

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

CINDY ROSS and CHERYL HURT, on behalf of themselves and all others similarly situated,

CIVIL DIVISION

Plaintiffs,

No. G.D. 17-008663

vs.

USX COMPANY, f/k/a and d/b/a U.S. STEEL CORPORATION,

Defendant.

2019 DEC -4 PM 3:38  
COURT OF COMMON PLEAS

**ORDER PRELIMINARILY APPROVING SETTLEMENT, CONDITIONALLY CERTIFYING CLASS FOR SETTLEMENT PURPOSES, APPROVING FORM AND MANNER OF CLASS NOTICE, AND SETTING DATE FOR SETTLEMENT FAIRNESS HEARING**

Named Plaintiffs, on behalf of themselves and the proposed Settlement Class, seek preliminary approval of the Settlement Agreement in its entirety and approval of the notice procedure, including without limitation conditional certification of the proposed Settlement Class, the proposed Class Notice (Plaintiff's Unopposed Motion for Preliminary Approval of Settlement, Exhibit 1), the proposed Claim Form (*id.*, Exhibit 2), the proposed Publication Notice (*id.*, Exhibit 3), and all of the requirements for potential Class Members to either opt-out or object.

This Court, having reviewed the pleadings in the case and the submissions of the parties with respect to preliminary approval of the proposed Settlement Agreement, and for good cause shown;

IT IS HEREBY ORDERED, this 4th day of December, 2019, that pursuant to Chapter 1700 of the Pennsylvania Rules of Civil Procedure:

2019 DEC -5 AM 9:12  
CIVIL DIVISION  
ALLEGHENY COUNTY

1. This Order incorporates by reference the definitions in the Settlement Agreement (a copy of which is attached), and all capitalized terms used in this Order will have the same meanings as set forth in the Settlement Agreement, unless otherwise defined in this Order.

2. The Settlement Agreement, together with its attached exhibits, sets forth the terms and conditions for the proposed settlement and dismissal with prejudice of the class action Litigation against Defendant (“U. S. Steel”). The Settlement Agreement was the result of extended good faith, arm’s-length negotiations by the parties, including a voluntary mediation process before retired Judge Ronald Folino, concerning the settlement of Plaintiffs’ claims against U. S. Steel and continued negotiations thereafter.

3. Pursuant to Chapter 1700 of the Pennsylvania Rules of Civil Procedure, the Settlement Agreement and the proposed settlement provided for therein are preliminarily approved as (a) fair, reasonable, and adequate in light of the relevant factual, legal, practical, and procedural considerations of the Litigation, (b) free of collusion to the detriment of putative Class Members, and (c) within the range of possible final judicial approval, subject to further consideration thereof at the Settlement Fairness Hearing as described below. Accordingly, the Settlement Agreement and the settlement are sufficient to warrant notice thereof, as set forth below, and a full hearing on the settlement.

4. If, for any reason, the Settlement Agreement is not finally approved or does not become effective, this provisional approval Order, including but not limited to the conditional Settlement Class certification, shall be null and void and automatically deemed vacated. Neither the Settlement Agreement nor anything related to the negotiation, consideration, or approval of it shall be used, referred to, proffered, or admissible for any purpose in this Litigation or any other

action or proceeding. In such event, the parties and the putative Class Members shall be returned to the same litigation position that they were in prior to seeking preliminary approval of the Settlement Agreement, and they shall be free to raise all claims, defenses, and arguments as they would have been able to had they never negotiated or sought approval of the Settlement, including opposing class certification on any and all grounds (including but not limited to Chapter 1700 of the Pennsylvania Rules of Civil Procedure). The parties must also promptly schedule a status conference to establish a new scheduling order for the continuation of the Litigation.

5. Solely for the purpose of settlement in accordance with the Settlement Agreement, and pursuant to Chapter 1700 of the PA Code, this Court hereby conditionally certifies the following class (the "Settlement Class"):

All owner/occupants and lessees of residential property contained within the area depicted on Exhibit A, who have resided within the area depicted on Exhibit A at any time between May 25, 2015 through the Effective Date, together with the persons listed on Exhibit B to the Settlement Agreement.

As set forth in the proposed Settlement Agreement, the "Effective Date" as used above means the date on which this Settlement Agreement becomes binding as to all Parties, which is the date on which any order later issued by this Court finally approving a class action settlement becomes a final, non-appealable order or judgment.

6. The form, content, and procedures of notice to the putative Settlement Class Members as set forth in the Settlement Agreement, including but not limited to the direct mailings, publication, and internet postings, are approved. The notices to be provided to the putative Settlement Class Members clearly, concisely, and in plain language advise them of,

among other things, the nature of the Litigation, the proposed Settlement Agreement, the definition of the Settlement Class, the claims the Settlement Class would release, the consideration the Settlement Class would receive, Class Counsel's intended application for attorneys' fees and expenses and monetary awards for the Named Plaintiff, putative Settlement Class Members' right to participate individually or through an attorney and object to the Settlement Agreement or any portion of it, putative Settlement Class Members' right to opt out and exclude themselves from the Settlement Agreement, and the binding nature of the Settlement Agreement if it is ultimately approved. The notices to be provided to the putative Settlement Class Members are the best notice practicable under the circumstances, and constitute due and sufficient notice of the proposed Settlement Agreement and this Order to all persons affected by and/or entitled to participate in the settlement, in full compliance with the notice requirements of Rule 23 and due process. The Court finds that, other than as provided herein, no other or further notice is reasonably necessary in this action.

7. Within fourteen (14) days of entry of this Order, (a) Class Counsel shall provide notice of the proposed Settlement Agreement and the Settlement Fairness Hearing to all Class Members by mailing to each identified putative Settlement Class Member via first class mail a copy of the Notice of Pendency of Class Action Settlement ("Class Notice"), substantially in the form as that document attached as Exhibit to Plaintiff's Unopposed Motion for Preliminary Approval of Settlement; (b) Class Counsel also shall arrange for the publication of the Publication Notice in the Pittsburgh Post-Gazette substantially in the form as that document attached as Exhibit to Plaintiff's Unopposed Motion for Preliminary Approval of Settlement; and (c) Class Counsel shall establish a website interested parties can access to get information about this Litigation and the proposed Settlement Agreement, including but not limited to copies

of the Settlement Agreement and other exhibits (which include among other exhibits the Complaint, Class Notice, Claim Form, and the proposed Final Judgment and Order) and a copy of this Preliminary Approval Order. That website shall remain accessible until the Settlement Agreement is terminated or six (6) months following the Effective Date, whichever is sooner, at which time Class Counsel shall cease hosting the website. At least seven (7) days prior to the Settlement Fairness Hearing, Class Counsel shall serve and file a sworn statement evidencing compliance with the provisions of this Order concerning the mailing of Class Notice, publishing of the Publication Notice, and hosting of a website.

8. As set forth the Settlement Agreement, costs and expenses for Administration of Settlement shall be paid by Class Counsel, to be reimbursed from the Settlement Fund subject to the Court's approval. In no event will U. S. Steel be responsible for paying costs and expenses associated with the Administration of Settlement.

9. Any putative Settlement Class Member wishing to be excluded from the Settlement Class shall mail an opt-out request to Class Counsel conforming in all respects to the terms and provisions of the Class Notice. Those who timely and properly do so shall neither participate in the settlement nor release his or her claims, and they forego (a) all of the benefits he or she might otherwise receive as a result of the settlement and (b) his or her standing to participate in the Settlement Fairness Hearing or object to the proposed Settlement Agreement or any portion of it. Failure to opt out in strict compliance with the time and manner requirements set forth in the Class Notice shall result in waiver of the right to opt out. All potential Settlement Class Members who either do not attempt to or fail to properly and timely opt out shall remain

part of the Settlement Class and, to the extent the Settlement Agreement is ultimately approved, be bound by the settlement.

10. The Class Notice shall designate Class Counsel as the entity to whom opt-out requests shall be sent. Class Counsel shall be responsible for the receipt of all responses from putative Settlement Class Members and shall preserve all opt-out requests and any and all other written communications from putative Settlement Class Members or any other person in response to the Class Notice until Administration of the Settlement is complete or pursuant to further Order of this Court. All written communications received from putative Settlement Class Members and all written responses to inquiries by them relating to the Settlement Agreement and settlement shall be available at all reasonable times for inspection and copying by counsel for U. S. Steel, subject to further Order of the Court if issues of privilege or confidentiality arise.

11. Within fourteen (14) days of the deadline for potential Settlement Class Members to opt out, Class Counsel shall provide copies of any and all opt-out notices received by it to counsel for U. S. Steel. At least seven (7) days prior to the Settlement Fairness Hearing, Class Counsel shall file with the Court a sworn statement listing all persons who properly have submitted timely requests for exclusion. The originals of all opt-out notices shall be retained by Class Counsel.

12. Any potential Settlement Class Member who does not attempt to or fails to properly and timely opt out of the Settlement Class may, but is not required to, enter an appearance either *pro se* or through counsel of said Settlement Class Member's own choosing and expense. Any Settlement Class Member who does not enter a separate appearance shall be represented by Class Counsel. Settlement Class Members who are in favor of the proposed

Settlement need not appear at the Settlement Fairness Hearing or take any other action to indicate their approval.

13. Absent further order from the Court, any Settlement Class Member who will challenge or object to the fairness, reasonableness, or adequacy of the Settlement Agreement or any portion of the settlement, including without limitation the amount of Class Counsel's requested fees and expenses or the amount of Named Plaintiff's incentive award must remain part of the Settlement Class and must mail such Settlement Class Member's written objection to Class Counsel conforming in all respects to the terms and provisions of the Class Notice. Within fourteen (14) days of the objection deadline, Class Counsel shall circulate copies of any and all such objections to counsel for U. S. Steel. Within seven (7) days of the Settlement Fairness Hearing, Class Counsel shall file all objections received with the Court. Any objecting Settlement Class Member may appear at the Settlement Fairness Hearing in person, with or without such Class Member's separate counsel. The scope of any objector's presentation of evidence or argument at the Settlement Fairness Hearing shall be limited to such objector's written objection. Any Settlement Class Member who fails to file and serve an objection in strict compliance with the deadlines and procedures, and containing the information required by the Class Notice shall be deemed to have forever waived and forfeited the right to object to the proposed Settlement Agreement or any part of the settlement or to raise or pursue an objection at

the Settlement Fairness Hearing or at any point thereafter, including in appeal or as part of a separate proceeding.

14. All other events contemplated under the Settlement Agreement to occur after this Order and before the Settlement Fairness Hearing described in this Order shall be governed by the Settlement Agreement, to the extent not inconsistent herewith.

15. All memoranda, affidavits, declarations, and other evidence in support of the request for approval of the Settlement Agreement and Class Counsel's request for approval of attorneys' fees and costs and the Named Plaintiffs' awards shall be filed on or before

1/24/20

16. A Settlement Fairness Hearing shall be held before the undersigned at 10 am on 2/24/20, in the Court of Common Pleas of Allegheny County, Courtroom 820, 414 Grant Street, Pittsburgh, Pennsylvania 15219, to consider the fairness, reasonableness, and adequacy of the proposed Settlement Agreement, the entry of any final order or judgment in the action, any application for attorneys' fees and costs, payments to the Named Plaintiff, and other related matters. The Settlement Fairness Hearing may be postponed, adjourned, or continued by further Order of this Court without further notice to the putative Settlement Class.

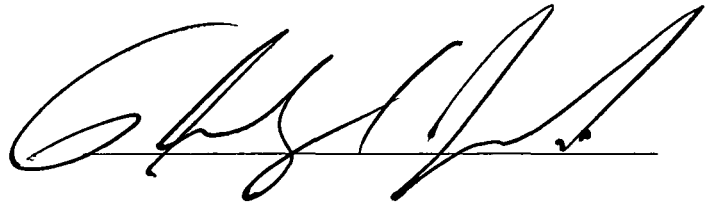
17. All proceedings in the action other than such as may be necessary to carry out the terms and conditions of the Settlement Agreement or the responsibilities related or incidental thereto are stayed and suspended until further notice of this Court. Pending final determination of the fairness, reasonableness, and adequacy of the proposed Settlement Agreement, no putative Settlement Class Member, other than those who timely and properly have opted out of the Class,



may either directly or indirectly prosecute, institute, or commence any individual or class action with respect to the subject matter of this Litigation.

18. Class Counsel is hereby appointed to coordinate and effectuate the Administration of Settlement.

SO ORDERED.

A handwritten signature in black ink, written over a horizontal line. The signature is highly stylized and cursive, appearing to consist of several large, sweeping loops and flourishes.

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

**CINDY ROSS and CHERYL HURT**  
on behalf of themselves  
and all others similarly  
situated,

CIVIL DIVISION

Case No.: **G.D. 17-008663**

Plaintiffs

vs.

**USX COMPANY, f/k/a and d/b/a**  
**U.S. STEEL CORPORATION**

Defendant

Type of Pleading:  
**PLAINTIFF'S UNOPPOSED MOTION  
FOR ORDER CONDITIONALLY  
CERTIFYING CASE AS A CLASS  
ACTION FOR SETTLEMENT  
PURPOSES, APPOINTING CLASS  
COUNSEL, APPOINTING CLASS  
REPRESENTATIVES, APPROVING  
MANNER AND CONTENT OF NOTICE  
AND PRELIMINARILY APPROVING  
CLASS ACTION SETTLEMENT**

Filed on behalf of:  
**CINDY ROSS and CHERYL HURT**  
on behalf of themselves  
and all others similarly  
situated

Plaintiff

Counsel of Record:

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Pittsburgh, PA 15219

(412) 471-1415

**FILED**  
**19 NOV 27 PM 1:57**  
**DEPT OF COURT RECORDS**  
**CIVIL FAMILY DIVISION**  
**ALLEGHENY COUNTY PA**

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IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,  
PENNSYLVANIA

CINDY ROSS and CHERYL HURT  
on behalf of themselves and all others  
similarly situated,

Case No.: G.D. 17-008663

*Plaintiffs*

vs.

USX COMPANY, f/k/a and d/b/a  
U.S. STEEL CORPORATION

*Defendant*

---

**PLAINTIFF'S UNOPPOSED MOTION FOR ORDER CONDITIONALLY  
CERTIFYING CASE AS A CLASS ACTION FOR SETTLEMENT PURPOSES,  
APPOINTING CLASS COUNSEL, APPOINTING CLASS REPRESENTATIVES,  
APPROVING MANNER AND CONTENT OF NOTICE AND PRELIMINARILY  
APPROVING CLASS ACTION SETTLEMENT**

Plaintiffs Cindy Ross and Cheryl Hurt, on behalf of themselves and all others similarly situated, respectfully move this Court for entry of an order: (1) conditionally certifying the class solely for the purpose of settlement; (2) preliminarily approving the Settlement Agreement (attached as **Exhibit 1**); (3) directing notice to the Settlement Class; (4) setting a final fairness hearing for approval of the Class Settlement; and (5) appointing settlement Class Counsel and Class Representatives. In support of this motion, Plaintiffs state as follows:

1. On June 11, 2017, Plaintiff Cindy Ross filed this case as a class action against Defendant USX Company f/k/a and d/b/a U.S. Steel Corporation, bringing claims of nuisance, negligence, and gross negligence, alleging that Defendant's ownership and operation of a facility near Plaintiff's home had caused odor impacts to her home and the homes of her neighbors.

2. On August 4, 2017, the *Ross* case was consolidated with a similar case subsequently filed by Plaintiff Hurt and a Mr. John Macus. On December 1, 2017, Plaintiffs Ross and Hurt filed

a consolidated amended complaint, wherein Mr. Macus ceased to be a named Plaintiff but remained eligible to participate in any class.

3. On January 12, 2018, Defendant filed Preliminary Objections to Plaintiffs' Consolidated Amended Complaint which were partially denied on April 6, 2018.

4. After engaging in investigation and discovery, an effort to avoid the cost, risk, and expense of further litigation, the parties began lengthy settlement discussions to determine whether a resolution of the case could be reached prior to a hearing on Plaintiffs' Motion for Class Certification. This included participation in a full day of mediation with a third-party neutral mediator, Judge Ronald W. Folino.

5. Based upon their investigation, and evaluation of the facts and law relating to the matters alleged in the action, Plaintiffs, Class Counsel and the Settlement Class have agreed to settle the Lawsuit, pursuant to the terms of the Settlement Agreement.

6. The terms of the proposed settlement are fully set forth in the Settlement Agreement and include \$2,000,000 in direct monetary relief (to be allocated pursuant to the procedures outlined in the Settlement Agreement) and \$6,500,000 worth of improvement measures at Defendant's facility, designed to reduce air emissions.

7. Parties have agreed to a settlement class consisting of the following:

all owner/occupants and lessees of residential property contained within the Class Area, who have resided within the Class Area at any time during the Class Period, together with the persons listed on Exhibit B [to the Settlement Agreement].

(Settlement Agreement, ¶ 2(f)). The Class Area is the area delineated in the Class Area Map, attached as **Exhibit A** to the Settlement Agreement. Persons listed on **Exhibit B** are those who submitted forms to Plaintiffs' counsel detailing their complaints about Defendant's emissions. The

Effective Date means the date on which this settlement becomes binding as to all parties, which shall be the date on which the Final Judgment and Order approving the settlement becomes Final.

8. As part of the Proposed Settlement Agreement, the parties have agreed to appoint Steven Liddle and Nicholas Coulson of Liddle & Dubin, P.C. and James E. DePasquale as Class Counsel and appoint Plaintiffs as the Class Representatives.

9. The proposed settlement was achieved in good faith and without any undue influence. Each side has zealously represented its interests.

10. The proposed settlement was achieved by counsel experienced in similar litigation.

11. To effectuate the Settlement, the parties request that the Court enter an Order providing for the following:

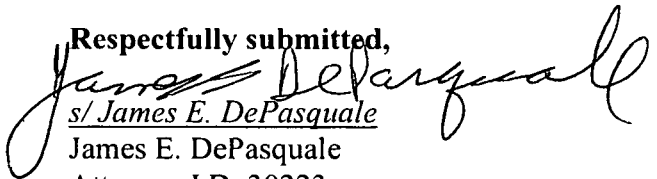
- a. Certification of this case for settlement purposes only as a class action pursuant to Rules 1702, 1708, 1709 and 1710 of the Pennsylvania Rules of Civil Procedure;
- b. Appointment of Steven Liddle, Nicholas Coulson, and James E. DePasquale as Class Counsel;
- c. Appointment of Plaintiffs as the Class Representatives;
- d. Defining of the Class as described herein;
- e. Approving of the Notice, attached as **Exhibit D to the Settlement Agreement**, under Rules 1712 and 1714 of the Pennsylvania Rules of Civil Procedure and approving the manner of notice as first class mail and publication;
- f. Approving of the Claim Form, attached as **Exhibit 2**, which will be submitted with the Notice via first class mail to the Class;
- g. Preliminarily approving the Settlement Agreement as fair, reasonable, and adequate, and scheduling a Final Fairness Hearing to hear any objections

from Plaintiff Class members and to consider final approval of the proposed settlement.

12. A proposed order is attached as **Exhibit E** to the Settlement Agreement.

WHEREFORE Plaintiffs, on behalf of themselves and the proposed Plaintiff Class, respectfully request that the Court grant this Motion for an Order Conditionally Certifying Case as a Class Action, Defining Class, Approving Manner and Content of Notice and Preliminarily Approving Class Action Settlement.

Dated: November 25, 2019

Respectfully submitted,  
  
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IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,  
PENNSYLVANIA

CINDY ROSS and CHERYL HURT  
on behalf of themselves and all others  
similarly situated,

Case No.: G.D. 17-008663

*Plaintiffs*

vs.

USX COMPANY, f/k/a and d/b/a  
U.S. STEEL CORPORATION

*Defendant*

---

**BRIEF IN SUPPORT OF PLAINTIFFS' MOTION FOR ORDER CONDITIONALLY  
CERTIFYING CASE AS A CLASS ACTION FOR SETTLEMENT PURPOSES,  
APPOINTING CLASS COUNSEL, APPOINTING CLASS REPRESENTATIVES,  
APPROVING MANNER AND CONTENT OF NOTICE AND PRELIMINARILY  
APPROVING CLASS ACTION SETTLEMENT**

**I. INTRODUCTION**

This case has been pending since June 11, 2017. Plaintiffs, on behalf of themselves and a Class of their neighbors, allege that odor emissions and air particulates from the Clairton Coke Plant have interfered with their ability to fully use and enjoy their homes. Defendant owns and operates the facility. Plaintiffs assert claims for nuisance, negligence, and gross negligence. Defendant denies each of these claims.

Before and after initiating the litigation, Plaintiffs, through Counsel, conducted an extensive investigation of the facility and the odor problem Plaintiffs allege. This includes the request and receipt of large volumes of documents from Allegheny County and the Pennsylvania Department of Environmental Protection ("PA DEP") and surveying thousands of area residents. Such information provided Plaintiffs, and their experienced counsel, a sufficient foundation to be well informed in the assessment of the likelihood of prevailing on issues of class certification, merits, and damages.



After Plaintiffs' claims survived Defendant's Preliminary Objections to Plaintiffs' Amended Complaint, the parties agreed to explore the possibility of resolution prior to any determination on a motion for class certification. On October 25, 2018, the parties participated in a full day of mediation with neutral mediator, Judge Ronald W. Folino. The negotiation process was extensive, and each side aggressively pursued its position. Mediation did not fully resolve the case, but Parties continued to negotiate. In October, 2019, Plaintiffs and Defendant came to a resolution as to the proposed terms of the Settlement Agreement. Plaintiffs now request that the Court grant preliminary approval of that Settlement Agreement so Class members may be notified and feedback received.

The Settlement Agreement provides substantial and immediate benefits for the Class and does not release claims based on Defendant's future conduct. The Settlement Agreement requires Defendant to pay \$2,000,000 into a fund for the benefit of the Class Members. After the deduction of such attorney fees, costs/expenses, and incentive awards as the Court may grant, the fund will be distributed on a *pro rata* basis to all Class Member households that timely submit approved Claim Forms. Perhaps of greater importance, the Settlement Agreement requires Defendant to implement \$6,500,000 worth of improvement measures to the Clairton Coke Plant in order to reduce air emissions. (**Exhibit 1** ("Settlement Agreement"), ¶ 7). The specific expenditures include:

Installation of mass air coolers at the Pushing Emission Control baghouses, battery machinery improvements and refractory improvements, all of which will reduce air emissions.

The Class consists of: all owner/occupants and lessees of residential property contained within the Class Area, who have resided within the Class Area at any time during the Class Period, together with the persons listed on Exhibit B [to the Settlement Agreement]. The Class Area is the area delineated in the Class Area Map, attached as **Exhibit A** to the Settlement Agreement. The Effective Date means the date on which this settlement becomes binding as to all parties, which shall be the date on which the Final Judgment and Order approving the settlement becomes Final.

The Settlement Agreement calls for notice to be provided to the Class by first class mail. (Settlement Agreement ¶ 2(p)). All documents related to the Settlement Agreement, including the Notice and Claim Form, will be available on Class Counsel's website. Along with Notices, Class Members will be provided a Claim Form for seeking compensation from the Settlement Fund and instructions for opting out of or objecting to the settlement. (**Exhibit 1**, ¶2 (p)). Class Members will have 30 days to opt out or object to the Settlement Agreement, and 45 days to file a Claim Form. (**Exhibit 1**, ¶6). Any Class Member who elects to opt out will neither be bound by the Settlement Agreement nor release any claims against Defendant.

The Court's preliminary approval of the proposed settlement will allow the parties to serve notice of the proposed settlement to the Settlement Class before seeking final approval and effectuating the Settlement. Accordingly, Plaintiff requests the Court enter the attached Order. (**Exhibit E to Exhibit 1**).

**I. THE COURT SHOULD CERTIFY THE PROPOSED SETTLEMENT CLASS**

Plaintiffs move to conditionally certify a class for settlement purposes pursuant to Rules 1702, 1708, 1709, and 1710 of the Pennsylvania Rules of Civil Procedure.

**A. The Requirements of Rule 1702 are Met**

The prerequisites for class certification under Rule 1702 are that (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; (4) the representative parties will fairly and adequately assert and protect the interests of the class under the criteria set forth in Rule 1709; and (5) a class action provides a fair and efficient method for adjudication of the controversy under the criteria set forth in Rule 1708.

**i. The Settlement Class is so Numerous that Joinder of all Members is Impracticable**

Here, there are more than 5600 households within the geographic class area, in addition to more than one hundred and fifty complainants. The number of Class members is of magnitude greater than those that normally appropriate to satisfy this prerequisite. To join the owners or tenants of each of these homes to this action would clearly pose a strong litigation hardship or inconvenience, such that joinder of all Class members is patently impracticable. Both the proposed class's size and impracticability in joinder satisfy Rule 1702 and weigh heavily in support of certification.

**ii. The Settlement Class Shares Common Questions of Law and Fact.**

Under Pennsylvania law, "questions of law or fact common to the class generally exist if the members' grievances arise out of the 'same practice or course of conduct on the part of the class opponent.'" *Schall v. Windermere Court Apts.*, 27 Pa. D. & C. 5th 471, 480 (Pa. C.P. 2013) (quoting *Liss & Marion, P.C. v. Recordex Acquisition Corp.*, 983 A.2d 652, 664 (Pa. 2009)). Essentially, commonality will be found if "proof on these issues as to one is proof as to all." *Id.* at 482 (citing *Liss*, 983 A.2d at 663).

Plaintiffs' claims, and those of the Class, arise from common questions at the heart of the case involving Defendant's alleged failure to adequately control the facility's emissions from dispersing into the surrounding area, and the impact of those emissions on Class Members' homes. This common nucleus of operative facts gives rise to functionally identical legal claims. The claims of the Plaintiffs and the other class members involve the same type of injuries and are based on the same legal theories. For these reasons, the commonality prerequisite is satisfied.

**iii. The Claims or Defenses of the Representative Parties are Typical of the Claims or Defenses of the Class.**

For similar reasons, Plaintiffs' claims are coextensive with those of the absent Class Members, such that the typicality requirement is satisfied. *In re Sheriff's Excess Proceeds Litig.*, 98 A.3d 706, 733 (Pa. Commw. Ct. 2014) ("Typicality exists if the class representative's claims arise out of the same course of conduct and involve the same legal theories as those of other members of the putative class.") (*quoting Samuel-Bassett v. Kia Motors Am., Inc.*, 34 A.3d 1, 31 (Pa. 2011)). This requirement "ensures that the legal theories of the representative and the class do not conflict, and that the interests of the absentee class members will be fairly represented." *In re Sheriff's Excess Proceeds Litig.*, 98 A.3d at 733 (*quoting Samuel-Bassett*, 34 A.3d at 31). The claims of Plaintiffs and the other Class members have a common cause and their damages are of the same type. The claims originate from the same failure of the Defendant to properly maintain, operate, and/or construct the facility. All Class members have suffered injury in fact as a result of the invasion of their properties by noxious odors and air particulates emitted by Defendant. The noxious odors and air particulates emitted by Defendant interfere with their ability to use and enjoy their homes and have impacted property values.

The claims of the class representatives in this case are the exact same claims as those advanced on behalf of the proposed class—nuisance, negligence and gross negligence. Plaintiffs, like all putative class members, allege they have been impacted by Defendant's failure to employ sufficient measures to prevent noxious odors from invading her property. Plaintiffs' claims are not only typical of, but identical to, the claims of their fellow putative class members. The typicality across the claims is plain satisfaction of the Rule 1702's typicality requirement.

#### **B. The Requirements of Rule 1709 Are Met.**

Plaintiffs have satisfied their obligations to fairly and adequately assert and protect the interests of the class under Rules 1702(4) and 1709. For this determination, the court considers:

- (1) whether the attorney for the representative parties will adequately represent the interests of the class,
- (2) whether the representative parties have a conflict of interest in the maintenance of the class action, and
- (3) whether the representative parties have or can acquire adequate financial resources to assure that the interests of the class will not be harmed.

Pa R. Civ. Pro. 1709.

**i. Class Counsel will Continue to Fairly and Adequately Protect the Class' Interests.**

“With regard to the first factor, generally, ‘until the contrary is demonstrated, courts will assume that members of the bar are skilled in their profession.’” *Dunn*, 794 A.2d at 425 (quoting *Janicik v. Prudential Ins. Co.*, 451 A.2d 451, 458 (Pa. Super. Ct. 1982)). Plaintiffs have retained the services of counsel who are experienced in complex class action litigation, and in particular class actions stemming from invasions of private property by industrial emissions. Plaintiffs’ counsel will vigorously prosecute this action and will otherwise protect and fairly and adequately represent Plaintiffs and all absent Class members. Therefore, the first factor is satisfied.

**ii. The Representative Parties do not Have a Conflict of Interest in the Maintenance of the Class Action**

“Under Rule 1709(2), conflicts are interests antagonistic to other class members.” *Grajales v. Safe Haven Quality Care, LLC*, 2012 Pa. Dist. & Cnty. Dec. LEXIS 8, at \*4 (Pa. County Ct. 2012) (citing *Samuels v. Smock*, 422 A.2d 902, 903 (Pa. Commw. Ct. 1980)). And just as with Rule 1709(1), “courts have generally presumed that there is no conflict of interest on the part of the representative parties unless the contrary is established and ‘have relied upon the adversary system and the court’s supervisory powers to expose and mitigate any conflict.’” *Dunn*, 794 A.2d at 425-26 (quoting *Janicik*, 451 A.2d at 459). Plaintiffs’ interests are coextensive with and not antagonistic to the interests of the Settlement Class because the Settlement provides the Class Members with a

*pro rata* distribution from the Settlement Fund. Therefore, the second factor is satisfied.

The named Plaintiffs in this case bring claims that are entirely typical of the claims of the absent class members. They have no conflict of interest with their neighbors. All are residents of the neighborhoods surrounding the facility seeking redress for injuries that have genuinely diminished their ability to use and enjoy their homes. Plaintiffs and their chosen counsel have prosecuted and will continue to prosecute the action vigorously on behalf of the class.

**iii. The Representative Parties Have Acquired Financial Resources to Assure that the Interests of the Class Will Not be Harmed.**

“If the attorney for the class representatives is ethically advancing costs to representatives of a generally impecunious class, the adequate financing requirement will ordinarily be met.” *Grajales*, 2012 Pa. Dist. & Cnty. Dec. LEXIS 8, at \*7 (quoting *Haft v. United States Steel Corp.*, 451 A.2d 445, 448 (Pa. Super. Ct. 1982)). Here, Class Counsel have devoted the necessary resources to prosecuting this specialized case, which falls within their niche practice area. As such, the third factor is met. Since all of the requirements of Rule 1709 are met, it is clear that Plaintiffs will fairly and adequately assert and protect the interests of the Class.

**C. The Requirements of Rule 1708 are Met.**

Under Pennsylvania Rules 1702(5) and 1708, certification is appropriate if a class action is a fair and efficient method of adjudicating the controversy. In making this determination the court considers:

- (1) whether common questions of law or fact predominate over any question affecting only individual members;
- (2) the size of the class and the difficulties likely to be encountered in the management of the action as a class action;
- (3) whether the prosecution of separate actions by or against

individual members of the class would create a risk of

(i) inconsistent or varying adjudications with respect to individual members of the class which would confront the party opposing the class with incompatible standards of conduct;

(ii) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of other members not parties to the adjudications or substantially impair or impede their ability to protect their interests;

(4) the extent and nature of any litigation already commenced by or against members of the class involving any of the same issues;

(5) whether the particular forum is appropriate for the litigation of the claims of the entire class;

(6) whether in view of the complexities of the issues or the expenses of litigation the separate claims of individual class members are insufficient in amount to support separate actions;

(7) whether it is likely that the amount which may be recovered by individual class members will be so small in relation to the expense and effort of administering the action as not to justify a class action.

Pa Civ. R. Pro. 1708.

Under Rule 1708(a)(1), “[t]he analysis of predominance . . . is closely related to that of commonality under Rule 1702(2).” *Lewis v. Bayer AG*, 66 Pa. D. & C. 4th 470, 515 (Pa. County Ct. 2004) (citing *Janicik*, 451 A.2d at 461). Thus, the court may adopt and incorporate its analysis of commonality and conclude that the requirement of predominance has been satisfied. *See id.* Here, each Settlement Class Member’s relationship with U.S. Steel Company arises from common legal and factual issues arising out of an invasion of property by emissions that is the same or substantially similar in all relevant respects. Plaintiffs therefore readily satisfies the predominance requirement because liability questions common to all Settlement Class Members substantially outweigh any possible issues that are individual to each Settlement Class Member.

The factor regarding the size of the class and the difficulties in managing the class action is also met. In *Schall*, the court found that “[t]he class is not burdensomely large” because “its

members are easily identifiable and to the extent that their damages claims are distinct, the court has at its disposal a variety of means to manage them.” 27 Pa. D. & C. 5th 471 at ¶ 49. Similarly, the Settlement Class Members here are easily identifiable through reference to objective criteria. Also, review of this factor is limited because when “[c]onfronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems . . . for the proposal is that there be no trial.” *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997) (internal citation omitted). Thus, the size-and-manageability requirement is met.

The prosecution of separate actions by individual Settlement Class Members would create a risk of inconsistent adjudications which would impair the protection of other Members’ interests. Also, the separate claims of individual Settlement Class Members are insufficient in amount to support such separate actions. *See Board v. SEPTA*, 14 Pa. D. & C. 5th 301, 316 (Pa. C.P. 2010) (“In considering the separate effect of actions, the precedential effect of a decision is to be considered as well as the parties’ circumstances and respective ability to pursue separate actions”). Here, it would be nearly impossible for the Settlement Class Members to file their own actions— the time and expense required to initiate and pursue such litigation would be enormous in comparison with the relatively small benefit to which each Settlement Class Member is entitled. And even if these thousands of suits were to be brought, there would be a “significant risk of inconsistent adjudications if tried separately,” (*see id.*) i.e. one claim might be dismissed in one court while a substantially similar claim might be upheld in another court. This would severely impair the rights of the non-litigating Settlement Class Members. Therefore, “because of the straightforward nature of the issues and facts involved, as a single certified class one case will determine liability and one verdict will establish all obligations.”



*Id.*

The Parties are not aware of any litigation already commenced by Settlement Class Members involving any of the same issues. Moreover, venue in the Allegheny County Court of Common Pleas is proper under the Pennsylvania Rules of Civil Procedure for litigation of the claims of the entire Settlement Class. Therefore, these two factors are met.

The Settlement Fund is \$2,000,000. The Settlement Class Members are easily identified and notified of their *pro rata* share of the Settlement Fund. *See* Pa. R. Civ. P. 1708(a)(7); *see also Haft*, 451 A.2d at 450 (holding that “the amounts which may be recovered by the individual class members will be large enough in relation to the expenses and effort of administering the action as to justify a class action” where “potential individual recoveries will be more than de minimis”) Finally, Environmental Improvement Projects at the Facility will be implemented within one year of the Effective Date. Such Environmental Improvement Projects will reduce air emissions and are expected to cost approximately \$6,500,000. Therefore, a class action is justified.

Since all of the requirements of Rule 1708 are met, it is clear that a class action is a fair and efficient method of adjudicating this controversy. For these reasons and the reasons listed above, the Court should certify the Settlement Class.

## **II. THE SETTLEMENT AGREEMENT SHOULD BE PRELIMINARILY APPROVED.**

“Settlements are favored in class action lawsuits.” *Dauphin Deposit Bank & Trust Co. v. Hess*, 727 A.2d 1076, 1078 (Pa. 1999). Approval of class action settlements includes two stages, preliminary and final approval. At the preliminary approval stage, it is the Court’s role to determine whether the proposed settlement is “within the range of possible approval.” *Brophy v. Phila. Gas Works*, 921 A.2d 80, 88 (Pa. Commw. Ct. 2007). Before the Court grants preliminary approval of a proposed class action settlement, it must determine whether the

settlement is “within the range of possible approval.” *Brophy v. Phila. Gas Works*, 921 A.2d 80, 88 (Pa. Commw. Ct. 2007). Settlement negotiations that involve arm’s length, informed bargaining with the aid of experienced counsel support a preliminary finding of fairness. See MANUAL FOR COMPLEX LITIGATION (Third) § 30.42 at 240 (1995) (“[A] presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arms’ length negotiations between experienced, capable counsel after meaningful discovery”) (citation omitted).

The Pennsylvania Supreme Court has held that the following seven factors should be considered when evaluating whether to grant *final* approval of a proposed class action settlement:

(1) the risks of establishing liability and damages, (2) the range of reasonableness of the settlement in light of the best possible recovery, (3) the range of reasonableness of the settlement in light of all the attendant risks of litigation, (4) the complexity, expense and likely duration of the litigation, (5) the stage of the proceedings and the amount of discovery completed, (6) the recommendations of competent counsel, and (7) the reaction of the class to the settlement.

*Buchanan*, 393 A.2d at 709, accord *Shaev v. Sidhu*, Nov. Term 2005, No. 0983, 2009 Phila. Ct. Com. Pl. LEXIS 63, at \*22-23 (Pa. C.P. 2009). “In considering these factors, there is no exact calculus or formula for the court to use: ‘[i]n effect the court should conclude that the settlement secures an adequate advantage for the class in return for the surrender of litigation rights.’” *Milkman*, 61 Pa. D. & C. 4th at 532 (quoting *Buchanan*, 393 A.2d at 709). A preliminary evaluation of these factors shows that the Settlement falls within the range of reasonableness and should be preliminarily approved.

**A. The Risks of Establishing Liability and Damages Favor the Settlement, and the Settlement is Within the Range of Reasonableness in Light of All the Attendant Risks of Litigation.**

Plaintiffs and their counsel believe that they and the class have an excellent case that is reflected in the agreed upon resolution. The Settlement Agreement provides for \$2,00,000 in direct monetary relief and \$6,500,000 in improvement measures. This is an excellent result for the Class in terms of both direct economic benefit and nonmonetary relief that is comparable, and in most cases exceeds, results obtained in similar litigation. Litigation of an air pollution class action is inherently costly and time consuming given the involvement of highly specialized experts and the necessity for extensive documentary and testimonial evidence. The class certification stage alone typically lasts a period of years and involves costs, particularly for expert costs, that typically range from high five to low six figures. Litigating beyond the class certification stage would necessarily involve additional voluminous discovery and likely hundreds of thousands of dollars worth of additional expert testimony and could proceed for several years through trial and possibly appeal(s).

The Settlement achieves substantial benefits for the class without expending additional resources and causing further delay. Now the Class will obtain immediate relief, as opposed to waiting years for an uncertain outcome which would in any event be diminished by the costs of protracted litigation. This is a particularly important consideration where the relief is not merely monetary, but also consists of real improvements that will boost Class Members' quality of life. The Settlement is well within the range of reasonableness in light of all the attendant risks of litigation. *See* William B. Rubenstein, Alba Conte, and Herbert B. Newberg, *Newberg on Class Actions* § 11:50 at 155 (4th ed. 2002) ("In most situations, unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results"); *Ashley v. Atl. Richfield Co.*, 794 F.2d 128, 134 n.9 (3d Cir. Pa. 1986)

(“Physical, psychological and monetary benefits inure to both sides of a settlement agreement. Indeed, the avoidance of litigation expense and delay is precisely what settlement contemplates”).

**B. The Complexity, Expense and Likely Duration of the Litigation Favor Settlement.**

Where, as here, Class Counsel and U.S. Steel Company have reached a settlement regarding “a vigorously disputed matter, the Court need not inquire as to whether the best possible recovery has been achieved but whether, in view of the stage of the proceedings, complexity, expense and likely duration of further litigation, as well as the risks of litigation, the settlement is reasonable.” *Wilson v. State Farm Mut. Auto. Ins. Co.*, 517 A.2d 944, 948 (Pa. 1986) (internal quotation omitted); *see also Gregg v. Independence Blue Cross*, Dec. Term 200, No. 3482, 2004 WL 869063, at \*40 (Pa. C.P. April 22, 2004) (holding that “[t]he complex nature, the high expense and the likelihood of years’ passing without final resolution weigh in favor of settlement”).

This case presents complexities not at issue in other cases. Establishing liability and damages at trial would require extensive expert testimony. The years the Parties have already spent litigating this case would likely expand to several more years before there is a final resolution. Thus, the proposed Settlement is the best vehicle for Settlement Class Members to receive relief in a prompt and efficient manner.

**C. The Stage of the Proceedings and the Amount of Discovery Completed Favor the Settlement.**

Class Counsel’s extensive experience in similar facility emissions cases allowed them to quickly and efficiently seek the essential information needed to evaluate the strengths and weaknesses of the claims in the case. This information ensured that Plaintiffs and their counsel had the information necessary to adequately evaluate the merits of the case and weigh the benefits of settlement against further litigation. Therefore, it is “particularly appropriate to settle[]” because

there has been “sufficient discovery to put parties on firm notice of strengths and weaknesses of case,” *See Klingensmith*, 2007 WL 3118505, at \*4.

#### **D. The Recommendations of Competent Counsel Favor Settlement.**

“The court must [] consider the recommendations of competent counsel in evaluating the reasonableness of the settlement, and those recommendations are given substantial weight.” *Gregg*, 2004 WL 869063, at \*41 (*citing Milkman*, 61 Pa. D. & C. 4th at 545). The particular weight attributed to the counsel’s recommendation depends on factors such as competence, the length of involvement in the case, experience in the particular type of litigation, and amount of discovery completed. *Austin v. Pa. Dep’t of Corrs.*, 876 F. Supp. 1437, 1472 (E.D. Pa. 1995). “Usually, however, an evaluation of all the criteria leads courts to conclude that the recommendation of counsel is entitled to great weight following ‘arm’s length negotiations’ by counsel who have ‘the experience and ability . . . necessary [for] effective representation of the class’s interests.’” *Id.* (*quoting Weinberger v. Kendrick*, 698 F.2d 61, 74 (2d Cir. 1982)).

Class Counsel and Plaintiffs strongly endorse this Settlement. The Parties have been litigating this case for two years, and as stated above, Class Counsel are competent and experienced in class action litigation (particularly in similar facility emissions cases), the Parties have completed adequate discovery and the Settlement is a result of arm’s length negotiations. Therefore, Class Counsel’s recommendations in favor of the Settlement should be afforded great weight.

### **III. THE NOTICE PLAN SHOULD BE APPROVED.**

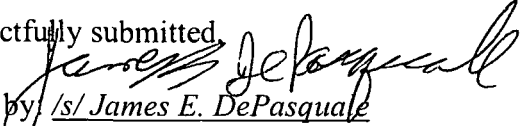
Rule 1714(c) of the Pennsylvania Rules of Civil Procedure requires that “[i]f an action has been certified as a class action, notice of the proposed . . . settlement . . . shall be given to all members of the class in such manner as the court may direct.” For class members who can be

identified with reasonable effort, “[t]he court may require individual notice to be given by personal service or by mail.” Pa. R. Civ. P. 1712(b). The Settlement Agreement calls for notice to be sent via first class mail to all reasonably obtainable addresses within the Class Area boundary, in the form attached to the Settlement Agreement as **Exhibit D**. This notice will be supplemented by publication in the Pittsburgh Post-Gazette. The Notice, along with copies of the Settlement Agreement, and Claim Form shall be posted by Class Counsel on its website.

The Notice clearly states that it contains only a summary of the Settlement Agreement and detail how Class members can obtain additional information regarding the Settlement Agreement. The Notice also refers interested individuals to Plaintiffs’ counsel’s website, where they may access the First Amended Complaint, Claim Form, and Settlement Agreement should they seek further information. All Class Members will have 30 days from the date the Notice is sent to opt out of or object to the Settlement Agreement from date the notice is mailed. To be eligible to participate and receive a distribution from the Settlement Amount, a Class member must submit a completed Claim Form to Plaintiffs’ Counsel within 45 days of the Notice being mailed.

#### IV. CONCLUSION

Plaintiffs request that this Honorable Court enter an order preliminarily approving the Settlement Agreement, certifying the Class for settlement purposes, appointing Plaintiffs as the Class Representatives and their counsel as Class Counsel, ordering Notice to be provided to the Class members as outlined in the Settlement Agreement, and setting a date for the final fairness hearing, substantially in the form attached to the Settlement Agreement as **Exhibit E**.

Respectfully submitted,  
  
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*Attorneys for Plaintiffs*

Dated: November 25, 2019

# U.S. STEEL CLAIRTON WORKS LAWSUIT CLAIM FORM

## CLASS ACTION SETTLEMENT

### GENERAL INSTRUCTIONS

- 1. THIS CLAIM FORM MUST: (a) BE POSTMARKED BY \_\_\_\_\_, (b) BE FULLY COMPLETED, (c) ATTACH ALL REQUIRED DOCUMENTATION, (d) BE SIGNED BY YOU, AND (e) MEET ALL REQUIREMENTS OF THE SETTLEMENT AGREEMENT.**
2. In order to claim compensation from the settlement and to receive a payment from the Settlement Fund, a Settlement Class Member such as yourself must complete and return this Claim Form along with the requested documentation to Class Counsel: Liddle & Dubin, P.C., 975 E. Jefferson Ave., Detroit, MI 48207. If you fail to properly complete and timely return this Claim Form, your claim may be rejected, and you may be precluded from receiving any payment from the Settlement Fund, but you will still be bound by the Settlement Agreement if the Court approves it.
3. This Claim Form is directed to all Settlement Class Members as defined in the attached Notice of Pendency of Class Action Settlement (the "Class Notice").
4. IF YOU ARE NOT A SETTLEMENT CLASS MEMBER OR IF YOU, OR SOMEONE ACTING ON YOUR BEHALF, FILED A REQUEST FOR EXCLUSION FROM THE SETTLEMENT CLASS, DO NOT SUBMIT A CLAIM FORM. YOU MAY NOT, DIRECTLY OR INDIRECTLY, PARTICIPATE IN THE SETTLEMENT IF YOU ARE NOT A SETTLEMENT CLASS MEMBER. THUS, IF YOU FILE A VALID REQUEST FOR EXCLUSION IN A TIMELY MANNER, ANY CLAIM FORM THAT YOU SUBMIT, OR THAT MAY BE SUBMITTED ON YOUR BEHALF, WILL NOT BE ACCEPTED.
5. It is important that you completely read the Class Notice that accompanies this Claim Form and the Settlement Agreement. The Class Notice and Settlement Agreement contain the definitions of many of the defined terms (which are indicated by initial capital letters) used in this Claim Form. By signing and submitting this Claim Form, you will be certifying that you have read the Class Notice and Settlement Agreement, including the terms of the releases made by you and the other Settlement Class Members. Your Claim Form may be rejected if you do not check the box that says you have read the Class Notice and Settlement Agreement.
6. Submission of this Claim Form does not guarantee that you will get a share of the Settlement Fund. If the Court does not approve the proposed settlement, there will be no Settlement Fund or distribution from it. If the Court does approve the settlement, the distribution of the Settlement Fund will be governed by the claim procedures set forth in the Settlement Agreement or such other plan of allocation as the Court may approve.
7. You are required to submit copies of genuine and sufficient documentation in response to the requests contained in this Claim Form. IF SUCH DOCUMENTS ARE NOT IN YOUR POSSESSION, PLEASE OBTAIN COPIES OR EQUIVALENT DOCUMENTS TO RESPOND TO THESE REQUESTS. THE LACK OF DOCUMENTATION MAY RESULT IN REJECTION OF YOUR CLAIM. DO NOT SEND ORIGINAL DOCUMENTS. KEEP A COPY OF ALL DOCUMENTS THAT YOU SEND TO CLASS COUNSEL. Any documents you submit with your Claim Form will not be returned.
8. If you or anyone in your household timely and properly completes and submits this Claim Form and it is approved by Class Counsel, a check will be sent to your household for your payment from the Settlement Fund in approximately thirty (30) days after the Court's approval of the settlement becomes final. You will have one hundred and twenty (120) days from the date of the check to cash it. Any uncashed



checks after 120 days will become null and void and you or any other Settlement Class Member who fails to timely cash such a check will forever forfeit any claim to receiving any payment from the Settlement Fund.

9. Type or print legibly in blue or black ink.

### Claimant's Identity

_____ Your Full Name (please print)	_____ Your Spouse's Full Name (please print)
_____ Current Mailing Street Address	_____ Email Address
_____ City, State Zip	(      ) Daytime telephone number

### Eligibility

I own(ed) and occupied or rent(ed) a residential property within the Class Area at some point in time from May 25, 2015 to the present.  Yes  No

I submitted an information sheet to Class Counsel before October 25, 2018.  Yes  No

### Claimed Address

1. Is your claimed address the same as your current address, above?  Yes  No

2. If no, please provide your claimed address within the Class Area:

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City, State Zip

### Proof of Identification

You must attach to your Claim Form a copy of a government-issued photo identification to establish your identity and current address. Please mark the box that identifies the requested enclosed item:

Driver's License

State Identification Card

Other government-issued photo identification sufficient to prove your identity

### Claimed Address Status

If you own(ed) or rent(ed) a residential property within the Class Area, mark the box that describes your interest in that property and attach the requested documents to your Claim Form.

Owner/occupant - If marked, you *must* attach a copy of the deed or other documentation of ownership. If your current address as reflected on the proof of identification you provided does not match this address, please attach a utility bill or other proof that you resided at the property within the Class Area.

Tenant - If marked, you *must* attach a copy of either a valid lease or rental agreement.

Date you first owned or rented the property at this address \_\_\_\_\_

Do you currently own or rent property at this address?  Yes  No

If you answered no to the prior question, date you last owned or rented property at this address \_\_\_\_\_

**Claimant's Certification**

By submitting this Claim Form, I declare under penalty of perjury that:


I have read the Notice of Pendency of Class Action Settlement (the "Class Notice") accompanying this Claim Form and understand the referenced Settlement Agreement, which I have had the opportunity to review.

\_\_\_\_\_  
Your signature

Date: \_\_\_\_\_

\_\_\_\_\_  
Your Spouse's signature

Date: \_\_\_\_\_

Your fully completed Claim Form must be postmarked no later than   
to Class Counsel at the following address:

**Liddle & Dubin, P.C.**  
**Attn: U.S. Steel Clairton Works Claim Forms**  
**975 E. Jefferson Ave.**  
**Detroit MI 48207-3101**

## NOTICE OF PENDENCY OF CLASS ACTION SETTLEMENT

If you owned and occupied, or rented residential property located within the Class Area (see map herein) at any time since May 25, 2015, or submitted an information sheet to Class Counsel before October 25, 2018, you may be a Settlement Class Member.

**Please read this Notice carefully, as it affects your legal rights.**

(A Court authorized this notice. This is not a solicitation from a lawyer.)

- A proposed settlement has been reached with the owner and operator of the Clairton Coke Plant (United States Steel Corporation, or "U. S. Steel") to resolve claims brought by named plaintiffs Cindy Ross and Cheryl Hurt ("Named Plaintiffs") on behalf of a proposed class relating to the alleged emission of pollutants, air contaminants, and noxious odors from the plant. The proposed settlement has been memorialized in a written agreement between the parties (the "Settlement Agreement").
- If approved by the Court, the Settlement Agreement requires the Settlement Class Members to release the claims concerning the emissions and it requires U. S. Steel to pay \$2,000,000 into a fund (the "Settlement Fund") for the benefit and advantage of the Settlement Class Members, meaning all who participate in and are bound by the proposed settlement, as further defined by the Settlement Agreement. The Settlement Agreement also requires U. S. Steel to spend \$6,500,000 within one year on various environmental improvement measures to help minimize the impact of airborne emissions from the plant.
- This Class Notice explains the proposed settlement, your rights, the available benefits, and how to get them. As a potential Settlement Class Member, you have various options that you may exercise before the Court decides whether to approve the proposed settlement. Unless you properly exclude yourself and opt out of the proposed settlement, you will be bound by its terms if it is approved by the Court.
- The Court in charge of this case still has to decide whether to approve the proposed settlement.
- Your legal rights are affected whether you act or do not act. Please read this Notice carefully.

<b>Your Legal Rights and Options in this Proposed Settlement</b>	
<b>EXCLUDE YOURSELF OR "OPT OUT"</b>	If you exclude yourself and opt out of the proposed settlement, you will <b>no longer</b> be a Settlement Class Member, Class Counsel will not be representing you, your claims will not be released, and you will be responsible for pursuing or not pursuing your individual claims. You will not be eligible to receive any payment from the proposed Settlement Fund, and you will have no standing or ability to object to the proposed settlement. There are statutes of limitations that may bar your individual claims. To exclude yourself and opt out of the proposed settlement, you must strictly follow the procedures outlined below and submit your request no later than _____ or you will remain part of the Settlement Class and bound by the orders of the Court.
<b>OBJECT</b>	If there is something about the proposed settlement that you do not like and think is legally inappropriate, you may remain part of the Settlement Class and object to all or part of the proposed settlement. You may do so on your own or through a lawyer that you hire to assist you. If you object, you may also submit a claim for payment from the Settlement Fund as you will be part of the Settlement Class. To object to the proposed settlement, you must strictly follow the procedures outlined below and submit your written objection no later than _____ or you will waive your right to object. If you do properly and timely object, you will be part of the Settlement Class and bound by the Court's decisions like every other Settlement Class Member who does not opt out or exclude themselves.

<p><b>MAKE A CLAIM FOR PAYMENT</b></p>	<p>If you want to participate in the proposed settlement and receive a payment from the Settlement Fund, you must complete the attached Claim Form and submit it with the required information to Class Counsel no later than _____. If you do not do so, you will waive your right to any payment from the Settlement Fund. Whether you timely submit a properly completed Claim Form or not, if the Court approves the settlement, you will be part of the Settlement Class and be bound by the terms of the Settlement Agreement, including releasing U. S. Steel from all claims as defined in the Settlement Agreement. After the deduction of expenses, costs, attorneys' fees for Class Counsel and incentive awards for Named Plaintiffs, all Settlement Class Member Households that submit approved Claim Forms will receive a check for an equal prorated share of the Settlement Fund, except that the share for a particular home may be divided if subject to multiple claims. All checks must be cashed within 120 days of the date on the check or you will forfeit your right to receive any payment from the Settlement Fund.</p>
<p><b>DO NOTHING</b></p>	<p>You do not have to do anything to participate in the proposed settlement. However, if you do not do anything and the Court ultimately approves the proposed settlement, you will waive your right to object to any portion of the proposed settlement, you will be bound by the terms of the Settlement Agreement, and will have released U. S. Steel from any and all claims as defined in the Settlement Agreement. You will not obtain any payment from the Settlement Fund, but you still will benefit from the other measures that U. S. Steel will take as part of the proposed settlement to control the emissions.</p>

1. **WHAT IS THIS NOTICE ABOUT?** This Class Notice, given by Order of the Honorable Judge Phillip A. Ignelzi, is to inform you of the proposed settlement of a class action lawsuit against United States Steel Corporation, pending in the Court of Common Pleas of Allegheny County, Pennsylvania. It summarizes your rights as set forth in the Settlement Agreement.
2. **WHAT IS THE LAWSUIT ABOUT?** The lawsuit (*Ross v. USX Company, f/k/a and d/b/a as U.S. Steel Corporation* Allegheny County, Pennsylvania Case No: G.D. 17-008663) was filed in 2017, and concerns the alleged airborne emission of pollutants, air contaminants, and noxious odors from the Clairton Coke Plant. The lawsuit alleges that at least certain emissions in the area surrounding the Clairton Coke Plant occurred because of U. S. Steel's conduct. The Named Plaintiffs who filed the lawsuit allege that these emissions have interfered with their ability to use and enjoy their homes. U. S. Steel has vigorously denied and continues to deny all claims of wrongdoing or liability arising out of the allegations and claims asserted in the lawsuit.
3. **WHY IS THE CLASS ACTION BEING SETTLED?** The Court did not decide in favor of the Named Plaintiffs or U. S. Steel. Instead, all sides agreed to settle the claims asserted in the lawsuit to avoid the cost and risk of trial. The proposed settlement does not mean that any law was broken or that U. S. Steel did anything wrong. U. S. Steel denies all legal claims in this case. The Named Plaintiffs and their attorneys, the Class Counsel, believe that the proposed settlement is in the best interest of all Settlement Class Members.
4. **HOW DO I KNOW IF I'M PART OF THE PROPOSED SETTLEMENT?** The Court has decided that the Settlement Class will include all owner/occupants and renters of residential property within the Class Area at any point in time from May 25, 2015 to the present (the "Class Period"), together with certain additional persons who submitted information sheets to Class Counsel before October 25, 2018. If the Court approves the settlement, the Class Period will continue until the date the Court's approval of the proposed settlement becomes final and non-appealable. The Class Area is illustrated in detail in Exhibit A to the Settlement Agreement, included with this Notice.
5. **SUMMARY OF THE PROPOSED SETTLEMENT:** If the Settlement Agreement is approved by the Court, U. S. Steel will pay the total amount of \$2,000,000 into the Settlement Fund for the benefit and advantage of all Settlement Class Members, each of whom will release his or her claims as set forth in Paragraph 8 below. After the deduction of any court-approved payments (a) to Class Counsel for attorneys' fees and the costs and expenses incurred in the case (which will not exceed \$925,000) and (b) to each of the Named Plaintiffs for bringing the lawsuit on behalf of the Settlement Class (which is expected to be no more than \$5,000), the Settlement Fund will be evenly distributed to the households of all Settlement Class Members

who submit a Claim Form approved by Class Counsel. U. S. Steel also will spend at least \$6,500,000 on environmental improvement measures within one year to address plant emissions and reduce the potential for odor.

6. **WHO ARE THE LAWYERS FOR THE SETTLEMENT CLASS AND HOW WILL THEY BE PAID?** The Court has appointed the following attorneys to represent you and the other Settlement Class Members: Steven D. Liddle and Nicholas A. Coulson of Liddle & Dubin, P.C., 975 E. Jefferson Ave., Detroit, MI 48207 and James E. DePasquale, 1302 Grant St. Building 310, Pittsburgh, PA 15219 ("Class Counsel"). You may contact Class Counsel at (800) 536-0045 or [info@ldclassaction.com](mailto:info@ldclassaction.com). You do not need to hire your own lawyer because Class Counsel is working on your behalf. But, if you want your own lawyer, you may hire one at your own expense.

Class Counsel has prosecuted this case on a contingency basis. At the Settlement Fairness Hearing, Class Counsel will be seeking the approval of the Settlement Agreement and requesting the Court for an award of attorneys' fees, costs and expenses up to, but not to exceed \$925,000 from the Settlement Fund. Class Counsel and each Named Plaintiffs also will seek approval of a \$5,000 payment from the Settlement Fund to each Named Plaintiff for their efforts in representing the Settlement Class.

7. **CAN I GET PAID AND, IF SO, HOW MUCH?** Each Settlement Class Member who participates in the settlement may submit an attached Claim Form which, if approved by Class Counsel, will permit the Class Member's household to share, pro rata, in the Settlement Fund. The actual amount of each payment to each household will be the amount of the Settlement Fund remaining after the court-approved payments to Class Counsel and Named Plaintiffs divided by the number of households of the Settlement Class that submit Claim Forms approved by Class Counsel.
8. **WHAT AM I GIVING UP TO STAY IN THE CLASS?** If the proposed settlement is ultimately approved by the Court, in exchange for everything U. S. Steel is doing, each Settlement Class Member will release certain claims he or she may have against each U. S. Steel and all related people and entities, as set forth more fully in the Settlement Agreement. This means that you will no longer be able to sue U. S. Steel or any related people or entities regarding any claims described in the Settlement Agreement. It also means that all of the Court's orders will apply to you and legally bind you. In addition, you and the other Settlement Class Members will be prohibited from bringing any such claims that arose before December 24, 2018.
9. **HOW DO I REQUEST TO BE EXCLUDED FROM THIS PROPOSED SETTLEMENT?** If you are a Settlement Class Member and if the Settlement Agreement is approved by the Court, then you will be bound by the terms of the Settlement Agreement unless you submit a request to be excluded. To exclude yourself from the proposed settlement, you must mail a written request for exclusion to Class Counsel at the following address:

<b>Class Counsel</b>
Liddle & Dubin, P.C. Attn: U.S. Steel Clairton Works Opt-Outs 975 E. Jefferson Ave. Detroit, MI 48207

This request for exclusion must be postmarked no later than \_\_\_\_\_. The request for exclusion must be in writing and contain the following: (a) the caption or other identification of the lawsuit at the top of the first page with the phrase "Request for Exclusion" underneath it; (b) the potential Settlement Class Member's full name, street address, email address, and telephone number; (c) the following statement requesting exclusion:

"I do not want to be a member of the Settlement Class in the U.S. Steel Clairton Works Lawsuit. I understand that I will not participate in or receive any monetary benefit of the proposed settlement. I also understand that, if I want to pursue any right or claim I may have, it will be my responsibility to do so at my own expense."

and (d) be signed by the potential Settlement Class Member seeking to be excluded from the proposed settlement. Any

potential Settlement Class Member's request for exclusion that does not meet these requirements is deemed invalid and ineffective and the potential Settlement Class Member will be considered included as part of the Settlement Class for purposes of the proposed settlement.

- 10. HOW DO I TELL THE COURT THAT I LIKE OR DISLIKE THE PROPOSED SETTLEMENT?** If you are a potential Settlement Class Member and you do not properly request to be excluded, you can tell the Court you like the proposed settlement and that it should be approved, or that you object to the proposed settlement or any particular part of it, including Class Counsel's requests for fees and expenses.

Class Members desiring to object must submit a written Notice of Objection to Class Counsel at the following address:

<b>Class Counsel</b>
Liddle & Dubin, P.C. Attn: U.S. Steel Clairton Works Objections 975 E. Jefferson Ave. Detroit, MI 48207

This objection must be postmarked no later than \_\_\_\_\_. You can submit this objection by yourself or, if you like, you can hire a lawyer to assist you. Objections must be in writing and contain the following: (a) the caption of the lawsuit at the top of the first page with the phrase "Notice of Objection" underneath it; (b) the Settlement Class Member's full name, address, and telephone number; (c) the name and address of each lawyer or other person assisting you in filing the objection, if any; (d) the reason, grounds, and basis for the objection, including any legal authority supporting the objection the Settlement Class Member would like the Court and other parties to consider; (e) the signature of the Settlement Class Member who is objecting; and (f) copies of all documents the Settlement Class Member intends to present to the Court in support of the objection, if any. If an objection is submitted by someone purporting to represent a Settlement Class Member, in addition to the Settlement Class Member's signature the objection must attach sufficient documentation to support the representative's legal authority to represent the Settlement Class Member.

Objections that do not meet the requirements set forth above will be deemed invalid and the Court will not consider them. Class Counsel and U. S. Steel reserve the right to challenge the validity and grounds of any objection. If you do not submit a written objection to the proposed settlement or the application of Class Counsel for attorney fees and expenses in accordance with the deadline and procedure set forth above, you will waive your rights to be heard at the Settlement Fairness Hearing and to appeal from any order or judgment of the Court concerning the matter.

- 11. WHEN AND WHERE WILL THE COURT DECIDE WHETHER TO APPROVE THE PROPOSED SETTLEMENT?** The Court will hold a Settlement Fairness Hearing on \_\_\_\_\_, at \_\_\_\_\_ a.m./p.m. at the Court of Common Pleas of Allegheny County, Courtroom \_\_\_\_\_, City-County Building, 414 Grant Street, Pittsburgh, Pennsylvania 15219. At this hearing the Court will consider whether the Settlement Agreement and proposed settlement is a fair, reasonable, and adequate resolution of the lawsuit. If there are timely and properly submitted objections, the Court will consider them and any response the Parties may have. The Court may listen to people who have asked to speak at the hearing. At or after the hearing, the Court will decide whether to approve the Settlement Agreement and proposed settlement. The Court also will decide how much to award Class Counsel and Named Plaintiffs.

You do not have to attend the Settlement Fairness Hearing. Class Counsel will answer questions the Court may have. But, you are welcome to attend at your own expense provided you have not excluded yourself from the proposed settlement. If you timely and properly send an objection, you may attend the Settlement Fairness Hearing and talk about your objection, or you may have your own lawyer do so. However, you do not have to attend even if you send an objection. As long as you timely and properly sent your written objection, the Court will consider it even if you do not attend.

12. **WHAT HAPPENS IF I DO NOTHING AT ALL?** If you do nothing at all, and you are a Settlement Class Member, you will be bound by the proposed settlement if the Court approves it. You will release your claims and receive the benefit of the improvement measures U. S. Steel will implement, but you will not receive any payment from the Settlement Fund.
13. **WHAT HAPPENS IF THE COURT DOES NOT APPROVE THE PROPOSED SETTLEMENT?** If the Court ultimately does not approve the Settlement Agreement and the proposed settlement, or if the Court's approval is reversed on appeal or the Settlement Agreement is terminated, then the settlement shall become null and void. If the settlement becomes null and void, the case will proceed as though the Settlement Agreement was never entered into.
14. **ARE MORE DETAILS ABOUT THE PROPOSED SETTLEMENT AND MY RIGHTS UNDER THE PROPOSED SETTLEMENT AVAILABLE?** This Class Notice is a summary and does not describe all details of the Settlement Agreement or the proposed settlement. More details are in the Settlement Agreement. For a complete, definitive statement of the terms of the Proposed Settlement, refer to the Settlement Agreement at [www.ldclassaction.com/Clairton](http://www.ldclassaction.com/Clairton). You may also contact Class Counsel at (800) 536-0045 or [info@ldclassaction.com](mailto:info@ldclassaction.com) for more details of the lawsuit.

**PLEASE DO NOT CONTACT THE COURT WITH QUESTIONS ABOUT THIS NOTICE.**