BEFORE THE DIRECTOR
ALLEGHENY COUNTY HEALTH DEPARTMENT
542 4TH AVENUE
PITTSBURGH, PENNSYLVANIA 15219

UNITED STATES STEEL CORPORATION, a Delaware corporation,	)	
Appellant,	)	
v.	)	Petition for Stay of Order
ALLEGHENY COUNTY HEALTH DEPARTMENT, Air Quality Program	)	#191202
Appellee.	)	

PETITION FOR STAY

Pursuant to Article XI of the Rules and Regulations of the Allegheny County Health Department (hereinafter "Department"), Appellant UNITED STATES STEEL CORPORATION ("U.S. Steel") has appealed and hereby requests a stay of the Department's Enforcement Order No. 191202 dated February 28, 2019 ("Order") in its entirety throughout the pendency of this appeal. U.S. Steel also requests an immediate temporary stay of the Order until such time as the Hearing Officer can hold a hearing and issue a decision on U. S. Steel's Petition for Stay. A copy of the Order appears as Exhibit A to the Notice of Appeal. Consistent with Section 1111 of Article XI of the Department's Rules and Regulations, this submission sets forth the reasons for which a stay is requested.

A. Background

1. U.S. Steel owns and operates Clairton Coke Works ("Clairton"), a by-products coke plant which includes 10 coke batteries located at 400 State Street, Clairton, PA 15025, with telephone number (412) 233-1002.

2. Clairton's coke manufacturing process generates coke oven gas, which is processed to recover byproducts and cleaned and desulfurized so that it can be used to underfire its coke ovens and as downstream fuel gas at its Edgar Thompson (ET) and Irvin plants.

3. On December 24, 2018 at about 4:30 AM, Clairton experienced a significant fire which destroyed much of the equipment integral to performing desulfurization activities, byproduct recovery and cleaning processes for coke oven gas. The fire was sudden and unforeseeable.

4. As a result of the fire, Clairton cannot fully clean coke oven gas generated from its coke ovens to remove excess sulfur constituents contained in it. In response, Clairton has already implemented several mitigation measures to minimize any potential environmental impacts as a result of the fire.

5. U.S. Steel has been in close contact with the Department regarding the fire and mitigation measures and has worked with the Department to implement additional mitigation measures as is practicable.

6. Notwithstanding this background, the Department unilaterally issued the Order yesterday (February 28, 2019) and imposed numerous immediate requirements on Clairton, some of which require action today (March 1, 2019). These requirements include:

a. Limiting emissions of SO2 emissions from its coke oven batteries, boilers and stacks across all Mon Valley facilities (i.e., Clairton, ET and Irvin works) to no more than 13,597.59 pounds per day within as soon as 7 days;

b. Implementation of extended coking times at each battery by at least 15 minutes per day starting March 1, 2019, until it reaches extended total coking times of at least

30 hours for Batteries 1-3, B and C, and 36 hours for Batteries 13-20 by no later than March 29, 2019;

c. Limiting the use of coke oven gas to no more than 0.148% as fuel for its boilers at the ET Works.

d. Requiring U.S. Steel to either reduce the volume of coal in each coke oven (partial charging), extend coking times beyond those specified above, or hot idle batteries.

B. Standard of Review

7. Section 1111 of Article XI of the Department Rules and Regulations provides that the 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.

8. The three factors to be considered mirror the factors applied by Pennsylvania courts and the Pennsylvania Environmental Hearing Board when evaluating a request for stay/supersedeas. These tribunals use a balancing test to apply the criteria, as opposed to a mechanical application of each criterion in isolation. See, e.g., *Pennsylvania Fish Comm. v. DER*, 1989 EHB 619; *Pennsylvania PUC v. Process Gas Consumers Grp*., 467 A.2d 805, 809 (Pa. 1983) (noting that each individual criterion should be considered and weighed relative to the other criteria). Moreover, tribunals may grant a request for a stay even if all three criteria are not satisfied. See, e.g., *Island Car Wash, LP v. DEP*, 1998 Pa. Envirn. LEXIS 50 at *5 ("if the

challenged action of the Department is without authority, the petitioner may be entitled to a supersedeas irrespective of proof of irreparable harm or the absence of harm to the public or other parties"); *Wayne Drilling & Blasting, Inc. v. DER*, 1992 Pa. Envirn. LEXIS 3 at *5 ("However, the petitioner need not demonstrate irreparable harm and likelihood of injury to the public if the petitioner shows that DER lacked authority to take the action at issue or if it is apparent that DER's action was unlawful.").

C. Irreparable Harm to U.S. Steel

9. The requirements in the Order are i) impossible to implement within the required timeframes without causing unacceptable risks to worker safety and an increased risk to public health, ii) not necessary to prevent endangerment to public health or exceedances of the SO2 national ambient air quality standard (NAAQS), iii) likely to result in significant damage to coke oven refractories.

10. Given that it is impossible to implement and achieve the requirements in the Order within the required timeframes as provided above, the Order, by its terms, will lead to hot idling of batteries, which is harmful to the coke oven batteries and lead to permeant and long term adverse effects to the environment. In addition, hot idling of a battery, much less multiple batteries, is a complex process that cannot be achieved in a manner ensuring worker and public safety, within 35 days as required by the Order.

11. The Order also impacts U.S. Steel's ability to comply with a prior Enforcement Order and a prior Consent Judgment, which makes the Order unreasonable and unenforceable. The Department issued to Clairton Enforcement Order No. 180601 (Exhibit A) on June 28, 2018 ("2018 Enforcement Order"), which, among other things, would separately require Clairton to hot idle two of its coke oven batteries in the event that overall compliance rate, including opacity

standards as determined from continuous opacity monitoring system (COMS) data, does not improve over two successive quarters, beginning this calendar quarter.

12. The Department has also entered into a Consent Judgment dated March 24, 2016 ("2016 Consent Judgment") with U.S. Steel (Exhibit B). The 2016 Consent Judgment requires the adherence to combustion stack opacity standards of up to 20% for less than 3 minutes per hour or up to 60% at any time, and subjects Clairton to a schedule of stipulated penalties for exceedance of such standards.

13. Implementing the requirements of the Order is likely to cause combustion stack opacity exceedances that may reduce Clairton's overall compliance rate significantly, thereby materially inhibiting U.S. Steel's ability to comply with a 2018 Enforcement Order and the 2016 Consent Judgment.

14. Moreover, absent a stay of the Order, U.S. Steel would not have an opportunity to fully adjudicate the merits of the Order given the immediate timeframes and deadlines contained in the order. For this reason, not granting a stay would constitute irreparable harm to U.S. Steel. See *Scripps-Howard Radio, Inc. v. FCC*, 316 U.S. 4, 9 (1942) (noting that the general rationale for granting a stay is based on the need "to prevent irreparable injury to the parties or to the public.")

15. In addition, implementation of the requirements of the Order would impede Clairton's efforts to repair its damaged equipment, since it would divert resources that are currently being devoted to bringing such desulfurization equipment back online as quickly as possible and instead shift it towards having to hot-idle batteries. Thus, the Order impedes U.S. Steel's ability to comply with applicable H2S and SO2 requirements.

16. Hot idling is an unusual and extraordinary measure—a "last resort" practice in the steel and coke industry. Hot idling is tantamount to a shutdown. See 40 CFR Section 63.301 (federal NESHAP definition of "shutdown" as pushing or removal of all coke from ovens). Hot idling batteries at the Facility would result in significant economic loss to U.S. Steel. Significant monetary losses constitute irreparable harm. See, e.g., *McDonald Land & Mining, Inc. v. Comm. of Pennsylvania, Dept. of Envtl. Res*., 1991 Pa. Envirn. LEXIS 14 at *7 ("Our more recent cases […] all seem to hold that significant economic harm to a party may constitute irreparable harm, particularly where a party […] has no remedy with which to recover its compliance costs. It appears that this is the better reasoning, since it is difficult to perceive of a harm which is more irreparable to a private enterprise than the unrecoverable loss of money, or business.").

D. Likelihood of U.S. Steel Prevailing on the Merits

17. A stay is appropriate because U.S. Steel is likely to succeed on the merits in this action. As an initial matter, the entire Order, and the timeframes included therein, deprive U.S. Steel of its fundamental right to procedural due process. The Order, and the timeframes included therein, deprive U.S. Steel of a meaningful process to test the allegations in the Order and hold the Department to its burden of proving the highly technical allegations and punitive requirements in the Order.

18. In addition, U.S. Steel incorporates by reference herein the objections to the Order outlined in the Notice of Appeal. By issuing the Order, the Department has unlawfully and unreasonably created a genuine and substantial risk of: (1) net harm to the public safety, health and the environment, (2) threats to employee safety, (3) damage to the batteries, and (4) battery shutdown.

19. Administrative orders requiring a permitted entity to implement a requirement that is impossible to achieve or face punitive measures such as shutdown may be unreasonable. See *DER v. Medusa Corp*., 1978 EHB 149. At minimum, such orders must give the permittee sufficient "time to explore all possible alternatives" before any cessation aspect of such orders may be upheld. *Id*. at *19. See also *Hughey v. JMS Development Corp*., 78 F.3d 1523 (11th Cir. 1996) (holding that an environmental standard cannot apply when achievement of such is factually impossible).

20. The Local Health Administration Law, 16 P.S. Section 12001 et seq, authorizes the Director of the Health Department to abate public health nuisances by order, but that a "reasonable" amount of time must be given to the person suspected to have caused the nuisance to allow them to correct the condition. 16 P.S. Section 12012(d).

21. The Department's authority to issue administrative orders under Section 2109.03.1 of Article XXI is limited to actions "as are necessary to aid in the enforcement of the provisions of this Article," including an order to cease unlawful activities.

22. However, the Order does exactly the opposite: by requiring the extreme SO2 reduction measures under such a tight timeframe, it is likely to impede Clairton's ability to achieve compliance with both the opacity limits for its combustion stacks, the 2016 Consent Judgment and 2018 Enforcement Order, and existing applicable requirements for H2S and SO2. Therefore, the Order exceeds the scope of the Department's authority by impermissibly hindering Clairton from achieving compliance with applicable requirements.

23. An Order that requires action to be taken that is contrary to public and/or employee safety is unlawful and contrary to Section 2101.11.a.3 of Article XXI, which prohibits any source from operating in a manner that may reasonably be anticipated to endanger the public safety.

24. The Order is unlawful because it is impermissibly more stringent than existing permitted limits without satisfying procedural requirements.

25. Although Section 2109.04 of Article XXI purports to authorize the Department to unilaterally establish more stringent standards than those duly promulgated in the form of permit conditions or regulations, such sidestepping of procedural requirements violates administrative process.

26. Paragraph 5's limitation of 13,597.59 lbs/day and Paragraph 1's requirement of extending coking times to certain durations for each battery is not provided for in any statute, regulation or permit condition. Establishment of a requirement via administrative order without parallel basis in binding authority constitutes an "arrogat[ion of] a power without a statutory basis, making it impossible to comply with the law. DEP v. Cumberland Coal Co., 628 Pa. 17 (2014). See also Our Lady of Victory Catholic Church v. DHS, 153 A.3d 1124, 1132 (Pa. Cmwlth. 2016) (suggesting that an order establishing new standards would constitute a "binding norm"). Those actions constituting binding norms are required to undergo the same procedural requirements as regulations. See Northwestern Youth Servs. v. DPW, 1 A.3d 988, 993 (Pa. Cmwlth. 2010) (finding those agency actions that establish provisions that have the force of law as a binding norm and tantamount to a regulation that must go through ordinary rulemaking procedures).

27. The Local Health Administration Law specifies detailed procedures for local agency rulemakings that must be followed. See, e.g., 16 P.S. Section 12011(c) (requiring rules and regulations to be submitted to the county commissioners for review and approval and to first be published in newspapers of general circulation).

28. The Department did not go through any such procedures is issuing its Order containing otherwise binding requirements as contained in Paragraphs 1 and 5 of the Penalty Assessment section. It is, therefore unlawful.

29. Moreover, even if Section 2109.04 is considered a valid outlet to establish more stringent standards without any procedural requirements, Paragraph 5 imposes a SO2 emissions limit of 13,597 lbs/day across ET, Irvin and Clairton works combined, which is less than half of the already-permitted SO2 emissions allowed under these facilities Title V and Installation Permits for the applicable emissions units described in the Order.

30. Paragraph 5's SO2 limit is therefore a more restrictive standard than already established by regulation or permit.

31. Section 2109.04 of Article XXI requires the Department, in imposing a more restrictive standard, to affirmatively find that emissions from a source are either causing or contributing to exceedance of any ambient air quality standard, or that such emissions are reasonably anticipated to endanger the public health.

32. The 13,597 lbs/day limit for SO2 in Paragraph 5 cannot be necessary to ensure no exceedances of the NAAQS or to prevent endangerment to public health, since Clairton is already permitted to emit over 31,000 lbs/day of SO2.

E. Likelihood of Injury to the Public or Other Parties

33. Denying U.S. Steel's Petition for a stay is likely to injure the public health, safety and environment. As discussed above, implementation of the extreme measures required under the Order will threaten the public and employee safety. In addition, it is likely to lead to a significant loss of jobs.

34. On the other hand, the Department has not shown how the actions required in the Order would have any net positive impact on public health. Staying the Order will not result in serious or immediate danger to the public health and welfare. This is evident by the fact that Clairton's permits allow for substantially higher SO2 emissions than the Order seeks to limit it to and the current emissions evidence does not show public harm.

F. Conclusion

35. For the foregoing reasons, U.S. Steel requests that the Hearing Office grant this Petition and enter the Orders attached hereto.

Respectfully submitted,

/s/ Mark K. Dausch

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Counsel for Appellant

Dated: 3-1-19

ALLEGHENY COUNTY HEALTH DEPARTMENT

ADMINISTRATIVE DECISION

UNITED STATES STEEL CORPORATION,	:	In Re: Petition for Stay of Enforcement Order No. 180601
	:	
Appellant,	:	Copies Sent To:
	:	*Counsel for Appellant:*
v.	:	Michael H. Winek, Esq.
	:	Mark K. Dausch, Esq.
ALLEGHENY COUNTY HEALTH DEPARTMENT,	:	Varun Shekhar, Esq.
	:	BABST, CALLAND, CLEMENTS AND ZOMNIR, P.C.
Appellee.	:	Two Gateway Center
	:	Pittsburgh, PA 15222
	:	
	:	*Counsel for ACHD:*
	:	Jason K. Willis, Esq.
	:	301 39th Street, Building 7
	:	Pittsburgh, PA 15201

ORDER

AND NOW, this ___ day of _____, 2019, it is hereby ORDERED that the Appellant's Petition for Stay is hereby **GRANTED**. The Department's Enforcement Order (#190202) is herby stayed throughout the pendency of the appeal of the Order.

__/s/_____
Max Slater
Administrative Hearing Officer
Allegheny County Health Department

ALLEGHENY COUNTY HEALTH DEPARTMENT
ADMINISTRATIVE DECISION

UNITED STATES STEEL CORPORATION,	:	In Re: Petition for Temporary Stay of Enforcement Order No. 180601
	:	
Appellant,	:	Copies Sent To:
	:	*Counsel for Appellant:*
v.	:	Michael H. Winek, Esq.
	:	Mark K. Dausch, Esq.
ALLEGHENY COUNTY HEALTH DEPARTMENT,	:	Varun Shekhar, Esq.
	:	BABST, CALLAND, CLEMENTS AND ZOMNIR, P.C.
Appellee.	:	Two Gateway Center
	:	Pittsburgh, PA 15222
	:	
	:	*Counsel for ACHD:*
	:	Jason K. Willis, Esq.
	:	301 39th Street, Building 7
	:	Pittsburgh, PA 15201

ORDER

AND NOW, this 1st day of March, 2019, after receipt of Appellant's Notice of Appeal and Petition for Stay, and following a telephone conference with counsel, it is hereby ORDERED that:

1. The Department's Enforcement Order (#190202) is temporarily stayed. This temporary still will remain in effect until such time as the undersigned can hold a hearing and issue a decision on Appellant's Petition for Stay.
2. A hearing on Appellant's Petition for Stay will be begin on _____ at _____.

__/s/_____
Max Slater
Administrative Hearing Officer
Allegheny County Health Department