

In the Matter of:

United States Steel Corporation
600 Grant St.
Pittsburgh, PA 15219-2800

CONSENT ORDER and AGREEMENT

This CONSENT ORDER and AGREEMENT (Agreement) is entered into this 17th day of March, 2008 by and between the Allegheny County Health Department (ACHD) and United States Steel Corporation (U. S. Steel), collectively referred to as "Parties."

The ACHD has found and determined the following:

- A. The Director of the ACHD has been delegated authority pursuant to the federal Clean Air Act, 42 U.S.C. §§ 7401 *et seq.*, and the Pennsylvania Air Pollution Control Act, 35 P.S. §§ 4001 *et seq.*, and the ACHD is a local health agency organized under Local Health Administration Law, Act 315 of August 24, 1951, P.L. 1304, as amended, 16 Pa.C.S. §12001 *et seq.*, whose powers and duties include the enforcement of laws relating to public health within Allegheny County, including the Allegheny County Health Department's Rules and Regulations, Article XXI, Air Pollution Control (Article XXI).
- B. U. S. Steel operates coke oven batteries 1, 2, 3, 7, 8, 9, 13, 14, 15, 19, and 20 (Batteries) located in Clairton, PA.
- C. U. S. Steel also operates coke ovens in B Battery (B Battery) located in Clairton, PA.
- D. U.S. Steel has been submitting monthly Continuous Opacity Monitoring (COM) reports concerning the Batteries' combustion stacks to the ACHD pursuant to ACHD Enforcement Order No. 161 dated July 23, 1990 and ACHD letter dated February 26, 2007.
- E. The COM reports indicate that between October 1, 2007 and December 31, 2007 U.S. Steel has had 713 clock hours that had at least 3 minutes of 20 percent or greater opacity and 246 clock hours that contained at least one 10 second reading of 60 percent or greater opacity.
- F. Such emissions constitute violations of Article XXI §2105.21(f) and subject U.S. Steel to civil penalty liability under Article XXI § 2109.06(a).

- G. U.S. Steel has also been submitting Semi-annual Deviation Reports concerning the Batteries' coke pushing operations pursuant to the reporting requirements of Installation Permit Nos. 0052-I005a, 0052-I006, 0052-I007, and 0052-I008.
- H. The January 21, 2008 report indicates that between July 1, 2007, and December 31, 2007, U.S. Steel has had 67 instances where pushing emissions exceeded 20 percent opacity and 1 instance where visible emissions from the transport of hot coke in the open atmosphere exceeded 10 percent opacity.
- I. Such emissions constitute violations of Article XXI §2105.21(e)(4) and (e)(5) respectively and subject U.S. Steel to civil penalty liability under Article XXI § 2109.06(a).
- J. U. S. Steel cannot certify that the emissions from the Number 3 Screening Station at the U. S. Steel Clairton facility continuously meet the particulate emission limitations required by Article XXI §2104.02(f) and Installation Permit No. 0052-I003.
- K. Emissions at the Number 3 Screening Station exceeding the standards required by Article XXI §2104.02(f) are considered violations of Article XXI §2104.02(f) and Installation Permit No. 0052-I003.
- L. U.S. Steel operates the Edgar Thomson Plant (ET Plant) located in Braddock Pennsylvania.
- M. On or about November 11, 2004 the ACHD observed visible emissions coming from ET Plant's Basic Oxygen Process (BOP) facility.
- N. Such emissions constitute violations of Article XXI §2104.01 and subject U.S. Steel to civil penalty liability under Article XXI § 2109.06(a).
- O. U. S. Steel cannot certify that emissions from the ET Plant's BOP scrubber stacks continuously meet the opacity limitations required by Article XXI §2104.01.
- P. Emissions at the BOP scrubber stacks exceeding the standards required by Article XXI §2104.01 are considered violations of Article XXI §2104.01.
- Q, U. S. Steel cannot certify that emission from the ET Plant's Ladle Metallurgical Facility (LMF) continuously meet the opacity limitations required by Article XXI §2104.01 and Permit No. 90-I-003-P.
- R. Emissions at the LMF exceeding the standards required by Article XXI §2104.01 are considered violations of Article XXI §2104.01 and Permit No. 90-I-003-P.

WHEREAS, after a full and complete negotiation of all matters set forth in this Agreement and upon mutual exchange of covenants contained herein, the Parties agree that settlement of this matter without protracted litigation is in the best interest of the Parties and the public; and

NOW, THEREFORE, without any final determination of fact or law, and intending to be legally bound hereby, the Parties hereto agree as follows:

I. JURISDICTION

Solely for the purposes of this Agreement and the underlying alleged violations, U. S. Steel waives all objections and defenses that it may have to jurisdiction or venue. U. S. Steel shall not challenge ACHD's jurisdiction to enter into or to enforce this Agreement.

II. APPLICABILITY

- a. The provisions of this Agreement shall apply to, be binding upon, and inure to the benefit of ACHD and U. S. Steel and upon their respective officers, directors, agents, contractors, employees, servants, successors, and assigns.
- b. The duties and obligations under this Agreement shall not be modified, diminished, terminated, or otherwise altered by the transfer of any legal or equitable interest in the Plants or any part thereof.
 1. In the event that U. S. Steel proposes to sell or transfer the Plants or any part thereof, U. S. Steel shall provide written notice to ACHD of such purchaser or transferee at least thirty (30) days prior to the sale or transfer. U. S. Steel shall also provide a copy of this Agreement to any person or entity U. S. Steel intends to make any such sale or transfer at least thirty (30) days prior thereto.
 2. ACHD may, upon U. S. Steel's request, agree to modify or terminate U. S. Steel's duties and obligations under this Agreement upon transfer of the Plants. U. S. Steel reserves the right to challenge any decision by ACHD in response to U. S. Steel's request under ACHD's Rules and Regulations for Hearings and Appeals, Article XI.

- c. The undersigned representative of U. S. Steel certifies that he or she is fully authorized to execute this Agreement on behalf of U. S. Steel, and to legally bind U. S. Steel to this Agreement.

III. GENERAL TERMS

- a. This Agreement addresses and is intended to resolve all outstanding issues between the Parties relating to the violations alleged in of this Agreement.
- b. The Parties do not authorize any other persons to use the findings in this Agreement in any matter or proceeding.
- c. Nothing herein is intended to limit the authority of ACHD with respect to violations that may have occurred prior to the date of this Agreement, if any, that are not intended to be the subject of resolution hereunder, or to limit the authority of ACHD to seek further enforcement of this Agreement in the event that U. S. Steel fails to successfully comply with its terms and conditions.

IV. CORRECTIVE ACTIONS

- a. **Clairton Plant - Batteries 7, 8, and 9.**
 - 1. U.S. Steel shall shut down batteries 7, 8, and 9 by December 31, 2012.
 - 2. Until batteries 7, 8, and 9 are shut down, U.S. Steel shall implement for these batteries the following:
 - i. Advanced Patching Plan outlined in Appendix A;
 - ii. Regenerator Repair Plan outlined in Appendix C; and
 - iii. Gas Gun Improvement Plan outlined in Appendix D
 - 3. If the ACHD or U.S. Steel determines that one or more of the above referenced Plans is inadequate to prevent fugitive emissions from Batteries 7, 8, and 9, the ACHD may request, or U.S. Steel may submit at its own initiative for ACHD approval, revisions to the above plans, which could include plans to rehabilitate the endflues and/or throughwalls.
- b. **Clairton Plant - Batteries 1, 2, and 3**
 - 1. U.S. Steel shall complete automation of reversing rooms by July 31, 2008.

2. U.S. Steel shall shut down batteries 1, 2, and 3 by December 31, 2014.
 3. Until batteries 1, 2, and 3 are shut down, U.S. Steel shall implement for these batteries the following:
 - i. Advanced Patching Plan outlined in Appendix A;
 - ii. Flue Nozzle Repair Plan outlined in Appendix B;
 - iii. Regenerator Repair Plan outlined in Appendix C; and
 - iv. Gas Gun Improvement Plan outlined in Appendix D.
 3. If the ACHD or U.S. Steel determines that one or more of the above referenced Plans is inadequate to prevent fugitive emissions from Batteries 1, 2, and 3, the ACHD may request, or U.S. Steel may submit at its own initiative for ACHD approval, revisions to the above plans, which could include plans to rehabilitate the endflues and/or throughwalls.
- c. **Clairton Plant - Battery 15**
1. Acknowledging that U.S. Steel has completed one round of the Enhanced Preventive Maintenance Refractory Repair Plan outlined in Appendix E on Battery 15 prior to this Agreement, U.S. Steel shall complete a second round of the Plan in Appendix E on Battery 15 by June 30, 2008 and a third round by December 31, 2008.
 2. With respect to Battery 15, U.S. Steel shall achieve compliance with the opacity standards set forth in Article XXI § 2105.21(f) by December 31, 2008.
 3. If the compliance deadline established by paragraph IV.c.2 above is missed, U. S. Steel shall incur stipulated penalties as provided by paragraph VII.c, of this Consent Order and Agreement in lieu of any penalties that would have been incurred by paragraph VII.a.
- d. **Clairton Plant - Battery 19**
1. U.S. Steel shall replace 25 heating walls on Battery 19 by October 31, 2012.
 2. With respect to Battery 19, U.S. Steel shall achieve compliance with the opacity standards set forth in Article XXI §2105.21(f) by December 31, 2012.
 3. If the compliance deadline established by paragraph IV.d.2 above is missed, U. S. Steel shall incur stipulated penalties as provided by paragraph VII.c, of this Consent Order and Agreement in lieu of any penalties that would have been incurred by paragraph VII.a.

4. Until Battery 19 achieves compliance with Article XXI §2105.21(f), U.S. Steel shall implement for Battery 19 the Advanced Patching Plan outlined in Appendix A.
5. If the ACHD or U.S. Steel determines that the Advanced Patching Plan is inadequate to prevent fugitive emissions from Battery 19, the ACHD may request, or U.S. Steel may submit at its own initiative for ACHD approval, revisions to the Advanced Patching Plan, which could include plans to rehabilitate the endflues and/or throughwalls.

e. **Clairton Plant - Battery 20**

1. U.S. Steel shall completely install WOBBE stabilizer by April 30, 2008.
2. U.S. Steel shall replace 88 heating walls on Battery 20 by October 31, 2014.
3. With respect to Battery 20, U.S. Steel shall achieve compliance with the opacity standards set forth in Article XXI §2105.21(f) by December 31, 2014.
4. If the compliance deadline established by paragraph IV.e.2 above is missed, U. S. Steel shall incur stipulated penalties as provided by paragraph VII.c, of this Consent Order and Agreement in lieu of any penalties that would have been incurred by paragraph VII.a.
5. Until Battery 20 achieves compliance with Article XXI §2105.21(f), U.S. Steel shall implement for Battery 20 the following:
 - i. Advanced Patching Plan outlined in Appendix A; and
 - ii. Revitalization Plan of Battery Heating System outlined in Appendix F.
6. If the ACHD or U.S. Steel determines that the Advanced Patching Plan or Revitalization Plan is inadequate to prevent fugitive emissions from Battery 20, the ACHD may request, or U.S. Steel may submit at its own initiative for ACHD approval, revisions to the Advanced Patching Plan or Revitalization Plan, which could include plans to rehabilitate the endflues and/or throughwalls..

f. **Clairton Plant - Number 3 Screening Station**

1. U.S. Steel shall submit an administratively and technically complete application for an installation permit for a new baghouse for the Number 3 Screening Station within twenty (20) days of the Allegheny County Chief Executive approving the U.S. Steel Number 3 Screening Station SIP Revision, ACHD SIP file # 59.

2. Within three months of issuance of an installation permit for a new baghouse for the Number 3 Screening Station, U. S. Steel shall submit a revised Compliance Plan (Schedule M) to ACHD based upon final appropriation that will include dates for beginning of on-site construction, completion of construction, shakedown period, and compliance

g. Edgar Thomson Plant - BOP

1. U.S. Steel shall retain a consultant to conduct engineering study of the mixer baghouse (Mixer Baghouse Study) and the gas cleaning system (Gas Cleaning Study) within five (5) business days of the execution of this Agreement.
2. U.S. Steel shall develop, implement, and submit to the ACHD a copy of an Enhanced Operating and Maintenance Plan for the mixer baghouse within five (5) business days of the execution of this Agreement.
3. U.S. Steel shall develop, implement, and submit to the ACHD a copy of an Enhanced Operating and Maintenance Plan for the gas cleaning system by March 31, 2008.
4. U.S. Steel shall complete and submit to the ACHD a summary of the Mixer Baghouse Study by May 31, 2008.
5. Based upon the summary of the referenced Mixer Baghouse Study, U. S. Steel shall make necessary revisions to the Plan referenced in g(2) of the section by August 31, 2008 and if upgrades to the Mixer Baghouse are necessary, U. S. Steel shall submit a revised Compliance Plan (Schedule M) to ACHD that will include dates for installation permit application submittal, date for final appropriation, beginning of on-site construction, completion of construction, shakedown period, and compliance.
6. Acknowledging that U.S. Steel began construction of an upgrade to the BOP emission capture system on April 30, 2007, U.S. Steel shall complete the upgrade by June 30, 2008.
7. U.S. Steel shall complete and submit to the ACHD a summary of the Gas Cleaning Study by August 31, 2008.
8. Based upon the summary of the referenced Gas Cleaning Study, U. S. Steel shall make necessary revisions to the Plan referenced in g(3) of the section by November 30, 2008 and if upgrades to the Gas Cleaning system are necessary, U. S. Steel shall submit a revised Compliance Plan (Schedule M) to ACHD that will include dates for

installation permit application submittal, date for final appropriation, beginning of on-site construction, completion of construction, shakedown period, and compliance.

9. U.S. Steel shall end the shakedown period of the upgrade to the BOP emission capture system by November 30, 2008.
10. U.S. Steel shall complete upgrade to the emission capture system and achieve compliance with Article XXI §2104.01 at the BOP roof monitor by December 31, 2008, as indicated by conducting performance testing and demonstrating compliance consistent with the installation permit for the modification of the existing BOP Secondary Emission Control System, ACHD permit # 0051- I004.

h. Edgar Thomson Plant – LMF

1. Acknowledging that U.S. Steel has retained an engineering consultant to evaluate the causes of LMF emissions prior to this Agreement, U.S. Steel shall submit a summary of the evaluation (LMF Study) to the ACHD within five (5) business days of the execution of this Agreement.
2. U.S. Steel shall develop, implement, and submit to the ACHD a copy of an Enhanced Operating and Maintenance Plan for the LMF by March 31, 2008.
3. U.S. Steel shall complete the design engineering for the LMF baghouse upgrade in accordance with the LMF Study by June 30, 2008.
4. U.S. Steel shall submit an administratively and technically complete application to the ACHD for the upgrade for the LMF baghouse by August 31, 2008.
5. Within three months of issuance of an installation permit for upgrades to the LMF, U.S. Steel shall submit a revised Compliance Plan (Schedule M) to ACHD based upon final appropriation that will include dates for beginning of on-site construction, completion of construction, shakedown period, and compliance.

V. REPORTING

- a. U. S. Steel shall submit a written quarterly reports (Quarterly Reports) within thirty (30) days after the close of each calendar quarter to ACHD. The first Quarterly Reports are due within thirty (30) days after the close of the first calendar quarter that begins following the

entry date of this Agreement. The Quarterly Reports shall contain, at a minimum, the following information:

1. A list of every clock hour in the calendar quarter that compliance is not achieved for Article XXI opacity limits applicable to the Batteries' combustion stacks as measured by the combustion stacks' continuous opacity monitor (COM). U.S. Steel shall indicate the date, time, root cause, and ovens that are believed to have contributed to the exceedance;
 2. For Batteries 19 and 20, a list of heating walls that have been replaced and put back into service, along with the corresponding completion and startup dates;
 3. For Batteries 19 and 20, a list of heating walls currently out of service for replacement;
 4. For Batteries 19 and 20, a list of heating walls planned to be taken out of service for replacement during the subsequent calendar quarter;
 5. Status of milestone activities completed in accordance Section IV of this Agreement;
 6. A summary of activities completed at the ET Plant to resolve the visible emissions of the BOP and LMF facilities; and
 7. A list of all items in Section IV for which U.S. Steel anticipates not meeting the compliance deadline as well as a summary for why the deadline will be missed.
- b. U.S. Steel shall submit a Semi-annual Deviation Report for all deviations from Article XXI §2105.21(e)(4) and (e)(5) for all Batteries and B Battery.
- c. The Quarterly Reports, Semi-annual Deviation Reports, and written notices required in this Section shall be mailed to the individuals in Section XII(d).

VI. CIVIL PENALTY

- a. U. S. Steel consents to the assessment of a civil penalty three-hundred-one-thousand-eight-hundred (\$301,800) dollars in full settlement of all issues and alleged violations arising under or related to those described in this Agreement, within thirty (30) days of the date of this Agreement.
- b. The ACHD has determined that the penalty amount stated above is in accordance with Article XXI, §2109.06.b, reflecting relevant factors including: the nature, severity, and

frequency of the alleged violations; the maximum amount of civil and criminal penalties authorized by law; the willfulness of such violations; the impact of such violations on the public and the environment; the actions taken by U. S. Steel to minimize such violations and to prevent future violations; and U. S. Steel's compliance history. The ACHD hereby releases and forever discharges U. S. Steel from liability for any and all issues and alleged violations arising under or related to those described in this Agreement, including, but not limited to those arising under Article XXI, U. S. Steel's Operating Permit(s), or state and federal law.

VII. STIPULATED CIVIL PENALTIES

- a. Should U. S. Steel fail to complete any of the Corrective Actions provided in Section IV of this Agreement, including those actions outline in the referenced Appendices, by the deadlines agreed to by the Parties pursuant to this Agreement, each day following a missed deadline shall be considered a violation of this Agreement. With the exception of the deadlines within the Appendices, the following Stipulated Civil Penalties shall be due and owing automatically within 30-days after the close of each quarter containing the missed deadline:

Days Delay in Completion	Daily Stipulated Penalty
1-30	\$500.00
31-90	\$1000.00
91+	\$2000.00

All Stipulated Civil Penalties described herein shall be assessed per violation, per day.

- b. For violations of missed deadlines within the Appendices of this Agreement, the following Stipulated Civil Penalties shall be due and owing within thirty days of ACHD's demand for stipulated penalties:

Days Delay in Completion	Daily Stipulated Penalty
1-30	\$500.00
31-90	\$1000.00
91+	\$2000.00

All Stipulated Civil Penalties described herein shall be assessed per violation, per day. U.S. Steel agrees to maintain current recording system associated with its programs referenced in the Appendices and make such records available to ACHD upon demand.

- c. In addition to the penalties above, U. S. Steel consents to payment of the following stipulated civil penalties for each clock hour that compliance for the Batteries' combustion stacks are not achieved for opacity limits, as determined by the combustion stack COM, as described in Article XXI 2105.21(f)(3) and 2105.21(f)(4), respectively:

Date of COM Violation.	Stipulated Penalty
Date of Execution – December 31, 2009	\$200.00
January 1, 2010 – December 31, 2012	\$300.00
January 1, 2013 – Termination of the Corresponding Corrective Action	\$500.00

The first thirty-three (33) clock hour opacity limit violations of each Battery stack in any calendar quarter shall not be subject to Stipulated Civil Penalties. For ovens with completely replaced throughwalls, said Stipulated Penalties shall be assessed beginning the eighth coking cycle following the first charge after final heating wall replacement. The Civil Penalties shall be due and owing automatically within 30-days after the close of each quarter in which the COM violation(s) occurred.

- d. In addition to the penalties above, U. S. Steel consents to the payment of a stipulated civil penalty of five-hundred (\$500) dollars for each push where compliance for the Batteries'

and B Battery's, pushing and transport emissions are not achieved for opacity limits, as described in Article XXI 2105.21(e)(4) and 2105.21(e)(5) respectively, whether observed by U.S. Steel or the ACHD. The Civil Penalties shall be due and owing automatically within 30-days after the close of each quarter in which the pushing violation(s) occurred.

- e. U.S. Steel shall submit a Stipulated Civil Penalty of fifty-thousand dollars (\$50,000) for each calendar quarter that the COM availability is less than 90%. These Stipulated Civil Penalties shall be due and owing automatically within 30-days after the close of each quarter in which the COM availability is less than 90%. The requirements for payment of stipulated penalties shall continue until termination of the corresponding Corrective Action occurs.

VIII. NON-FORCE MAJEURE DELAYS

- a. In the event that the ACHD does not issue a permit to U.S. Steel for the installation of C Battery by June 30, 2008, the date in Section IV a(1) shall be extended by one (1) day for every day that elapses between June 30, 2008 and the date of permit issuance. U.S. Steel shall notify the ACHD in writing of its desire to extend the date as authorized in this paragraph within ten (10) business days of permit issuance.
- b. In the event that the ACHD issues a permit to U.S. Steel for the installation of C Battery, but the permit is appealed in good faith by U.S. Steel or a third party within the time set forth in Allegheny County Health Department's Rules and Regulations, Article XI, or according to any other statute for which an appeal may be filed, the date in Section IVa(1) shall be extended by one (1) day for every day that elapses between the date of the appeal and the date that the appeal is resolved. The appeal will be considered resolved when it is either withdrawn or a final judgment is entered upon it by the ACHD's Hearing Officer or, if the Hearing Officer's judgment is appealed or if the appeal is pursued in another tribunal, by the presiding court. U.S. Steel shall notify the ACHD in writing of its desire to extend the date as authorized in this paragraph within ten (10) business days of the appeal's resolution.
- c. In the event that the ACHD does not issue a permit to U.S. Steel for the installation of D Battery within six (6) months of receiving the administratively complete application for D Battery, the date in Section IV b(2) shall be extended by one (1) day for every day that

elapses between the date six (6) months after receipt of the administratively complete application and the date of permit issuance. U.S. Steel shall notify the ACHD in writing of its desire to extend the date as authorized in this paragraph within ten (10) business days of permit issuance.

- d. In the event that the ACHD issues a permit to U.S. Steel for the installation of D Battery, but the permit is appealed in good faith by U.S. Steel or a third party within the time set forth in Allegheny County Health Department's Rules and Regulations, Article XI, or according to any other statute for which an appeal may be filed, the date in Section IV b(2) shall be extended by one (1) day for every day that elapses between the date of the appeal and the date that the appeal is resolved. The appeal will be considered resolved when it is either withdrawn or a final judgment is entered upon it by the ACHD's Hearing Officer or, if the Hearing Officer's judgment is appealed, or if the appeal is pursued in another tribunal, by the presiding court. U.S. Steel shall notify the ACHD in writing of its desire to extend the date as authorized in this paragraph within ten (10) business days of the appeal's resolution.
- e. Failure by U. S. Steel to comply with the notice requirements in this Section shall constitute a waiver of U. S. Steel's right to an extension.

IX. REOPENING

- a. In the event that any condition contained within Section IV of this Agreement or within the installation permits of C Battery or D Battery issued by the ACHD is modified or declared void by the ACHD's Hearing Officer or a presiding court so as to create a substantial burden on U.S. Steel to comply with the dates set forth in Sections IV, V, and VIII of this Agreement, such dates may be extended for a time as agreed to by the Parties.
- b. U.S. Steel shall notify the ACHD in writing of its desire to extend the dates in Sections IV, V, VIII as permitted in paragraph a of this Section within ten (10) business days after the condition is modified or declared void.
- c. Failure by U. S. Steel to comply with the notice requirements in paragraph b of this Section shall constitute a waiver of U. S. Steel's right to invoke the provisions of paragraph a of this Section.

- d. In the event that the Parties can not agree as to the length of extension permitted in paragraph a of this Section within ninety (90) days after the condition is modified or declared void, the ACHD shall set a date and notify U.S. Steel in writing of its position. The ACHD's position shall control unless U.S. Steel invokes the Dispute Resolution procedures outlined in Section XI of this Agreement.

X. FORCE MAJEURE

- a. For the purposes of this Agreement, "Force Majeure" as applied to U. S. Steel or to any entity or person controlled by U. S. Steel, is defined as any event arising from circumstances or causes beyond the control of U. S. Steel or any entity or person controlled by U. S. Steel, including but not limited to its officers, directors, employees, agents, representatives, contractors, subcontractors, or consultants, that may delay or prevent performance of an obligation under this Agreement, despite U.S. Steel's diligent efforts to fulfill the obligation. Such Force Majeure events must not have been potentially foreseen, mitigated or prevented through the performance of reasonable due diligence; and include, but are not limited to, events such as floods, fires, tornadoes, other natural disasters, labor disputes, and unavailability of necessary equipment beyond the reasonable control of U. S. Steel. The requirement to exercise "diligent efforts to fulfill the obligation" includes using diligent efforts to mitigate any delay caused by a potential Force Majeure event, either as it is occurring, and or following such an event, so that the delay or non-performance is minimized to the greatest extent reasonably possible.
- b. If U. S. Steel is prevented from complying with any requirement of this Agreement due to a potential Force Majeure event, U. S. Steel may claim that such an event constitutes Force Majeure, and may petition the ACHD for relief by notifying ACHD in the following manner:
 1. by telephone within seventy-two (72) hours, and by U.S. Mail or the equivalent in writing within ten (10) working days of the date U. S. Steel becomes aware, or with reasonable care should have become aware, of the potential Force Majeure event impeding performance. Written notice shall include:

- i. a description of the event and a rationale for attributing the event to Force Majeure; and
 - ii. a description of efforts that have been made to prevent, and efforts that are being made to mitigate, the effects of the event and to minimize the length of delay or non-performance; and
 - iii. an estimate of the duration of the delay or non-performance; and
 - iv. a description of and proposed timetable for implementing measures to bring U.S. Steel back into compliance with this Agreement; and
 - v. available documentation, which to the best knowledge and belief of U. S. Steel, supports its claim that the delay or non-performance was attributable to a Force Majeure event.
 2. Failure by U. S. Steel to comply with the notice requirements above shall constitute a waiver of U. S. Steel's right to invoke the provisions of this Force Majeure provision as a basis for delay or non-performance under this Agreement for the particular event.
- c. ACHD shall determine whether to grant all or part of a requested extension of time to perform obligations under this Agreement, necessary due to a delay caused by a Force Majeure event, on the basis of all documentation submitted by U. S. Steel and other information available to ACHD at the time of the determination. Any extension or excuse period granted shall not exceed the actual delay resulting from such an event. An extension of one compliance date shall not result automatically in the extension of subsequent compliance dates, unless specifically agreed by ACHD. U. S. Steel must make a separate showing of proof regarding each delayed incremental step or other requirement for which an extension is sought.
- d. If ACHD determines that a delay or nonperformance was not caused by a Force Majeure event, or if the Parties are unable to agree on a stipulated extension of time, ACHD will notify U. S. Steel in writing of its position after its receipt of U. S. Steel's written notice hereunder. ACHD's position shall control unless U. S. Steel invokes the Dispute Resolution procedures under Section XI of this Agreement. ACHD shall provide U. S. Steel with written notice of its Force Majeure determination prior to issuing an enforcement demand for the nonperformance or delay in performance of any

obligation contained in this Agreement, for which U. S. Steel has made a claim of Force Majeure.

- e. If U. S. Steel elects to invoke Dispute Resolution, it shall do so no later than ten (10) days after receipt of ACHD's notice of determination regarding a claim of Force Majeure. U. S. Steel shall have the burden of demonstrating by a preponderance of the evidence that:
 - 1. the delay or nonperformance has been caused by a Force Majeure event;
 - 2. diligent efforts were exercised to avoid and mitigate the effects of the Force Majeure event;
 - 3. U. S. Steel complied with each of the notice requirements;
 - 4. the requested period for delay or nonperformance is appropriate.
- f. If ACHD determines that U. S. Steel has carried this burden of demonstrating that a delay in performance was due to Force Majeure, the failure to meet a deadline subsequent to the delay or nonperformance at issue shall not be deemed a violation of this Agreement.

XI. DISPUTE RESOLUTION

- a. Unless otherwise expressly provided for in this Agreement, the dispute resolution procedures of this Section shall be the exclusive procedure for resolution of disputes arising between the Parties regarding matters arising included in this Agreement.
- b. If, in one Party's opinion, there is a dispute between the Parties with respect to implementation of this Agreement or the implementation of any provision of this Agreement, that Party may send a written Notice of Dispute to the other Party, outlining the nature of the dispute and requesting informal negotiations to resolve the dispute. The Parties shall make reasonable efforts to informally and in good faith resolve all disputes or differences of opinion regarding the implementation of this Agreement. Such period of informal negotiations shall not extend beyond thirty (30) days from the date when the Notice of Dispute was received unless the period is extended by written agreement of the Parties. The dispute shall be considered to have arisen when one Party receives the other Party's Notice of Dispute.
- c. In the event that the Parties cannot resolve a dispute by informal negotiations under this Section, the position advanced by ACHD shall govern, control and be binding unless,

within twenty (20) days after the conclusion of the informal negotiation period, U. S. Steel invokes the formal dispute resolution procedures of this Section by mailing to ACHD a written statement of position on the matter in dispute, including any available factual data, analysis, or opinion supporting that position, and including any supporting affidavits and/or documentation relied upon by U. S. Steel. Within twenty (20) days following receipt of U. S. Steel's statement of position submitted pursuant to this paragraph, ACHD shall issue a written statement of position (ACHD's Position) on the matter in dispute, including available factual data, analysis, opinion and/or legal arguments supporting ACHD's position along with any supporting affidavits and/or documents relied upon by ACHD.

- d. The position of ACHD shall be binding upon U. S. Steel unless U. S. Steel, within thirty (30) days of receipt of the ACHD's written statement of position, files with the Director and serves upon ACHD a petition for dispute resolution (Petition). This Petition shall set forth the matter in dispute, the efforts made by the Parties to resolve it, the relief U. S. Steel requests, and any factual data analysis, opinion, affidavits, legal argument and documentation supporting U. S. Steel's position. The Petition and ACHD's Position shall constitute the initial record for purposes of resolving the dispute. Either Party may request of the hearing officer (or Director, if there is no hearing officer assigned,) the opportunity to supplement the record with appropriate additional information, provided that such information could not reasonably have been obtained or discovered prior to filing the Petition. The hearing officer or Director shall render his or her final decision on the basis of the full record, including any supplemental materials received. The final decision of the Director or hearing officer shall be appealable by either Party to the Court of Common Pleas of Allegheny County.
- e. Judicial and administrative review of any dispute governed by this Section shall be governed by applicable provisions of law.
- f. Except as provided in Section IX, the invocation of informal or formal Dispute Resolution procedures under this Section shall not of itself extend, postpone, or affect in any way any obligation of U. S. Steel under this Agreement.
- g. Whenever service, process, or notice is required of any dispute pursuant to this Section, such service, notice or process shall be directed to the individual at the

addresses specified in paragraphs d and e of Section XII below, unless those individuals or their successors give notice in writing to the other Parties that another individual or address has been designated.

XII. GENERAL PROVISIONS

- a. In the event that U. S. Steel fails to comply with any provision of this Agreement, and the ACHD believes that such failure has created an emergency which may lead to the immediate and irreparable harm to the environment or community, ACHD may, in addition to the remedies prescribed herein, pursue any remedy available for a violation of an Order of ACHD, including an action to enforce this Agreement, or any other option available to it under the Clean Air Act, Pennsylvania Air Pollution Control Act, or the Local Health Administration Law.
- b. ACHD reserves the right to require additional measures to achieve compliance with this Agreement. U. S. Steel reserves the right to challenge any action that ACHD may take to require those measures.
- c. U. S. Steel shall be liable for any violations of this Agreement, including those caused by, contributed to, or allowed by its officers, agents, employees, or contractors.
- d. All correspondence with the ACHD concerning this Agreement shall be addressed to:

Mr. James Thompson
Section Chief, Enforcement
Allegheny County Health Department
Air Quality Division
301-39th Street
Pittsburgh, PA 15201-1891

with a copy to:
Henry Miller, III
Allegheny County Health Department
Legal Section
3333 Forbes Avenue
Pittsburgh, PA 15213

- e. All correspondence with U. S. Steel concerning this Agreement shall be addressed to:
- | | |
|---|--|
| Michael Hohman
Manager-Environmental Control
Mon Valley Works
400 State Street
Clairton, PA 15025 | Tishie Woodwell
Director-Environmental Control
600 Grant Street, Room 2068
Pittsburgh, PA 15219 |
|---|--|
- f. U. S. Steel shall notify ACHD whenever there is a change in the contact person's name, title, or address. Service of any notice or any legal process for any purpose under this Agreement, including its enforcement, may be made by mailing an original or true and correct copy by first class mail to the above addresses.
- g. The Paragraphs of this Agreement are severable, and should any part hereof be declared invalid or unenforceable, the remainder shall remain in full force and effect between the Parties.
- h. This Agreement shall constitute the entire integrated Agreement of the Parties. No prior or contemporaneous communications or prior drafts shall be relevant or admissible for the purposes of determining the meaning or intent of any provisions herein in any litigation or other proceeding.
- i. The Parties shall bear their respective attorneys fees, expenses, and other costs with regard to the prosecution or defense of this matter or any related matters arising prior to the execution of this agreement.
- j. This Agreement may be modified only by written agreement of the Parties.

XIII. EFFECTIVE AND TERMINATION DATES

- a. This Agreement shall be effective immediately.
- b. It is the intention of the parties that this Consent Order and Agreement may terminate separately by required Corrective Action as set forth below for each Corrective Action required by Section IV of this Consent Order and Agreement. For purposes of this termination paragraph, the Corrective Actions are as follows: (1) Clairton Plant Batteries 1, 2, and 3; (2) Clairton Plant Batteries 7, 8, and 9; (3) Clairton Plant Battery 15; (4) Clairton Plant Battery 19; (5) Clairton Plant Battery 20; (6) Clairton Plant Number 3 Screening Station; (6) Edgar Thomson Plant BOP Roof Monitor; (7) Edgar Thomson Plant

BOP Gas Cleaning; (8) Edgar Thomson Plant BOP Mixer Baghouse; and (9) Edgar Thomson Plant LMF. Each Corrective Action shall terminate, in whole or in part, if each of the following are met:

1. U. S. Steel has completed and complied with the provisions contained in the Consent Order and Agreement for the Corrective Action for which termination is sought;
2. U. S. Steel has paid the Civil Penalty required by Section VI;
3. U. S. Steel has paid any stipulated penalties due and owing to ACHD associated with the Corrective Action for which termination is sought;
4. U. S. Steel submits a written request to ACHD indicating that it has completed and complied with the provisions for the Corrective Action for which termination is sought; and
5. ACHD, within 60-days of receiving such a request from U. S. Steel, has not contested in writing that such compliance has been achieved. If ACHD disputes U. S. Steel's compliance with Corrective Action for which termination is sought, ACHD shall provide written notice to U. S. Steel within sixty (60) days of the date of the request and the Dispute Resolution provisions of the Consent Order and Agreement shall be invoked and the Consent Order and Agreement remain in effect for that Corrective Action for which termination is sought pending the resolution of the dispute by the parties or the Court.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives. The undersigned representative of U. S. Steel certify under penalty of law, as provided by 18 Pa.C.S. §4909 that he is authorized to execute this Agreement on behalf of U. S. Steel; that U. S. Steel consents to the entry of this Agreement as a final ORDER of ACHD; and that, except as otherwise provided herein, U. S. Steel hereby knowingly waives its rights to appeal this Agreement and to challenge its content or validity, which rights may be available under Article XI, and Pennsylvania Administrative Agency Law, 2 Pa.C.S. §103(a), or any other applicable provision of law. Signature by U. S. Steel's attorney certifies only that this Agreement has been signed after consulting with counsel.

FOR ACHD

3/17/08
Date

Bruce W. Dixon
Bruce W. Dixon, M.D.
Director

3/17/08
Date

Henry Miller, III
Henry Miller, III
Solicitor

FOR U.S. Steel

3/17/08
Date

Anthony R. Bridge
Anthony R. Bridge
Vice President – Operations, East

3/17/08
Date

David Hacker
David Hacker
Attorney – Environmental

Appendix A

Advanced Patching Plan

1. Track stack exceedances and corrective actions electronically along with the date that repairs (wet slurry patching, dry gunning, or ceramic welding or the equivalent to these techniques) were completed.
2. Repairs will be completed based on the following schedule:
 - wet slurry patching completed within 10 days of exceedance root cause identification;
 - dry gunning repair completed within 21 days of exceedance root cause identification;
 - ceramic welding repair completed within 30 days of exceedance root cause identification.

Days where the oven is taken out of service will not be counted.
3. Charts of the magnitude and duration of opacities will be used along with oven wall inspections to prioritize oven repair
4. A procedure for Identifying Ovens for Repair will be maintained in the Environmental Management System.
5. Equivalent techniques will be approved by ACHD.

Appendix B

Flue Nozzle Repair and Replacement Plan

1. Track exceedances and corrective actions electronically along with the date that repairs were completed.
2. Repairs will be completed based on the following schedule:
 - Flue cleanout will be completed within 10 days of exceedance root cause identification;
 - Flue nozzle replacement will be completed within 21 days of exceedance root cause identification.

Days where the oven is taken out of service will not be counted.
3. Flue inspections including cross wall inspections (or equivalent technique) will be performed monthly and the results maintained electronically.
4. A procedure for prioritizing repairs will be maintained in the Environmental Management System.
5. Equivalent techniques will be approved by ACHD.

Appendix C

Regenerator Repair Plan

1. When a combustion issue arises based on the review of COM data and cross wall data, the regenerators are inspected and the results are documented electronically.
2. Repairs are identified and prioritized based on a procedure to be maintained in the Environmental Management System.
3. Equivalent techniques will be approved by ACHD.

Appendix D

Gas Gun Improvement Plan

1. Cross wall data are used to identify potential gas gun issues.
2. Repairs will be completed based on the following schedule:
 - Gas gun cleanout will be completed within 10 days of exceedance root cause identification;
 - Gas gun weld will be completed within 21 days of exceedance root cause identification:
3. Repairs are documented electronically.
4. Follow-up cross wall temperatures are taken and documented electronically to track effectiveness.
5. Equivalent techniques will be approved by ACHD.

Appendix E

Enhanced Preventive Maintenance Refractory Repair Plan

1. Perform dry gunning all oven ends.
2. Perform dry gunning all standpipe interiors.
3. Perform dry gunning all charging holes.
4. Perform ceramic welding and replace standpipes where dry gunning is not sufficient.
5. Equivalent techniques will be approved by ACHD.

Appendix F

Revitalization Plan of Battery Heating System

1. COM data is used to identify potential issues.
2. Track exceedances and corrective actions electronically along with the date that repairs were completed.
3. Repairs will be completed based on the following schedule:
 - Gas riser grouting completed within 30 days of exceedance root cause identification. Days where the oven is taken out of service will not be counted.
4. Flue inspections including cross wall inspections (or equivalent technique) will be performed monthly and the results maintained electronically.
5. A procedure for prioritizing repairs will be maintained in the Environmental Management System.
6. Equivalent techniques will be approved by ACHD.