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

UNITED STATES STEEL CORPORATION,	)	
Petitioner,	)	In re Settlement Agreement and Order, executed June 27, 2019 and entered February 10, 2020, resolving Appeals of Enforcement Orders 180601, 190305, and 190501, and Administrative Order 181002
v.	)	
ALLEGHENY COUNTY HEALTH DEPARTMENT,	)	
Respondent.	)	

UNITED STATES STEEL CORPORATION'S REPLY BRIEF TO THE ALLEGHENY COUNTY HEALTH DEPARTMENT'S RESPONSIVE BRIEF

The United States Steel Corporation ("U. S. Steel"), by and through its counsel, submits this Reply Brief to the Allegheny County Health Department's ("ACHD's") October 8, 2021 Brief responsive to U. S. Steel's Request for Summary Grant of Relief. In its responsive Brief, the ACHD contends that it can disregard binding requirements of the June 27, 2019 Settlement Agreement and Order ("SAO") that it entered into, including Paragraph 12 ("Rulemaking Criteria"). The ACHD's theory is that the SAO is unenforceable with respect to certain proposed revisions to Article XXI ("Proposed Coke Rule"). It alleges that state law mandates that it make certain revisions sought in the Proposed Coke Rule regarding the hydrogen sulfide, pushing, and topside standards.

The ACHD concludes that as a result of the state mandate, it need not comply with the Rulemaking Criteria it agreed to for those revisions. It further alleges that the Proposed Coke

Rule's revision to the hydrogen sulfide concentration standard to 23 grains[1] is equally stringent as the current standard of 35 grains, on the basis that the current 35 grain standard is supposedly in error, although neither it, nor anyone else, has ever previously deemed the current standard to be incorrect. As a result, the ACHD says it need not comply with the Rulemaking Criteria for that proposed revision either.

The ACHD's positions are meritless. They reflect the ACHD's desire to impose obligations required on the other party to a binding contract, without having to abide by the obligations it committed to in that contract by developing novel and unsupported theories in an attempt to justify its conduct. As the party who is claiming that the SAO is unenforceable, the ACHD bears the heavy burden of proving that the SAO is unenforceable. The ACHD has failed to meet its burden that it need not comply with the SAO. Accordingly, the ACHD must be held accountable to comply with its commitments in the SAO.

The ACHD's Brief fails to identify any material factual disputes or otherwise demonstrate that its pursuit of proposed revisions to Article XXI ("Proposed Coke Rule") complied with the Rulemaking Criteria of the SAO, or that the relevant portions of the SAO are otherwise unenforceable with respect to each aspect of the Proposed Coke Rule disputed by U. S. Steel. U. S. Steel is entitled to summary relief as a matter of law and the ACHD should be enjoined from further pursuing the Proposed Coke Rule.

[1] For ease of reference this brief shortens characterization of the units of the hydrogen sulfide concentration limits to simply "grains" as opposed to "grains per hundred dscf".

I. ACHD bears the burden of proving that the provisions of the SAO are unenforceable.

The ACHD asserts that U. S. Steel bears the burden of proof in this matter. To the extent that U. S. Steel has any burden of proof in this matter, the only burden it carries is to demonstrate that: (1) the ACHD agreed to be contractually bound by the SAO which requires it to satisfy the Rulemaking Criteria before pursuing more stringent regulations; and (2) the ACHD has not made any determination that the Rulemaking Criteria have been met (the ACHD refuses to even try), and therefore, has failed to meet Section VII of the SAO. The ACHD does not dispute either of these points. In fact, the ACHD admits that the Proposed Coke Rule is a "divergence" from the terms of the SAO. ACHD Brief at 2. Therefore, U. S. Steel has met its burden.

The ACHD instead argues that the SAO is unenforceable with respect to certain revisions it is making to Article XXI as part of the Proposed Coke Rule, because, as the ACHD argues, the SAO would require ACHD to violate state law. *Id.*; U. S. Steel Petition, Ex. C at 5. Pennsylvania common law provides that, as a matter of contract law, not only does the ACHD bear the burden, but that it is a *heavy burden,* of showing that its "divergence" is excusable by way of the otherwise binding SAO being deemed unenforceable as contrary to public policy (i.e., by requiring it to violate a statute).[2] *Sayles v. Allstate Ins. Co.*, 219 A.3d 1110, 1122-23 (Pa. 2019) ("a challenger who asserts that clear and unambiguous contract provisions ... are void as against public policy carries a heavy burden of proof"); *Generette v. Donegal Mut. Ins. Co.*, 957 A.2d 1180, 1190 (Pa. 2008) (describing the burden required to declare an unambiguous provision

[2] The ACHD contended in its Statement of Position that the Proposed Coke Rule does not violate "the enforceable provisions of the SAO, and that "the provisions of Section VII of the SAO are not enforceable if they conflict with the [Air Pollution Control Act] requirements." ACHD Statement of Position at 3, 5.

of a contract void as against public policy as "heavy"). Therefore, the ACHD indeed bears the burden of proving its claim that the SAO's Rulemaking Criteria are unenforceable.

II. The ACHD is pursuing a more stringent hydrogen sulfide standard for coke oven gas in the Proposed Coke Rule than current Article XXI standards, and therefore, triggers the Rulemaking Criteria of the SAO.

The ACHD contends that the Proposed Coke Rule's hydrogen sulfide standard for coke oven gas (COG) is not more stringent than the ACHD's current hydrogen sulfide standard. As a matter of law, the ACHD is incorrect. The current ACHD hydrogen sulfide concentration standard is 35 grains.[3] The Proposed Coke Rule amends this standard initially to 23 grains, and will further reduce the limit in the event older batteries are shutdown. The ACHD's Brief somehow suggests that the proposed limit of 23 grains is not more stringent than the existing limit, despite it being nearly 40% lower numerically. It does so by falsely contending that the existing limit of 35 grains was an "error" (to which it provides no facts to support its contention and ignores the text of Section 2105.21.h.4), and thus, correcting the mistake to produce a lower numeric limit does not amount to a more stringent standard. ACHD Brief at 17-18. The ACHD's position is meritless.

A. The Proposed Coke Rule's hydrogen sulfide standard is numerically more stringent than the current standard.

[3] The ACHD seems to imply that the current hydrogen sulfide standards are the 10 grains and 50 grains limits at Section 2105.21.h.1 and 2, but somehow does not include the facility-wide standard applicable to the combined COG after desulfurization at Section 2105.21.h.4. However, compliance is based on testing of the hydrogen sulfide in the combined COG after desulfurization. Testing of COG from any individual battery is not feasible because COG from all operating batteries is combined and then treated at the desulfurization plant as a combined COG stream., the limit applicable to the combined COG after treatment is the only limit for which compliance can be determined. Determining compliance with the 10 and 50 grains standards at individual batteries is simply not feasible because the COG from the combined batteries is treated at the desulfurization plant as a single gas stream. The ACHD continually calls this a "concession" and suggests that it has somehow benefited U. S. Steel but the reality is that measuring the hydrogen sulfide in the COG after desulfurization necessarily entails measuring the hydrogen sulfide in the combined COG stream. The ACHD has made no concession in adopting this approach. It has simply recognized the obvious—the only compliance point is the combined COG stream that exists the desulfurization plant. To suggest that the facility-wide standard is somehow not a standard or limit is mystifying and plainly inconsistent with the text of the current regulation.

Regardless of whether the ACHD's characterization of the 35 grains limit as an "error" is accurate (it is not), a numerically more restrictive limit is "obviously" more stringent than a numerically less restrictive limit. *Groce et al v. Pennsylvania DEP*, 2006 EHB 856 at n. 12 (finding that a NOx emission limit of 0.11 lbs/MMBTU was "obviously less stringent" than a NOx emission limit of 0.08 lbs/MMBTU); *Arizona ex rel Darwin v. EPA*, 815 F.3d 519, 538 (9th Cir. 2016) (finding that a nitrogen oxides emissions limit of 0.065 lbs/mmBTU was "of course, very significantly more stringent than the [proposed] 0.32 lb/mmBTU limit" given the numeric difference). The proposed limit of 23 grains is plainly more restrictive than the existing limit of 35 grains. For example, if a source has a hydrogen sulfide concentration of 30 grains, it would be in compliance with the existing standard, but would need to take action to comply with the proposed standard. Moreover, the Proposed Coke Rule has an added layer of stringency beyond the current rule through an additional provision it contains that would further reduce the 23 grains limit in the event additional batteries are shut down. See U. S. Steel Petition, Ex. C at Ex. F, p. 17. Nowhere is such mechanism found in the current standard nor is such a provision found in the Air Pollution Control Act (APCA) or Pennsylvania coke rules. As a matter of law, the Proposed Coke Rule's hydrogen sulfide standard for COG is more stringent than the current standard.

B. <u>The current hydrogen sulfide standard is not erroneous.</u>

1. History of the development of the current hydrogen sulfide standard

As explained in U. S. Steel's Petition, ACHD established the current version of Section 2105.21.h.4 (which provides that the battery-specific 10 grains and 50 grains standards at Section 2105.21.h.1 and 2 are met if the facility-wide hydrogen sulfide concentration across Clairton batteries 1-3, 7-9, 13-15, 19-20, and B met a 40 grains standard) originally through a 1992 Consent Decree between the parties. U. S. Steel Petition, Ex. B. Furthermore, ACHD agreed to incorporate

the limit into its regulations and into the Pennsylvania State Implementation Plan (SIP), which it did in 1994. It was not mathematically calculated through the coal charge-weighted method averaging the 10 and 50 grains standards that the ACHD now uses in its Proposed Coke Rule. Instead, it was a limit determined through negotiations. The ACHD admits this in its Brief.[4] Thus, the basis of the existing limit in Article XXI (which has been approved by the Pennsylvania Department of Environmental Protection (Pennsylvania DEP) and United States Environmental Protection Agency (US EPA) for decades), is not the coal charge-weighted method of averaging that the ACHD suggests is the only correct way to establish a limit.

As part of a project between 2008-2012, U. S. Steel removed batteries 7-9 from the Clairton Facility. This meant that the universe of batteries that would collectively be subject to the 40 grains limit at 2105.21.h.4 shrunk to include only batteries 1-3, 7-9, 13-15, 19-20, and B. U. S. Steel then installed new battery C. Because of the addition of battery C, the ACHD sought to establish a revised facility-wide limit in lieu of the 40 grains limit at 2105.21.h.4 that covered the other remaining batteries. To calculate this revised limit, the ACHD instituted a coal charge-weighted method, averaging between the 40 grains limit applicable to all other batteries, with the 10 grains limit that battery C would otherwise be individually subject to under 2105.21.h.1. ACHD Brief at 16. This is how the ACHD arrived at the 35 grains limit that currently applies to each of the batteries at the Clairton Facility.

2. ACHD is not correcting the current hydrogen sulfide standard, but rather, changing its method of calculation.

[4] See ACHD Brief at 20 (U. S. Steel concedes that the 40 grains per hundred dscf was determined through negotiations rather than strict mathematical calculation). ACHD's use of the term "concedes" necessarily implies that it agrees that the statement is fact.

There is nothing erroneous about the method of calculation of the current hydrogen sulfide standard. It was ACHD, and not U. S. Steel, who developed and performed this calculation. The current hydrogen sulfide standard is a logical incorporation of the 10 grains standard for battery C, as no modifications or other changes were occurring at the 9 remaining batteries at the Clairton Facility, which were all subject to the distinct facility-wide standard of 40 grains as codified at Section 2105.21.h.4. As explained in U. S. Steel's Petition, it reiterated this same calculation method as part of a revision to the Pennsylvania SIP for sulfur dioxide standards, and the use of such method was approved by the US Environmental Protection Agency (US EPA) and the Pennsylvania DEP. The 35 grains limit was specifically examined by US EPA, who asked how it was calculated. The ACHD reiterated its calculation method, and neither of these agencies have ever indicated that the ACHD's original method was wrong. U. S. Steel Petition at 14-15.

Simply because the ACHD wants to use a different calculation methodology (which ignores the fact that Section 2105.21.h.4 plainly establishes a separate 40 grains standard for all of Clairton's batteries except battery C) than it previously did, does not make the initial calculation wrong. The ACHD did not consider its initial calculation of the grains standard wrong when it was developed, nor did ACHD consider the calculation wrong when it included the limit in the SIP which was approved by both Pennsylvania DEP and US EPA. Furthermore, ACHD did not consider the calculation wrong when it included that limit in the U. S. Steel permits. But, after more than 10 years, the ACHD now suddenly and unilaterally declares a decade of reliance (to which U. S. Steel reasonably relied upon when investing over $500 million on battery C) on the hydrogen sulfide standard by U. S. Steel, the ACHD, the US EPA, and the public to be wrong. Although it is not a critical factor in determining whether the Proposed Coke Rule is more stringent

than the existing ACHD hydrogen sulfide standard, the ACHD has nonetheless failed to demonstrate that the current standard is an error or that correction of it is necessary.

C. The ACHD's recently adopted position that the current 35 grain hydrogen sulfide standard was erroneously calculated is not entitled to deference.

The ACHD goes so far as to argue that its interpretation of the facility-wide hydrogen sulfide standard, which it says was determined by a weighted average of the 10 and 50 grains standard applied on a battery-by-battery basis, is to be afforded deference. As discussed above, the ACHD's novel interpretation is not of any significance, because as a matter of law the Proposed Coke Rule's limit of 23 grains is more stringent than the current limit of 35 grains and must comply with the SAO's Rulemaking Criteria. The ACHD's contrary position is not entitled to deference.

The ACHD does not advance an interpretation, but rather, a position taken in anticipation of litigation. For the approximately 10 years that the current hydrogen sulfide standard has existed, the ACHD never advanced the position regarding how the standard was calculated until now. The ACHD readily admits that the current position it advances regarding how the 40 grains standard at 2105.21.h.4 was derived reflects a change from its historical positions, including those expressed in permitting review memos and in correspondence and submittals to the US EPA. See U. S. Steel Petition at 15 and ACHD Brief at n. 19. It argues that it can freely change its position whenever it provides a "reasoned justification", and deference should be given to its interpretation.

However, deference is not due when the agency shifts its position, particularly in anticipation of litigation. *Mazza v. Sec'y of Dep't of Health & Hum. Servs.*, 903 F.2d 953, 959 (3d Cir. 1990) ("Courts do not accept a revision in administrative interpretation when it 'flatly contradicts the position which the agency had enunciated at an earlier date, closer to the enactment of the governing statute"); *Dauphin County Indus. Dev. Auth. v. Pa. Public Utilities*

Commission, 123 A.3d 1124, 1135 (Pa. Commw. Ct. 2015) ("An administrative agency may revise and correct its prior interpretation of a statute. However, it cannot expect that its later interpretation is entitled to very much deference").

The ACHD contends that its position should nonetheless be granted deference because of alleged "changing circumstances" related to "recent and future decommissioning of coke batteries and the installation of battery C at the Clairton Plant." ACHD Brief at 21. But the installation of battery C and the last shutdown of a battery at the Clairton Facility was completed by 2012. Since that time, the ACHD has advanced the same calculation methodology as reflected in the current hydrogen sulfide standard on multiple occasions, most recently, in 2017 as part of an installation permit issued to U. S. Steel that was incorporated into the Pennsylvania SIP and in 2016 in a series of Title V permits issued to U. S. Steel's facilities at the Edgar Thomson Works and Irvin Works. See U. S. Steel Petition at 15. All of the "changed circumstances" that the ACHD alleges authorizes it to change its position occurred before the most recent series of calculations advanced by the ACHD in support of the current limit. Therefore, its current position is not entitled to deference.[5]

The ACHD also suggests that the method of calculation in the 1992 Consent Decree that established the original 40 grains facility-wide hydrogen sulfide limit for Clairton should be ignored because it does not "continue for perpetuity and control[] all subsequent regulatory changes made by the Department", and that the ACHD is free to depart from it in changing its interpretation of a regulation. ACHD Brief at 20. What the ACHD fails to acknowledge is that in

[5] U. S. Steel also believes that it is important to understand that U. S. Steel as well as US EPA relied on the ACHD's previous methodology and the resultant hydrogen sulfide limits. U. S. Steel's decision to construct a new battery C at the cost of hundreds of millions of dollars and to be able to comply with the applicable emission limits must be given consideration. To think that the ACHD, or any government agency, can simply change its mind at a later date to completely upset the agreed upon standards and jeopardize the ability to operate in compliance, is unconscionable.

the 1992 Consent Decree, ACHD *specifically agreed* to incorporate the 40 grains facility-wide hydrogen sulfide limit into Pennsylvania SIP (which it did in 1994), and that the Consent Decree is explicitly referenced in the Clairton facility's current Title V permit (issued some 20 years later.[6] Thus, it is not a matter of certain provisions of a Consent Decree living in perpetuity as falsely asserted by ACHD. Rather, it is a matter of the ACHD properly acknowledging how the current hydrogen sulfide limits came into being, and which were codified into its regulations that are plainly binding on it.[7] The ACHD is plainly wrong in suggesting that the current hydrogen sulfide standard was an error. Instead, it is an affirmative change in the way that the standard was calculated, which itself triggers the Rulemaking Criteria under the SAO.

What the ACHD also fails to consider is that such change in position cannot otherwise supersede the binding requirements of the SAO. The ACHD's attempt to rewrite history by ultimately does not change the fact that the current limit of 23 grains is more stringent than the current standard of 35 grains. Whatever rationalization the ACHD advances in support of the 23 grains limit, no matter how well-reasoned (and it is not in this case), such rationalization does not allow the ACHD to ignore the binding Rulemaking Criteria of the SAO before pursuing such revision. The Proposed Coke Rule is more stringent than the current Article XXI standard for hydrogen sulfide concentration, and the ACHD has failed to meet the requirements of the SAO to pursue such rulemaking. The Proposed Coke Rule violates the SAO as a matter of law.

[6] See U. S. Steel Petition, Ex. B at 16 (noting that the 40 grains standard was required to be included in an enforceable permit and/or SIP). This was to ensure that the negotiated limit of 40 grains agreed to by the ACHD would continue on as the applicable limit for COG hydrogen sulfide concentration.

[7] The ACHD again seeks to ignore a settlement agreement negotiated between U. S. Steel and the ACHD. The ACHD argues that it is entitled to change its interpretation and simply ignore its prior agreements. The ACHD should not be allowed to enter into agreements and then later, ignore them, despite the ACHD's suggestion that it is well established precedent that an agency may change its mind. We do not believe it is appropriate or lawful for the ACHD, or any agency, to blatantly ignore prior enforceable agreements to which it was a party simply because it changed its mind.

III. The ACHD has not shown that the hydrogen sulfide standard for COG is less stringent than current Pennsylvania standards, and therefore, the ACHD cannot claim that it is required under the APCA to revise the standard.

In addition to lowering the hydrogen sulfide concentration limit for COG from 35 grains to 23 grains (and further lowering this limit based on additional batteries that may be shutdown), the Proposed Coke Rule also redefines the hydrogen sulfide limit, such that U. S. Steel would need to include five additional sulfur compounds in determining compliance with the limit. The ACHD does not dispute that this change in the Proposed Coke Rule is more stringent than the current rule. It also does not dispute that it did not meet the Rulemaking Criteria under the SAO for more stringent standards. Rather, the ACHD contends that because the current hydrogen sulfide limit is supposedly less stringent than Pennsylvania hydrogen sulfide standards for COG, it is required by the APCA to revise the regulation to be no less stringent than the state standard. Accordingly, the ACHD argues that the SAO's Rulemaking Criteria are unenforceable because they may limit the ACHD's ability to revise the existing standards.

However, the ACHD does not make any credible attempt to compare the ACHD hydrogen sulfide standard to the Pennsylvania hydrogen sulfide standard. Instead, the ACHD focuses solely on the addition of other sulfur compounds to the method for determining compliance and notes that the ACHD's regulations "essentially undercount the concentration of sulfur compounds contained in coke oven gas and thus are less stringent." ACHD Brief at 11. But the ACHD ignores the fact that the Pennsylvania numerical limit is 50 grains compared to ACHD's limit of 35 grains in concluding that its current regulations are less stringent than the Pennsylvania counterpart.

Moreover, the ACHD contends, without a modicum of support, that the statewide standard's use of the term "equivalent" necessarily includes the five specific compounds other than hydrogen sulfide that it seeks to require in the Proposed Coke Rule. Nowhere in the statewide

standard is any sulfur compound other than hydrogen sulfide specifically identified with respect to the COG concentration standard. In fact, the ACHD suggests that the Proposed Coke Rule's revisions still are less stringent than the statewide standards, indicating the absurdity of its position since it would be conceding that it is knowingly violating the APCA under its theory.[8] ACHD Brief at 12.

The ACHD's only attempt to explain the numerical difference between the Pennsylvania standard and ACHD standard is to seemingly dismiss the Pennsylvania standard under its own theory of age discrimination because it is apparently too old for ACHD to consider. See ACHD Brief at n. 14 ("U.S. Steel fails to note that the 50 grains standard was adopted by the PA DEP nearly 50 years ago . . . ."). The age of a standard is not relevant to its stringency. The ACHD's futile attempt to address this issue does not go unnoticed. It comes through loud and clear that the ACHD cannot show that the current ACHD standard is less stringent than the Pennsylvania standard.

The ACHD attempts to address the stringency of the two standards by looking at a gas sample and comparing the contribution from the inclusion of the other sulfur compounds. See ACHD Brief at 10. The gas sample cited by the ACHD shows that the effective hydrogen sulfide grain contribution attributable to the five additional compounds is on the order of 10 grains. Adding this to the existing 35 grains limit established by the ACHD shows that it is still more stringent compared to the statewide standard (45 total grains vs. 50 grains). To the extent that

[8] The ACHD suggests that the statewide standard should be read such that the statewide 50 grains limit is to be based on a limitless universe of sulfur compounds, and that the Proposed Coke Rule's focus on only five of these compounds is a relaxation of this requirement. The fact that the ACHD is, under its own theory, seeking to promulgate a rule that is less stringent than a statewide standard, illustrates that it does not genuinely believe that revision of the current Article XXI standards is truly necessary to comply with the APCA.

ACHD compared the ACHD standard to the Pennsylvania standard, its own example undeniably demonstrates that the current ACHD standard is already **more stringent** than the Pennsylvania standard.

Finally, if the ACHD wanted to make its hydrogen sulfide standard equivalent (and therefore "not less stringent") to the Pennsylvania standard, it could adopt the statewide 50 grains standard and include the language about the inclusion of other sulfur compounds/equivalent hydrogen sulfide. Instead, the ACHD wants to cherry-pick the provision from the statewide regulations regarding the inclusion of other sulfur compounds, while ignoring any difference in the numerical limits.

Because ACHD is arguing that the SAO's Rulemaking Criteria can be disregarded as void based on public policy, and because it is basing this argument on the affirmative assertion that the existing hydrogen sulfide standard is less stringent than the statewide standard, it bears the burden of providing each of these points. It has failed to show any realistic analysis where the ACHD's current 35 grains standard plus other sulfur compounds would be greater than the 50 grains limit in the statewide standard. Accordingly, ACHD's argument that the SAO is unenforceable with respect to its revisions to the method of determining compliance with the hydrogen sulfide standard is meritless.

IV. The ACHD has failed to demonstrate that it cannot comply with both the SAO and the APCA with respect to pushing and miscellaneous topside emission proposed revisions.

Even if it is assumed that the Pennsylvania statewide provisions for pushing and topside emissions are more stringent than the current Article XXI standards, this does not give the ACHD carte blanche to ignore the SAO. Rather, the only way that the binding terms of the SAO can be set aside is if the ACHD demonstrates that it is impossible to comply with the terms of the SAO

and state law, simultaneously. *Dippel v. Brunozzi*, 74 A.2d 112, 115 (Pa. 1950) ("If the contract be found to have been [performed without violating the regulation], defendant must then be afforded the right to assert the claim for the alleged breach . . ."). The ACHD has made no such attempt. In fact, the ACHD goes so far as to characterize such attempt as "nonsensical". U. S. Steel believes otherwise. U. S. Steel does not think compliance with the SAO is nonsensical. Commitments made in a negotiated settlement must be enforceable. The rare exception is if the party attempting to invalidate contractual commitments meets its "heavy burden" of proving that contract requires that it violate the law. ACHD has not even attempted to prove that compliance with the SAO will require it to violate the law.

V. Conclusion

The ACHD seeks to back out of commitments it agreed to in a binding contract, while holding U. S. Steel to its commitments in that contract. A regulatory agency should not be allowed to unilaterally disregard binding obligations that it agreed to in a valid contract. The ACHD's claims that the SAO is unenforceable or not applicable with respect to its revisions to the hydrogen sulfide pushing, and topside emission standards, are baseless. Moreover, the ACHD has not even tried to satisfy the Rulemaking Criteria before asserting that it should be set aside. In essence, the ACHD is pursuing more stringent regulations without any idea as to whether they are technically feasible. The ACHD has failed to comply with the SAO and has failed to demonstrate that compliance with the SAO would put it in violation of the APCA. Accordingly, the ACHD has failed to prove that the SAO Rulemaking Criteria are unenforceable. U. S. Steel's Request for Summary Relief should be granted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was filed and served via electronic mail this 22nd day of October, 2021 upon the following persons:

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