ALLEGHENY COUNTY HEALTH DEPARTMENT
ADMINISTRATIVE DECISION

UNITED STATES STEEL CORPORATION, *Appellant,* v. ALLEGHENY COUNTY HEALTH DEPARTMENT, *Appellee.*	:	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 Docket no. ACHD-21-037 Copies Sent To: *Counsel for U.S. Steel Corporation:* Michael H. Winek, Esq. Mark K. Dausch, Esq. Varun Shekhar, Esq. BABST, CALLAND, CLEMENTS & ZOMNIR, P.C. Two Gateway Center, 6th Floor Pittsburgh, PA 15222 David W. Hacker, Esq. U.S. Steel Corporation 600 Grant Street, Suite 1500 Pittsburgh, PA 15219 *Counsel for ACHD:* Jeffrey R. Bailey, Esq. 301 39th Street, Building 7 Pittsburgh, PA 15201

DECISION AND ORDER OF THE ALLEGHENY COUNTY HEALTH DEPARTMENT HEARING OFFICER

I. INTRODUCTION

In this action, United States Steel Corporation ("U.S. Steel") contends that proposed regulations issued by the Allegheny County Health Department ("ACHD" or the "Department") concerning coke oven batteries are unlawful. Specifically, U.S. Steel argues that the ACHD's proposed regulations violate a Settlement Agreement

and Order("SAO") that the parties entered into in June 2019. U.S. Steel seeks to prevent the ACHD from further pursuing these regulations. The ACHD asserts that its proposed regulations are permissible under Pennsylvania law.

After reviewing the briefs submitted by the parties, as well as the applicable statutes and regulations, this tribunal finds that the Department's actions were lawful with respect to pushing and miscellaneous topside emissions, but unlawful with respect to Coke Oven Gas.

II. ACRONYMS AND ABBREVIATIONS

As frequently happens with complex cases involving air quality standards, there are many acronyms and abbreviations involved in this case. Below is a non-exhaustive list:

ACHD: Allegheny County Health Department
APCA: Pennsylvania Air Pollution Control Act
COG: Coke Oven Gas
DSCF: Dry Standard Cubic Feet
DEP: Pennsylvania Department of Environmental Protection
EPA: United States Environmental Protection Agency
H_2S: Hydrogen Sulfide
SAO: Settlement Agreement and Order
SIP: State Implementation Plan
SO_2: Sulfur Dioxide
USS: United States Steel Corporation

III. EVIDENCE

The parties chose to submit this matter on briefs and forego a hearing. Although there was no formal evidence offered, U.S. Steel submitted a Petition for Dispute Resolution with numerous exhibits attached. This tribunal accepts those exhibits into evidence:

Ex. A: Settlement Agreement and Order ("SAO"), dated June 27, 2019
Ex. B: Federal Consent Decree
Ex. C: ACHD Installation Permit, Number 0052-I017
Ex. D: Notice of Dispute, Filed by U.S. Steel on January 20, 2021.
Ex. E: U.S. Steel Statement of Position, Filed on May 4, 2021
Ex. F: ACHD Statement of Position, Filed on May 24, 2021
Ex. G: Title V Operating Permit for U.S. Steel Mon Valley Works (Irvin Plant)
Ex. H: Major Source Operating Permit for U.S. Steel Edgar Thomson Plant
Ex. I: Summary of Public Comments and ACHD Responses Re: Proposed Title V Operating Permit for Mon Valley Works Edgar Thomson Plant
Ex. J: Comment and Response Document re: June 27, 2019 Settlement Agreement, Dated February 3, 2020
Ex. K: U.S. Steel Clairton Works Installation Permit, Number 0052-I012

IV. STATEMENT OF FACTS

1. U.S. Steel operates ten coke oven batteries at its Clairton Coke Works, located in Clairton, Allegheny County, Pennsylvania.

2. On June 27, 2019, U.S. Steel and the Department entered into the Settlement Agreement and Order ("SAO"), which was subject to a 30-day public comment period, and which was amended in February 2020 to reflect public comments that had been submitted.

3. The parties entered into the SAO to resolve four outstanding appeals of administrative/enforcement orders before this tribunal (#180601, 181002, 190305, and 190501). It requires U. S. Steel to undertake a series of "environmental improvement projects", and it minimized future penalty litigation between the parties by implementing a schedule of stipulated penalties for violations of certain standards of Article XXI of the ACHD's Rules and Regulations ("Article XXI") and the Clairton Coke Works' permit.

4. Section VII, Paragraph 12 of the SAO provides that the Department may pursue a rulemaking to impose more stringent limits on Clairton's coke oven batteries (except Battery C) "only if the more stringent limits are determined to be, inter alia, technically feasible in accordance with this Paragraph." The paragraph goes on to provide three criteria that must be fulfilled in order to pursue a rulemaking that imposes more stringent limits (collectively, the SAO's "Technical Feasibility Criteria"):

    a. Consideration of the US Environmental Protection Agency's statistical Upper Prediction Limit methodology across all batteries based on inspections between December 24, 2013 to December 23, 2018;

b. More stringent standards must be supported by a demonstrated compliance rate of not less than 99% for all regulated emissions points on the Clairton batteries over any consecutive 12-month period during a five-year period on a battery-by-battery basis; and
c. More stringent standards must be supported by a demonstration that the standard correlates with a measurable reduction in hydrogen sulfide and benzene levels at the Liberty Monitor, an ACHD-run air quality monitor located approximately 1.5 miles north of the Clairton Coke Works.

6. The Department has established standards for coke ovens and coke oven gas within Allegheny County. They include, among other things, standards that limit visible emissions from pushing operations and topsides of coke oven batteries. With respect to coke oven gas at the Clairton Coke Works, Article XXI, § 2105.21(h)(4) establishes a standard of 40 grains per hundred dscf hydrogen sulfide, as measured at the outlet of the Clairton Coke Works' desulfurization system, which treats the combined stream of coke oven gas routed to it from all batteries at Clairton Coke Works.

7. The 40 grains per hundred dscf limit was later modified in 2008 through installation permitting for Battery C at the Clairton Coke Works. As part of this permitting, the post-treatment limit for coke oven gas at the batteries was revised to 35 grains per hundred dscf. The revised 35 grains per hundred dscf standard has since been incorporated into the Allegheny County portion of the Pennsylvania State Implementation Plan ("SIP") and reflects the current hydrogen sulfide standard that U.S. Steel is required to meet.

8. The basis of the 35 grains per hundred dscf standards in these two permits is listed as 2105.21(h)(4).

9. In November 2020, the Department issued proposed amendments to Article XXI, entitled "Proposed Coke Ovens and Coke Oven Gas Regulation Revision" and "Proposed Revision to Allegheny County's portion of the Pennsylvania State Implementation Plan for the Attainment and Maintenance of the National Ambient Air Quality Standards" (collectively, the "Proposed Coke Rule," Department's Position Statement, Ex. F).

10. The Proposed Coke Rule seeks to amend Article XXI to impose more stringent limits in the following four ways:
    a. Revising current § 2105.21(h)(4) to reduce the hydrogen sulfide concentration limit in coke oven gas from 404 grains per hundred dry standard cubic foot (dscf) to either 23 grains5 per hundred dscf, or a calculated "weighted design capacity" concentration based on coke oven

batteries in operation on January 1, 2025 (and thereafter if the battery profile changes), whichever is lower;
b. Revising §§ 2105.21(h) and 2101.20 to add five compounds in addition to hydrogen sulfide, that must be counted to determine compliance with the current hydrogen sulfide limits in 2105.21(h): carbon disulfide, carbonyl sulfide, methyl mercaptan, ethyl mercaptan, and sulfur dioxide;
c. Revising §§ 2101.20 and 2105.21(e) to change the definitions of the terms "pushing", "pushing operation", and "pushing emissions" to include visible emissions that are not included in determining compliance with current pushing visible emissions standards; and
d. Adding § 2105.21(j), which would impose new prohibitions on topside emissions from the battery at any point other than allowed emissions from charging port seals, offtake piping, and soaking, none of which are currently prohibited.
(Petition for Dispute Resolution, Ex. F at pp. 3, 11-14, 16-19).

11. On January 20, 2021, U.S. Steel sent a Notice of Dispute to the Department, requesting informal negotiations to attempt to resolve the above matters in dispute, in addition to some other disputed matters, pursuant to Section XI, Paragraph 25 of the SAO. (Ex. D). The parties were able to resolve some of the disputed matters but were unable to resolve the matters included in this Petition through informal negotiations.

12. On May 4, 2021, U.S. Steel sent a Statement of Position to the ACHD invoking the formal dispute resolution procedures under Section XI, Paragraph 26 of the SAO. (Ex. E).

13. On May 24, 2021, the ACHD sent U.S. Steel its Statement of Position, which did not accept U.S. Steel's position on any of the matters in dispute. (Ex. F).

14. The Parties exhausted all dispute resolution procedures specified in Section XI, Paragraph 26 of the SAO.

V. DISCUSSION

A. Burden of Proof

A threshold issue in this case is which party bears the burden of proof. Each party in this case contends that the burden of proof is on the other. The Department argues that U.S. Steel bears the burden of proof because Article XXI provides, "In any proceeding arising out of the provisions of this Article,...or who claims that a

provision or interpretation other than the one resulting in the lowest permissible emission rate was intended to prevail pursuant to this Section shall bear the burden of proof and the burden of going forward with respect to such claim." Art. XXI, § 2101.06.f. The Department argues that because U.S. Steel is initiating this appeal in response to the Department's actions under Article XXI, U.S. Steel bears the burden of proof. (*ACHD Brief* at 3).

The Department also cites its Rules and Regulations, Article XI (Hearings and Appeals), which states that the burden of proof "shall normally rest with the party asserting the affirmative of an issue." Art. XI, § 1105(C)(7). The Department reasons that because U.S. Steel initiated its appeal in response to the Department's regulatory actions, U.S. Steel is therefore "asserting the affirmative" by claiming the Department violated the terms of the SAO." (*ACHD Brief* at 3-4).

U.S. Steel counters that the Department bears the burden of proving that the provisions of the SAO are unenforceable. (*U.S. Steel Reply Brief* at 3). U.S. Steel contends that because the Department admits that it diverged from the terms of the SAO by pursuing more stringent regulations than the SAO permits, the Department bears a heavy burden of "showing that its 'divergence'[1] is excusable by way of the otherwise binding SAO being deemed unenforceable as contrary to public policy[.]" (*U.S. Steel Reply Brief* at 3, citing *Sayles v. Allstate Ins. Co.*, 219 A.3d 1110, 1122-23 (Pa. 2019)).

[1] The Department concedes that is Proposed Coke Rule is a "divergence" from the SAO's terms. (*ACHD Brief* at 2).

This tribunal finds that U.S. Steel has the better argument here. Both parties entered into the SAO voluntarily and bindingly. The ACHD admits in its brief that it diverged from the terms of the SAO when it issued its Proposed Coke Rule. And Pennsylvania law is clear that a party bears a heavy burden when it attempts to declare an unambiguous contract provision invalid. *Generette v. Donegal Mut. Ins. Co.*, 957 A.2d 1180, 1190 (Pa. 2008); *see also Prudential Prop. & Casualty Ins. Co. v. Colbert*, 813 A.2d 747, 750 (Pa. 2002) ("Generally, courts must give plain meaning to a clear and unambiguous contract provision unless to do so would be contrary to a clearly expressed public policy."). Therefore, the ACHD bears the burden of proving its claim that the SAO's Rulemaking Criteria are superseded by state law or other public policy.

B. Public Policy Standard

U.S. Steel's core argument is that the Department has not met its burden of proving that the SAO's rulemaking criteria violate Pennsylvania law or public policy. (*See U.S Steel Request for Summary Grant of Relief* at 12). U.S. Steel argues, "Even if the [Air Pollution Control Act] required ACHD to impose more stringent limits [...], ACHD has not even attempted to do so while also complying with the SAO's rulemaking criteria. ACHD thus cannot satisfy its burden of proving that the SAO violates public policy." (*Id.* at 2).

For the Department to establish that a contract violates public policy, it must be evident that the "subject of the agreement is specifically proscribed by the statute," *Shafer v. A.I.T.S., Inc.*, 428 A.2d 152, 154 (Pa. Super. Ct. 1981), or that

compliance with the contract provision necessarily requires an unlawful act." *O'Brien v. O'Brien Steel Const. Co.*, 271 A.2d 254, 256 (Pa. 1970). Thus, to prove its case, the Department must show that Pennsylvania law requires it to impose emissions standards that diverge from the SAO or that complying with the SAO requires the Department to act unlawfully.

C. Points of Contention

U.S. Steel's central argument is that the Department "should not be allowed to unilaterally disregard binding obligations that it agreed to in a valid contract." (*U.S. Steel Reply Brief* at 14). Specifically, U.S. Steel argues that the Department imposed unlawfully strict emissions standards regarding coke oven gas, pushing and miscellaneous topside emissions. (*U.S. Steel Request for Summary Grant of Relief* at 6-12).

The Department responds that the Pennsylvania Air Pollution Control Act ("APCA") only allows the Department to enact "ordinances with respect to air pollution which will not be less stringent than the provisions of this act, the Clean Air Act or the rules and regulations promulgated under this act or the Clean Air Act." (*ACHD Brief* at 5 (citing 35 P.S. § 4012(a))). The Department reasons that if its regulations do not conform to the APCA, then going through the additional steps outlined in the SAO would be unnecessary. (*ACHD Brief at 6*).

1. Coke Oven Gas (Sections 2101.20, 2105.21.h)

At the core of this dispute between the ACHD and U.S. Steel is: What should be the relevant emissions standard for coke oven gas? The Department argues that

the relevant standard should be 23 grains per dscf. U.S. Steel contends that it should be 35 grains.

The ACHD's Position

The Department admits that it made a mistake when it originally calculated the 35 grains per dscf standard. In its brief, the ACHD concedes:

> "The Department now recognizes that it made an error when it calculated the 35 grains per dscf standard for the Battery C installation permit. The Department is proposing to correct the standard for concentration of sulfur compounds in the [COG] so that it is in conformity with the current 10 and 50 grains per 100 dscf standards in Article XXI, §§ 2105.21.h.1 and 2. (*ACHD Brief* at 17).

The Department points to Pennsylvania Air Resources regulations stating that emissions standards for coke oven gas is determined by measuring sulfur compounds "expressed as equivalent hydrogen sulfide." 25 Pa. Code § 123.23(b). According to the Department, hydrogen sulfide itself "may make up only a small percentage of total sulfur compounds in the coke oven gas that is combusted and converted to SO_2." (*ACHD Brief* at 10). The ACHD contends that a more accurate measure of the "equivalent hydrogen sulfide includes measurement of five additional compounds in COG: carbon disulfide, carbonyl sulfide, methyl mercaptan, ethyl mercaptan, and sulfur dioxide.[2] The Department reasons that the proposed revision of its COG regulations is less stringent than the Pennsylvania Air Resources regulations because it only requires the measurement of H_2S, without accounting for the five additional compounds.(*ACHD Brief* at 11).

[2] These compounds are hereinafter referred to as the "five additional compounds."

The Department asserts that it is not changing the standards for coke oven gas; it's merely changing its methods of calculating them. *(ACHD Brief* at 18-19). In its brief, the Department explains, "It is the Department's interpretation of the regulations that the facility-wide standard under Paragraph 2105.21.h.3 is to be based on the 10 and 50 grains per 100 dscf standard in Paragraphs 2105.21.h.1 and h.2." (*ACHD Brief* at 19).

In support of its position, the Department cites case law emphasizing, "When an agency interprets its own regulation, the Court, as a general rule, defers to it unless that interpretation is plainly erroneous or inconsistent with the regulation." (*Id.* (citing *Decker v. Nw. Envtl. Def. Ctr.*, 133 S. Ct. 1326, 1337 (2013) (internal citations omitted)). This new interpretation, according to the Department, is necessary given the changing circumstances of regulating U.S. Steel's facilities, namely the decommissioning of coke batteries and the installation of battery C at the Clairton Plant. (*ACHD Brief* at 21 (citing *Mazza v. Sec'y, Dep't of Health and Hum. Servs.*, 903 F.2d 953, 958-59 (3d Cir. 1990) ("But we note that agencies must be able to adapt their rules and policies to the demands of changing circumstances.") (internal citations omitted)).

In short, the ACHD's position is that it is not imposing a new standard, but rather interpreting its own regulation, and that this tribunal should defer to the ACHD's interpretation.

U.S. Steel's Position

U.S. Steel argues that the ACHD erred in imposing a 23 grains per dscf standard for coke oven gas ("COG"). Specifically, U.S. Steel asserts that the Department "has not shown that the hydrogen sulfide standard for COG is less stringent than current Pennsylvania standards," and that the Department therefore "cannot claim that it is required under the APCA to revise the standard." (*U.S. Steel Reply Brief* at 11). U.S. Steel claims that the Department is redefining the hydrogen sulfide limit, such that U.S. Steel would need to include the five additional compounds in determining compliance with the limit. U.S. Steel points out that the Departments inclusion of the five additional compounds has no textual support in any statute or state regulations pertaining to COG. (*U.S. Steel Reply Brief* at 11-12).

U.S. Steel also argues that it would be unjust for the Department to lower the emissions standard to 23 grains because U.S. Steel reasonably relied on the 35 grains standard for many years. In its brief, U.S. Steel reasons, "Even if the 35 grains per hundred dscf hydrogen sulfide limit is assumed to be erroneous, the Department's mistake cannot be used as a sword against U.S. Steel. (*Petition for Dispute Resolution* at ¶ 55). U.S. Steel asserts that this 35 grains standard created a reasonable reliance by U.S. Steel that it would be held to that standard. (*Id.*). *See also PQ Corp. v. Dept. of Envtl. Prot.*, EHB No. 2015-198-1 at *13 (November 17, 2016) (holding that equitable estoppel can bar an agency from rescinding a position that a regulated entity relied on).

Finally, U.S. Steel counters the Department's agency deference argument, contending that the Department's new proposed standard isn't a regular interpretation, but rather a position taken in advance of litigation. (*U.S. Steel Reply Brief* at 8). U.S. Steel points to case law indicating that courts do not afford deference to an agency when that agency shifts its position long after the enactment of the governing statute. *See Mazza*, 903 F.2d at 959; *see also Dauphin Cty. Indus. Dev. Auth. v. Pa. Pub. Util. Comm'n*, 123 .3d 1124, 1135 (Pa. Cmwlth. 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."). U.S. Steel then parries the Department's "changed circumstances" argument by pointing out that the events that the Department cites, such as the installation of battery C and the Title V permit process for U.S. Steel's Edgar Thomson and Irvin plants, occurred well before the Department changed its position for calculating the 23 grains limit. (*U.S. Steel Reply Brief* at 9).

This tribunal finds that U.S. Steel has the better argument here. The Department has not shown that its changing of the 35 grains standard to 23 grains is required by Pennsylvania law, such that it can sidestep the rulemaking criteria of the SAO. Absent a clear directive from state law, the Department cannot unilaterally back out of a binding contract that it agreed to. And the Department does not provide sufficient textual evidence that Pennsylvania law requires it to incorporate the five additional compounds when calculating hydrogen sulfide standards. The only state regulatory language the Department cites to justify its

inclusion of the five additional compounds is that COG standards shall be determined by measuring sulfur compounds "expressed as equivalent hydrogen sulfide." 25 Pa. Code § 123.23(b). While the Department's decision to include the five additional compounds may be well-reasoned, that does not entitle the Department to ignore the binding rulemaking criteria of the SAO before pursuing its revision.

The Department also attempts to justify its revision by pointing out that the current state standard for COG was "adopted by the PA DEP nearly 50 year ago, on October 25, 1974." (*ACHD Brief* at 11, n. 14). But as U.S. Steel astutely retorts, "The age of a standard is not relevant to its stringency." (*U.S. Steel Reply Brief* at 12).

Furthermore, this tribunal does not accept the Department's "changed circumstances" argument regarding coke oven gas. The decommissioning of coke batteries and installation of battery C, which the Department uses as its justification for unilaterally changing its COG emissions standard, all occurred many years before the Department changed its position. Thus, the Department's argument that it should now be entitled to deference based on the changed circumstances at U.S. Steel facilities does not pass muster.

Thus, this tribunal holds that the ACHD's proposed revisions concerning coke oven gas do not comply with the June 27, 2019 SAO.

2. Pushing and Miscellaneous Topside Emissions (Section 2105.21.j)

U.S. Steel also argues that the ACHD has failed to show that it cannot comply with both the SAO and the APCA regarding proposed revisions to pushing and miscellaneous topside emissions. U.S. Steel asserts, "[T]he 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." (*U.S. Steel Reply Brief* at 13-14 (citations omitted)). To this point, U.S. Steel contends that the Department has not even attempted to prove that compliance with the SAO and the APCA regarding pushing and topside emissions is not possible. (*Id.*).

In response, the Department presents a side-by-side comparison between its proposed pushing and miscellaneous topside emissions amendments to Article XXI and state regulations promulgated under the APCA:

Article XXI Proposed Amendment	**Pennsylvania Air Resources Regulations**
Section 2101.20 ("Definitions"): "Pushing emissions" means an air contaminant emitted into the outdoor atmosphere which is generated by or results from the pushing operation."	25 Pa. Code § 121.1: Pushing emissions—An air contaminant emitted into the outdoor atmosphere which is generated by or results from the pushing operation."
Section 2105.21.e: No person may permit the pushing of coke from a coke oven unless the pushing operation is enclosed during the removal of coke from a coke oven and pushing emissions are contained, except for the fugitive pushing emissions, that are allowed by Paragraphs 4 and 5 of this Subsection..."	**Section 2105.21.e:** "No person may permit the pushing of coke from a coke oven unless the pushing operation is enclosed during the removal of coke from a coke oven and pushing emissions are contained, except for the fugitive pushing emissions, that are allowed by subsections (c) and (e)."
Section 2105.21.j ("Miscellaneous Topside Emissions"):	**25 Pa. Code § 123.44(a)(6), (7):** (6) At no time may there be topside emissions from any point on the topside

1. At no time may there be topside emissions from any point on the topside other than allowed emissions from charging port seals under Subsection c, offtake piping under Subsection d and soaking under Subsection i. 2. At no time may there be visible emissions from the coke oven gas collector main.	other than allowed emissions from charging port seals under Subsection c, offtake piping under paragraphs (4) and (5). (7) At no time may there be visible emissions from the coke oven gas collector main.

This tribunal concurs with the Department here. Regarding pushing and miscellaneous topside emissions, the Department has demonstrated that its proposed amendments comport with the APCA. Indeed, the language in the proposed amendments is identical to the Pennsylvania Air Resources regulations, except for different ordinal numbering. And because both parties agree that the language in the Pennsylvania Air Resources Regulations regarding pushing and topside emissions are more stringent, the Department is required to incorporate that language, at a minimum, into Article XXI.

Unlike its proposed COG regulations, the Department's proposed amendments regarding pushing and miscellaneous topside emissions have strong statutory support. The language of the Department's proposed pushing and miscellaneous topside emissions almost precisely duplicate state standards. This is in line with the APCA's directive that ACHD regulations cannot be less stringent than Pennsylvania Air Resources regulations. 35 P.S. § 4012(a).

To prevail on public policy grounds, the Department must show that its actions are required by statutory language. *See Sayles*, 219 A.3d at 1123 (citing

Generette v. Donegal Mut. Ins. Co., 957 A.2d 1180, 1190-91 (Pa. 2008) (". [W]e are obliged to find contractual language to be contrary to public policy when it violates statutory language."). Here, the Department meets that burden because the statutory language at issue clearly requires the Department to include language that's at least as stringent as Pennsylvania Air Resources Regulations regarding pushing and miscellaneous topside emissions. *See* 35 Pa. C.S. § 4012(a).

This differs markedly from the Department's position on COG, in which the Department's only statutory justification for including the five additional compounds in its COG calculations is a provision in the Pennsylvania code stating COG standards shall be determined by measuring sulfur compounds "expressed as equivalent hydrogen sulfide." 25 Pa. Code § 123.23(b). The Department did not cite to any statutory language or other clear directive that requires it to include the five additional compounds when measuring COG. The Department's proposed amendments regarding COG therefore do not satisfy the "heavy burden" required to override the requirements of the SAO. *See Generette*, 957 A.2d at 1190.

Regarding pushing and topside emissions, however, the Department points to clear statutory support for its proposed amendments. The ACHD has proven that the relevant regulatory language permits it to enact its proposed amendments to Article XXI concerning pushing and miscellaneous topside emissions.

VI. CONCLUSION

Regarding coke oven gas, this tribunal finds that the Department failed to comply with the Rulemaking Criteria of the SAO. With respect to pushing and miscellaneous topside emissions, this tribunal finds that the Department's proposed revisions were lawful. This tribunal therefore **GRANTS** U.S. Steel's request for summary relief with respect to coke oven gas and **DENIES** U.S. Steel's request for summary relief with respect to pushing and miscellaneous topside emissions. This decision may be appealed to the Court of Common Pleas of Allegheny County, Pennsylvania.

Max Slater, Esq.
Administrative Hearing Officer
Allegheny County Health Department

Dated: December 6, 2021