 15219**

**ATI FLAT ROLLED PRODUCTS)
HOLDINGS, LLC)
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ALLEGHENY COUNTY HEALTH)
DEPARTMENT)**

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ATI Flat Rolled Products Holdings,
LLC**

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of June, 2018, true and correct copies of the foregoing Notice of Appeal and Petition for Stay were served this day via hand delivery and addressed as follows:

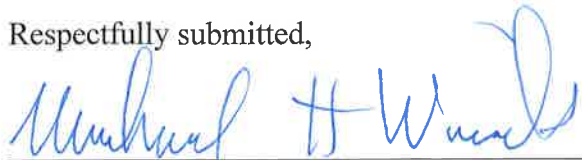
Karen Hacker
Office of the Director
Allegheny County Health Department
542 Fourth Avenue
Pittsburgh, PA 15219

The following individuals were served by electronic mail:

Max Slater, Esq.
Administrative Hearing Officer
Allegheny County Health Department
542 Fourth Avenue
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Jeffrey Bailey, Esq.
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Respectfully submitted,



Michael H. Winek, Esq.

Counsel for ATI Flat Rolled Products Holdings, LLC