

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

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

Plaintiff

vs.

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

Defendant

CIVIL DIVISION

JURY TRIAL DEMANDED

Case No.: GD-17-008663

Type of Pleading:

**AMENDED COMPLAINT IN CIVIL
ACTION**

Filed on behalf of:

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

Counsel of Record:

James E. DePasquale, Esquire
Pa. I.D. #30223
1302 Grant Building
310 Grant Street
Pittsburgh, PA 15219

(412) 471-1415

FILED

17 DEC -1 PM 2:42

DEPT OF COURT RECORDS
CIVIL/FAMILY DIVISION
ALLEGHENY COUNTY PA

JAMES E. DEPASQUALE
Attorney I.D. 30223
1302 Grant Building St.
310 Grant St.
Pittsburgh, PA 15219
(412) 471-1415
jim.depasquale@verizon.net
Attorney for Plaintiff

**THIS IS NOT AN ARBITRATION CASE;
AN ASSESSMENT OF DAMAGES IS
REQUIRED; JURY OF TWELVE
DEMANDED**

CINDY ROSS
on behalf of herself and all others
similarly situated,

IN THE COURT OF COMMON PLEAS
ALLEGHENY COUNTY
PENNSYLVANIA

*Proposed Class
Action Plaintiff*

Case No.:

vs.

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

Defendant

NOTICE TO DEFEND

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER. IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

**Lawyer Referral Service
Allegheny County Bar Association
11th Floor Koppers Building
436 Seventh Avenue
Pittsburgh, PA 15219
Telephone: (412) 261-5555**

JAMES E. DEPASQUALE
Attorney I.D. 30223
1302 Grant Building St.
310 Grant St.
Pittsburgh, PA 15219
(412) 471-1415
jim.depasquale@verizon.net
Attorney for Plaintiff

**THIS IS NOT AN ARBITRATION CASE;
AN ASSESSMENT OF DAMAGES IS
REQUIRED; JURY OF TWELVE
DEMANDED**

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

IN THE COURT OF COMMON PLEAS
OF ALLEGHENY COUNTY
PENNSYLVANIA

*Proposed Class
Action Plaintiff*

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

vs.

Type of Pleading: Class Action Complaint

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

Defendant

AMENDED CONSOLIDATED CLASS ACTION COMPLAINT AND JURY DEMAND

INTRODUCTION

1. Plaintiffs bring this class action against USX Company for the operation of its coke facility located at 400 State Street in the City of Clairton, County of Allegheny, Commonwealth of Pennsylvania ("facility" or "Clairton Coke Plant" or "Coke Plant"). Through its manufacturing process, Defendant releases noxious odors and air particulates onto Plaintiffs' property, causing property damage through private nuisance, negligence, gross negligence, and trespass.

THE PARTIES

2. Plaintiff Cindy Ross owns and resides at a home located at 402 Fremont Street, City of Clairton, County of Allegheny, Commonwealth of Pennsylvania.

3. Plaintiff Cheryl Hurt owns and resides at a home located at 534 Halcomb Avenue, City of Clairton, County of Allegheny, Commonwealth of Pennsylvania.

4. Defendant's facility is located at 400 State Street in City of Clairton, County of Allegheny, Commonwealth of Pennsylvania. Defendant is a Delaware corporation with its principle place of business located in Pennsylvania.

JURISDICTION AND VENUE

5. This court has personal jurisdiction over Defendant pursuant to 42 Pa.C.S. § 5301 as Defendant carries on a continuous and systematic part of its general business within the Commonwealth of Pennsylvania.

6. This Court has subject matter jurisdiction over this action pursuant to 42 Pa.C.S.A. § 931.

7. Venue is proper under Pa. R. Civ. Pro. § 2179, as Defendant regularly conducts business in this County and the cause of action arose in this County.

BACKGROUND

8. Coke is made by baking coal at a high temperature in a series of ovens known as a coke battery in order to concentrate the carbon.

9. The finished coke is used as fuel to make iron in the steel industry.

10. In general, the coke-making operation is comprised of the following steps: (a) Before carbonization, the selected coals from specific mines are blended, pulverized, and oiled for proper bulk density control; (b) The blended coal is then charged (or pushed) into a number of slot type ovens in the coke battery wherein each oven shares a common heating flue with the adjacent oven; (c) the Coal is then heated to approximately 2,000 °F to achieve carbonization by driving off volatile constituents including water, coal-gas, and coal-tar. This process fuses

together fixed carbon and residual ash; (d) finally, the off-gas (or coke oven gas) is then collected and sent to the by-product plant where various by-products are recovered.

11. Coke-making facilities have a number of major emission sources, including but not limited to the following:

- a) The Coal Handling facility;
- b) The Coke Battery;
- c) The Coke Handling facility;
- d) The By-product Chemical Recovery plant;
- e) The Sulfur Plant;
- f) Boilers and Process Fired Heaters;
- g) Flares for Coke Oven Gas and Sulfur Plant;
- h) Waste Water Treatment Plant; and
- i) Storage Tanks.

FACTUAL ALLEGATIONS

12. Defendant's Coke Plant is located in Clairton, Pennsylvania and sits along the west bank of the Monongahela River, approximately 20 miles south of Pittsburgh.

13. Defendant's plant is the largest coke manufacturing facility in North America, and operates ten (10) coke oven batteries, producing approximately 4.3 million tons of coke annually. Defendant's facility supplies customers in the commercial coke market as well as U.S. Steel's steelmaking facilities.

14. Defendant, its predecessors and agents either constructed or directed the construction of the facility and exercise control and ownership over the facility.

15. Defendant's coke plant has a well-documented history of failing to control the emissions generated by its operations. Examples include but are not limited to the following:

- a) Several Notices of Violations have been served on Defendant by the Allegheny County Health Department ("ACHD") documenting approximately 6,700 violations for air pollution releases between 2012 and 2015. These violations include but are not limited to the following: (1) excessive emissions from the charging of coke ovens; (2) excessive emissions from coke battery doors; (3) excessive emissions from the charging ports; (4) excessive emissions from the "offtake piping" at the coke batteries; and (5) excessive emissions from soaking at the coke batteries;
- b) As a result of Defendant's multiple violations the ACHD required Defendant to enter into a consent decree;
- c) Dozens of complaints have been received by the ACHD from surrounding residents concerning Defendant's noxious odors and air particulates that invade and blanket their properties. For example, in a complaint received by the ACHD on September 23, 2016, one resident stated that "the entire neighborhood has a bad chemical odor from the cokeworks." On October 15, 2016 another resident described the plant's emissions as "sulfur" ... "sooty" ... "oppressive" ... and "absolutely intolerable." Yet another resident complained on November 3, 2016 that the "smell in the air was absolutely unbearable" and that he or she "believe[s] it is from the Clairton Coke Works."; and
- d) Over 110 households have already communicated with Plaintiffs' counsel documenting Defendant's emissions and the nuisance that these emissions.

create for the surrounding residential neighborhoods. For example, in a *Data Sheet* sent by Plaintiffs' counsel, one resident notes that because of Defendant's emissions "I rarely use my porch or yard" and that these emissions "[a]lso cost me extra work each year pressure washing everything." Another resident describes Defendant's emissions as "nauseous [*sic*] odors" and "dust constantly on my house ... and car." This resident further states that due to Defendant's emissions "I have to stay indoors and I have to power wash my house and clean my outside furniture quite often."

16. Plaintiffs' properties have been and continue to be physically invaded by noxious odors and air particulates.

17. The noxious odors and air particulates which entered Plaintiffs' property originated from Defendant's facility, where they are generated as a result of Defendant's coke production process.

18. The invasion of Plaintiffs' property by noxious odors and air particulates has interfered with Plaintiffs' use and enjoyment of their property, resulting in substantial damages. For purposes of illustration, in an ACHD Complaint received on August 31, 2016 one resident stated that he/she "had to shut all of the windows due to the smell." Similarly, in her *Data Sheet* submitted to Plaintiffs counsel, Plaintiff Ross noted that because of the noxious odors and air particulates emitted on her property "you have to close your windows [be]cause the smell is so bad" and that she "can't sit outside and not matter much you dust it stays on your home." Another resident notes on his *Data Sheet* that he is "constantly cleaning outdoor furniture, windows, cars

... furnace/AC filters need [to be] changed more often" and that the "smell makes it hard to enjoy outdoor activities."

19. A properly operated, maintained, and/or constructed coke plant will not emit noxious odors and air particulates into the surrounding residential areas.

20. Defendant's operation, maintenance, control, and/or use of its facility has caused noxious odors and air particulates to invade the properties of Plaintiff and all others similarly situated, causing property damage.

21. Defendant intentionally, recklessly, willfully, wantonly, maliciously, grossly and/or negligently failed to properly maintain, operate, and/or construct the facility, and caused the invasion of Plaintiff's property by noxious odors and air particulates on intermittent and reoccurring dates too numerous to individually recount.

22. Defendant has failed to install and/or maintain adequate technology to control the emission of noxious odors and air particulates. Such failures include, but are not limited to the following:

- a) Failure to maintain the Coke Batteries to prevent the emission of noxious odors and air particulates through cracks and leaks in the coke battery oven walls and doors;
- b) Failure to prevent/control the emission of noxious odors and particulates from the transport of coal;
- c) Failure to prevent/control the emission of noxious odors and particulates from the coal charging lids;
- d) Failure of Defendant's Exhauster system to draw off gases, vapor, dust, and liquids in the coke batteries;

- e) Leaks in Defendant's Coke Oven Gas (COG) collector system;
- f) Failure of Defendant's flue exhaust system which allowed unburned coal, particles, and coke oven gas to be discharged; and
- g) Failure of Defendant's Pushing Emission Control collection device

23. Defendant is vicariously liable for all damages suffered by Plaintiffs caused by Defendant's employees, representatives and agents, who, during the course and scope of their employment created, allowed or failed to correct the problem(s) which caused noxious odors and air particulates to physically invade Plaintiffs' property.

CLASS ALLEGATIONS

A. Definition of the Class

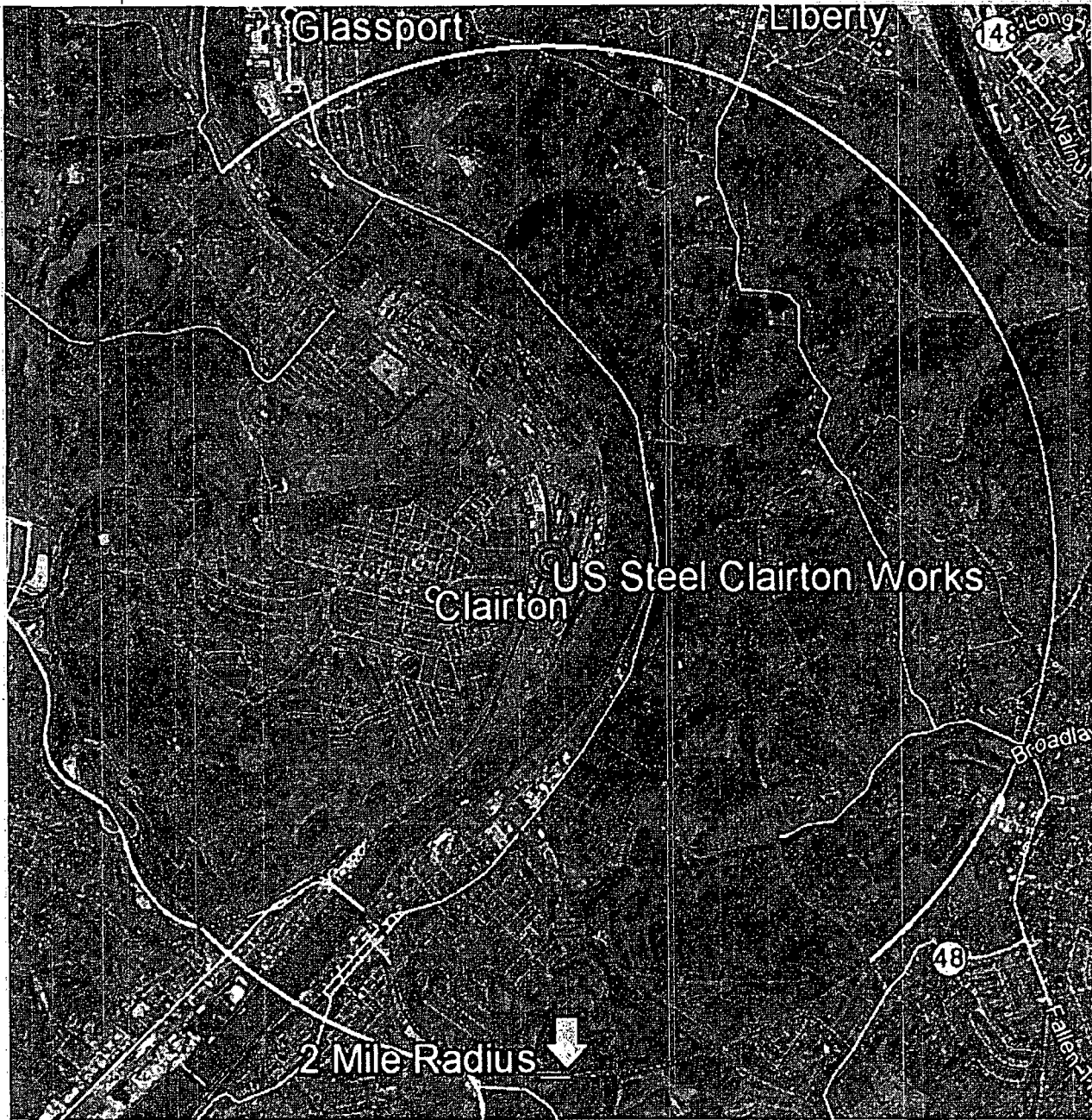
24. Plaintiffs bring this action individually and on behalf of all persons as the Court may determine to be appropriate for class certification, pursuant to PA Rule of Civil Procedure 1702. Plaintiff seeks to represent a Class of persons preliminarily defined as:

Any and all individuals who owned or occupied residential property at any time beginning in 2015 to present that are located within the two areas as identified in Figure 1.¹

The proposed class boundary is subject to modification as discovery progresses. Plaintiffs reserve the right to propose one or more sub-classes if discovery reveals that such subclasses are appropriate.

¹ The Class Definition is based on the location of 110 residents that submitted *Data Sheets* to Plaintiff's counsel attributing the invasion noxious odors and air particulates to Defendant's facility. See **Figure 1**, Map of Class Definition.

Figure 1, Map of Class Definition:



B. Numerosity

25. Based on 2010 census data, there are 5,928 households within 2.0 miles of the Facility. Accordingly, the members of the Class are so numerous that joinder of all parties is clearly impracticable.

26. Prosecution of separate lawsuits by Class members would risk inconsistent or varying adjudications. Class-wide adjudication of these claims is therefore appropriate.

C. Commonality

27. Defendant has engaged in a uniform and common course of misconduct towards members of the Class, giving rise to questions of both law and fact common to all Class members, including but not limited to:

- a) Whether and how Defendant intentionally, recklessly, willfully, wantonly, maliciously, grossly and negligently failed to maintain, operate, and/or construct the facility;
- b) Whether Defendant owed any duties to Plaintiffs;
- c) Which duties Defendant owed to Plaintiffs;
- d) Which steps Defendant has and has not taken in order to control its emissions through the maintenance and/or operation of its facility;
- e) Whether and to what extent the facility's emissions were dispersed over the class area;
- f) Whether it was reasonably foreseeable that Defendant's failure to properly maintain, operate, and/or construct the facility would result in an invasion of Plaintiffs' property interests;
- g) Whether the degree of harm suffered by Plaintiffs and the Class constitutes a substantial annoyance or interference; and
- h) The proper measure of damages incurred by Plaintiffs and the Class.

D. Typicality

28. The claims of the named Plaintiffs are claims typical of the claims of all members of the Class. If brought and prosecuted individually, the claims of each Class member would require proof of many of the same material and substantive facts, utilize the same complex evidence including expert testimony, rely upon the same legal theories, and seek the same type of relief.

29. 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.

30. 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.

E. Adequacy of Representation

31. Plaintiffs' claims are sufficiently aligned with the interests of the absent members of the Class to ensure that the Class' claims will be prosecuted with diligence and care by Plaintiffs as representatives of the Class. Plaintiffs will fairly and adequately represent the interests of the Class and do not have interests adverse to the Class.

32. 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.

F. Class Treatment Is The Superior Method of Adjudication

33. A class action is superior to other methods of litigation and will provide a fair and efficient method for adjudication of the controversy because:

- a) The prosecution of separate civil actions by individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class which would confront Defendant with potentially incompatible standards of conduct, and which would as a practical matter be dispositive of the interests of other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;
- b) The forum is appropriate as the conduct complained of occurred in Alleghany County, Defendant's business is located in Alleghany County, and all of the class members resided in Alleghany County when injured;
- c) In view of the complexities of the issues and/or the expenses of litigation, the separate claims of individual class members are insufficient in amount to support separate actions;
- d) It is not 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; and
- e) Based on Plaintiffs' counsel's experience, litigation of this case as a class action is manageable.

COUNT I

PRIVATE NUISANCE

34. Plaintiffs restate all allegations of this Complaint as if fully rewritten herein.

35. The noxious odors and air particulates, which entered Plaintiffs' property originated from the facility constructed, maintained and/or operated by Defendant.

36. The noxious odors and air particulates invading Plaintiffs' property are indecent and offensive to the senses, and obstruct the free use of their property as to substantially and unreasonably interfere with the comfortable enjoyment of life and property, including but not limited to the following:

- a. causing Plaintiffs to remain inside their homes and forego use of their yards;
- b. causing Plaintiffs to keep doors and windows closed when weather conditions otherwise would not so require;
- c. necessitating the frequent cleaning of Plaintiffs' property; and
- d. causing Plaintiffs embarrassment and reluctance to invite guests to their homes.

37. Defendant owed and continues to owe a duty to Plaintiffs to prevent and abate the interference with the invasion of the private interests of the Plaintiffs.

38. By constructing and then failing to reasonably repair and maintain its facility, Defendant has intentionally and negligently caused an unreasonable invasion of Plaintiffs' interest in the use and enjoyment of their property.

39. As a foreseeable, direct and proximate result of the foregoing conduct of Defendant, Plaintiffs suffered damages to their property as alleged herein.

40. Plaintiffs have suffered harm relating to the use and enjoyment of their land and property.

41. As a direct and proximate result of Defendant's noxious emissions, Plaintiffs' property value has been diminished on a temporary and/or permanent basis.

42. Plaintiffs did not consent for noxious odors and air particulates to enter and settle upon their property.

43. By causing noxious odors and air particulates produced and controlled by Defendants to physically invade Plaintiffs' land and property, Defendant intentionally, recklessly, and negligently created a nuisance which substantially and unreasonably interfered with Plaintiffs' use and enjoyment of their property.

44. Whatever social utility Defendant's facility provides is clearly outweighed by the harm suffered by Plaintiffs and the putative class, whom have on frequent occasions been deprived of the full use and enjoyment of their properties and have been forced to endure substantial loss in the value of their properties.

45. Defendants' substantial and unreasonable interference with Plaintiffs' use and enjoyment of her property constitutes a nuisance for which Defendant is liable to Plaintiffs for all damages arising from such nuisance, including compensatory, exemplary, and punitive relief since Defendant's actions were, and continue to be, intentional, willful, malicious and made with a conscious disregard for the rights of Plaintiffs, entitling Plaintiffs to compensatory and punitive damages.

COUNTS II AND III

NEGLIGENCE

46. Plaintiffs restate all allegations of this Complaint as if fully rewritten herein.

47. In maintaining, operating, controlling, engineering, constructing, and/or designing the facility, Defendant has a duty to exercise ordinary care and diligence so that noxious odors and air particulates do not invade Plaintiffs' property.

48. Defendant knowingly breached its duty to exercise ordinary care and diligence when it improperly maintained, operated, engineered, constructed, and/or designed the facility and knew, or should have known, that such actions would cause Plaintiffs' property to be invaded by noxious odors and air particulates.

49. As a direct and proximate result of the failure of Defendant to exercise ordinary care, Plaintiffs' property is physically invaded by noxious odors and particulates.

50. As a direct and proximate result of Defendant's negligence in operating, maintaining, and/or constructing its facility, Plaintiffs' property is exposed to and invaded by noxious odors and air particulates.

51. As a direct and proximate result of the invasion of Plaintiffs' property by noxious odors and air particulates, Plaintiffs have suffered damages.

52. The conduct of Defendant in knowingly allowing conditions to exist, which caused noxious odors and air particulates to physically invade Plaintiffs' property constitutes gross negligence as Defendant's conduct demonstrates a substantial lack of concern for whether an injury resulted to Plaintiffs' property, and at least constitutes recklessness.

53. Defendant is vicariously liable for the negligence of its employees, representatives, and agents, who, during the course and scope of their employment, allowed or failed to correct the problem which caused noxious odors and air particulates to physically invade Plaintiffs' property.

54. Defendant's conduct entitles Plaintiffs to an award of punitive damages, as it was engaged in with the reckless indifference to the rights of others and as such, constitutes outrageous conduct.

CAUSE OF ACTION IV

TRESPASS BY AIR PARTICULATES

55. Plaintiffs restate all allegations of this Complaint as if fully rewritten herein.

56. Defendant intentionally, recklessly, willfully, wantonly, maliciously and negligently failed to properly construct, maintain and/or operate the facility which caused air particulates to physically invade and enter upon Plaintiffs' property on occasions too numerous to identify independently.

57. As a direct and proximate result of Defendant's foregoing conduct, air particulates physically invaded, entered upon, settled upon, and accumulated upon Plaintiffs' property.

58. It was reasonably foreseeable that Defendant's failure to properly construct, maintain, and/or operate the facility would result in an invasion of Plaintiffs' property by air particulates.

59. The air particulates that have been and continue to be emitted by Defendant have invaded and continue to invade Plaintiffs' property and interfere with Plaintiffs' interests in the possession, use, and enjoyment of their property and constitutes a continuous trespass thereupon.

60. Plaintiffs did not consent to the physical invasion of their property by noxious odors and air particulates.

61. Defendant's actions resulting in the trespass upon Plaintiffs' land were and continue to be intentional, willful, malicious and made with a conscious disregard for the rights of Plaintiffs, entitling Plaintiffs to compensatory relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this Honorable Court enter judgment against Defendant for an amount in excess of the jurisdictional limits of compulsory arbitration holding that entrance of the aforementioned noxious odors and air particulates upon Plaintiffs' property

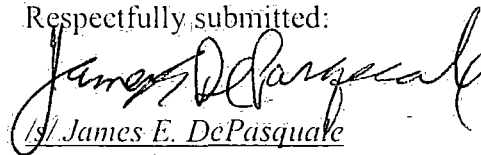
constitutes a nuisance. Plaintiffs further request that this Honorable Court grant the following: (1) compensatory damages caused as a result of the noxious odors and air particulates ; (2) injunctive relief not inconsistent with that which is required by Defendant's Federal and State issued permits; (3) punitive damages; and (4) prejudgment and post judgment interest as provided by law; (3) such further relief permitted by law.

JURY DEMAND

Plaintiffs hereby demand a trial by jury.

Dated: November 24, 2017

Respectfully submitted:



/s/ James E. DePasquale

James E. DePasquale
Attorney I.D. 30223
1302 Grant Building St.
310 Grant St.
Pittsburgh, PA 15219
(609) 394-8585
jim.depasquale@verizon.net

/s/ Steven D. Liddle

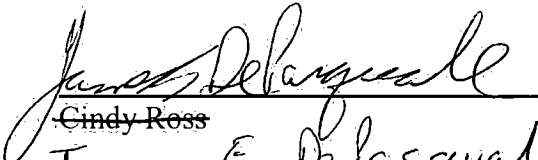
Steven D. Liddle
Nicholas A. Coulson
Brandon T. Brown
LIDDLE & DUBIN, P.C.
Pro Hac Vice to be submitted
975 E. Jefferson Avenue
Detroit, MI 48207
(313) 392-0015
sliddle@ldclassaction.com
ncoulson@ldclassaction.com
bbrown@ldclassaction.com

Attorneys for Plaintiff & the Putative Class

VERIFICATION

The undersigned having read the attached pleading, verified that within pleading is based on information furnished to counsel, which information has been gathered by counsel in the course of this lawsuit. The language of the pleading is that of counsel and not of signer. Signer verifies that signer has read the within pleading and that it is true and correct to the best of the signer's knowledge, information and belief. To the extent that the contents of the pleading are not that of signer, signer has relied upon counsel in making this Verification. This Verification is made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date: 12-1-17

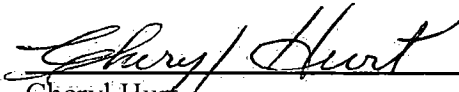

~~Cindy Ross~~
James E. DeLasquale,
Esquire for Cindy
Ross

VERIFICATION

The undersigned having read the attached pleading, verified that within pleading is based on information furnished to counsel, which information has been gathered by counsel in the course of this lawsuit. The language of the pleading is that of counsel and not of signer. Signer verifies that signer has read the within pleading and that it is true and correct to the best of the signer's knowledge, information and belief. To the extent that the contents of the pleading are not that of signer, signer has relied upon counsel in making this Verification. This Verification is made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date:

11/28/2017


Cheryl Hurt