UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

IN THE MATTER OF	:	
	:	PETITION FOR OBJECTION
Clean Air Act Title V Permit (Renewal)	:	
Issued to United States Steel Corporation, Irvin Plant, West Mifflin, Pennsylvania	:	Title V Operating Permit No. 0050-OP24
Issued by the Allegheny County Health Department	:	

PETITION REQUESTING THAT THE ADMINISTRATOR OBJECT TO TITLE V PERMIT RENEWAL NO. 0050-OP24 FOR THE UNITED STATES STEEL CORPORATION IRVIN PLANT IN WEST MIFFLIN, PENNSYLVANIA

Pursuant to section 505(b)(2) of the Clean Air Act, 42 U.S.C. § 7661d(b)(2), and 40 C.F.R. § 70.8(d), United States Steel Corporation ("U.S. Steel" or "Petitioner") respectfully petitions the Administrator of the United States Environmental Protection Agency ("EPA" or the "Administrator") to object to the renewed Title V Operating Permit No. 0050-OP24 (the "Permit") issued by the Allegheny County Health Department ("ACHD" or the "Department") on September 27, 2024, to U.S. Steel's Irvin plant located on Camp Hollow Road in West Mifflin, Pennsylvania (the "Irvin Plant" or the "Facility") (attached hereto as Exhibit 1). The specific Permit conditions addressed in this Petition relate to new emission limits for the Hot Strip Mill reheat furnaces at the Irvin Plant, which ACHD created and imposed on the Facility through the renewal Permit issuance process. In addition, U.S. Steel objects to new flare usage restrictions imposed through the Permit on the operation of Facility flares. For the reasons set forth herein, the Permit is not in compliance with the Clean Air Act ("CAA" or the "Act") nor with applicable requirements and requirements under 40 C.F.R. part 70. Therefore, EPA must object to the Permit, and in turn, ACHD must issue a revised Permit that satisfies EPA's objection. 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(d).

I. INTRODUCTION AND SUMMARY OF GROUNDS FOR PETITION

With the benefit of EPA's recent regulatory action to clarify once and for all the "Scope of 'Applicable Requirements' Under State Operating Permit Programs and the Federal Operating Permit Program," there can no longer be any doubt that "the title V operating permit program is a vehicle for compiling air quality control requirements from other CAA programs and for providing conditions necessary to assure compliance with such requirements, but it is not a vehicle for creating or changing applicable requirements from those other programs." Applicable Requirements Rule, 89 Fed. Reg. 1151, 1151 (proposed Jan. 9, 2024) (hereinafter

"Applicable Requirements Rule").[1] U.S. Steel agrees. ACHD, by contrast, disregarded this hallmark of the Title V program in issuing the Permit that is subject of this Petition. Specifically, ACHD used the Permit, which is simply a renewal of the Irvin Plant's preexisting Title V Permit, to create and impose on the Facility new emission limits for the Hot Strip Mill reheat furnaces. The new emission limits are set forth at Conditions V.A.1.f. and Table V-A-1 of the Permit at pages 40–41 ("Hot Strip Mill Emission Limits"). Exhibit 1, at 40–41. The Hot Strip Mill Emission Limits consist of new hourly and annual emission limits for carbon monoxide ("CO") and volatile organic compounds ("VOC"). Separately, ACHD has created new restrictions on the operation of the Coke Oven Gas Flare Nos. 1 to 3 and Peachtree A & B Flares, which would limit the flares' operation to only combust excess coke oven gas not combusted in other enumerated sources at the Facility (hereinafter, "Flare Usage Restrictions"). The Flare Usage Restrictions are set forth at page 79 of the Permit. Exhibit 1, at 79.

Neither the Hot Strip Mill Emission Limits nor the Flare Usage Restrictions are required via any standard promulgated under Section 111 or Section 112 of the CAA, and they were not established by any categorical or other standard under Article XXI of the Department's Rules and Regulations.[2] ACHD did not establish the Hot Strip Mill Emission Limits or Flare Usage Restrictions via a prior installation or operating permit issued to the Facility.[3] In fact, the cited authorities in the Permit for the new Hot Strip Mill Emission Limits simply do not apply to these pollutants or otherwise justify the limits. Alternatively, ACHD appears to have attempted to cite Article XXI provisions providing for Reasonably Available Control Technology ("RACT") in support of the new Hot Strip Mill Emission Limits in its response to comments, even though this authority is not cited in the Permit and would not justify imposition of the new Hot Strip Mill Limits even if properly cited. Moreover, ACHD has failed to provide an adequate regulatory or technical basis or justification for the Hot Strip Mill Emission Limits. Likewise, although ACHD cites this same RACT authority for the Flare Usage Restrictions, that provision provides no such support. Thus, in imposing the entirely new Hot Strip Mill Emission Limits and Flare Usage Restrictions through the Permit, ACHD has exceeded its delegated authority to implement the Title V program under the Clean Air Act 42 U.S.C. §7401 *et. seq*. The new Hot Strip Mill Emission Limits and Flare Usage Restrictions are arbitrary and capricious, an abuse of ACHD's discretion, and contrary law, including the Clean Air Act, the Pennsylvania Air Pollution Control

[1] Although the Applicable Requirements Rule is technically "proposed," EPA makes clear that it "is not proposing any changes to the agency's longstanding interpretations or policies discussed" therein, because EPA "considers these interpretations and policies to be consistent with, and accurately reflected in, the EPA's existing regulations in 40 CFR parts 70 and 71." *Id.* at 1152. Accordingly, the Agency's position as discussed herein is reasonably expected to remain unchanged upon issuance of the Applicable Requirements Rule as final.

[2] ACHD's Article XXI and XI Rules and Regulation are attached hereto as Exhibits 2 and 3, respectively, for the purpose of convenience and ease of review. U.S. Steel has otherwise not included copies of publicly available materials in conformity with customary practice.

[3] Based on U.S. Steel's review of the permitting record, it appears that different VOC and CO limits were included in the initial Title V permit issued for the Facility in 2005, that U.S. Steel appealed that permit on the basis (in pertinent part) that the limits were unlawful, and that the contested limits were removed from the permit when ACHD subsequently reissued it in 2016. *See* the 2005 Facility Title V permit at page 40, and the 2016 Facility Title V permit at page 38, attached hereto as Exhibits 4 and 5, respectively.

Act ("APCA"), 35 P.S. § 4001 *et. seq.*, and Article XXI, Air Pollution Control, of the ACHD's Rules and Regulations (herein "ACHD Rules and Regulations").[4]

U.S. Steel is mindful of the "resource-related, and practical limitations associated with [EPA's] title V oversight tools", including responding to public petitions to object to Title V permits, and that in light of such limitations, the Agency encourages "the use of proper [] avenues of review" at the installation- or operating-permit stage, prior to Title V issuance. Applicable Requirements Rule at 1152. Indeed, U.S. Steel would have welcomed the opportunity to review and comment on the new Hot Strip Mill Emission Limits at any permitting phase before they were incorporated into the Facility's Permit. But U.S. Steel was denied such opportunity when ACHD unlawfully added the new Hot Strip Mill Emission Limits directly to the Permit without ever establishing them through a preconstruction or installation permit or non-title V operating permit. U.S. Steel was given only a few days' notice of the new limits prior to the public comment period for the draft Permit and was therefore not able to provide meaningful input to ACHD during the permit development and review process. *But see* Letter from Cristina Fernandez, Director, U.S. EPA Region III, to Jayme Graham, Air Quality Program Manager, ACHD (May 29, 2018) (transmitting EPA's final report for the ACHD Title V program evaluation) (attached hereto as Exhibit 6). EPA confirmed that ACHD's Title V program provides for a "one week review" by the "company" of a permit pre-draft before the draft permit is made available for review by the public and EPA. Exhibit 6, at 3. Here, U.S. Steel was given only two days to review the pre-draft of the Permit. Likewise, U.S. Steel was given no notice at all, not even at the draft permit stage, of newly imposed Flare Usage Restrictions on the combustion of coke oven gas.

U.S. Steel may avail itself of two options for seeking review of the objectionable conditions in the Permit: (1) file a Notice of Appeal with ACHD pursuant to Art. XXI § 2102.03.h. and Art. XI § 1103 of ACHD's Rules and Regulations; and (2) file a petition to object to the Permit with EPA pursuant to section 505(b)(2) of the CAA, 42 U.S.C. § 7661d(b)(2), and 40 C.F.R. § 70.8(d). With respect to the first option, Art. XXI § 2102.03.h. of the ACHD Rules and Regulations confirms that a hearing in response to a Notice of Appeal "[s]hall be held before a Hearing Officer," and Art. XI § 1105.A. adds that "[w]ithin thirty (30) days after receipt of a Notice of Appeal, the Director or Hearing Officer shall give written notice, by mail, to all parties of the time and place of the scheduled hearing." *See* Exhibits 2 and 3. Consistent with the Pennsylvania Local Agency Law 2 Pa. C.S. § 105, Article XI provides that any party aggrieved by any decision of the Director or Hearing Officer may appeal therefrom to the Court of Common Pleas of Allegheny County. Exhibit 3, Art. XI § 1110. Thus, although judicial review

[4] ACHD previously issued renewed Title V permits for U.S. Steel's Clairton Works facility (Permit No. 0052-OP22) on November 21, 2022 and Edgar Thompson facility (Permit No. 0051-OP23) on August 1, 2023. The Clairton permit was subsequently reissued on October 11, 2024 as a result of *EPA's Order Granting in Part and Denying in Part Petitions for Objection to a Title V Operating Permit* dated September 18, 2023. Like the Irvin Plant Permit, the permits for the Clairton Works and Edgar Thompson facilities created and imposed for the first time through the permit issuance process new emission limits and other standards that were never included in any prior installation or operating permits. U.S. Steel filed timely appeals of the Clairton Works and Edgar Thompson Title V permits with the ACHD, intending to seek judicial review of the objectionable permit conditions. *See* Clairton I Docket No. 22-064; Clairton II Docket No. 24-056; and Edgar Thompson Docket No. 23-048. Those appeals have been pending for one (Edgar Thomson) and two (Clairton) years respectively.

may ultimately be available to U.S. Steel, Article XI contemplates an administrative process must first be undertaken by the designated Hearing Officer.[5]

U.S. Steel filed a timely Notice of Appeal of the Permit on October 28, 2024 (attached hereto as Exhibit 7).[6] However, U.S. Steel's ability to proceed with its appeal has been thrust into doubt by the impending absence of a Hearing Officer. U.S. Steel has been told on multiple occasions over the past several weeks that the current Hearing Officer will be leaving his position on November 15, 2024, and that it is unclear when a replacement Hearing Officer will be hired and onboarded such that new hearings may be scheduled and proceed. In fact, the current Hearing Officer confirmed that on or before October 16, 2024, he was directed by administration at the ACHD to not issue any rulings in any cases prior his departure. *See* Oct. 18, 2024 and Oct. 28, 2024 Emails from Hearing Officer to U.S. Steel (attached hereto as Exhibits 8 and 9, respectively).[7]

Based on U.S. Steel's own experience, when the current Hearing Officer's predecessor stepped down as Hearing Officer in October 2022, it took ACHD several months to hire and complete onboarding of a replacement. Throughout that period, proceedings pending before the ACHD remained stagnant, and parties seeking judicial review of objectionable actions by the Department were left without due process and procedural recourse. Using recent history as our guide, U.S. Steel reasonably expects the Hearing Officer's position to remain vacant for a minimum of several months, with meaningful additional time needed for training and initiation to the wide variety of matters, including complex air permitting and enforcement matters pending before ACHD. Indeed, in addition to air matters, the Hearing Officer will hear appeals from Department actions relating to food safety, housing, plumbing and solid waste. Regardless of an individual's past employment, the ACHD Rules and Regulations are unique to Allegheny County and will therefore demand a period of extensive onboarding. In addition, the unique nature of U.S. Steel's operations and the complexities of the CAA make it a difficult task for the would-be new Hearing Officer to gain sufficient knowledge on an expedited basis to fairly and completely step into these pending matters. Accordingly, in the absence of a Hearing Officer, U.S. Steel is effectively deprived of its fundamental right to pursue judicial review as established under the CAA, the APCA, and ACHD's own Rules and Regulations, while at the same time, the Facility has no choice but to use best efforts to comply with the objectionable and arbitrary Hot

[5] Section 1102 defines "Hearing Officer" as "a person or persons other than the Director designated by the Director to preside at hearings or conferences." Exhibit 3, Art. XI § 1102.

[6] ACHD's Rules and Regulations governing permit appeals state that "[a]ll actions of the Department shall become final thirty (30) days after receipt of written notice or issuance if no appeal has been perfected under the provisions of this Section." Exhibit 3, Art. XI § 1104.D. U.S. Steel filed a timely Notice of Appeal of the Permit pursuant to Art. XXI § 2102.03.h. and Art. XI § 1103.

[7] The October 18, 2024 email attached as Exhibit 8 relates to a separate appeal of a matter associated with U.S. Steel's Edgar Thompson facility.

Strip Mill Emission Limits that are not based on sound science or law and that are the subject of the Notice of Appeal.[8]

It is with this backdrop that U.S. Steel asks EPA to review this Petition to Object and ultimately grant the claims asserted herein. The Hot Strip Mill Emission Limits and Flare Usage Restrictions are arbitrary and capricious, unreasonable, an abuse of the Department's discretion, and contrary to law including, but not limited to, the APCA, 35 P.S. § 4001, et seq., the federal CAA, 42 U.S.C. § 7401 et seq., the APA, and Articles XXI and XI of ACHD's Rules and Regulations. U.S. Steel further objects to the Hot Strip Mill Emission Limits on the basis that they are inappropriate and/or not based on sound technical bases or otherwise necessary or consistent with good operating practices. Further, ACHD does not currently meet its obligations under section 502(b)(6) of the CAA and the federal part 70 permit regulations promulgated thereunder and incorporated in ACHD's Rules and Regulations. Accordingly, the Department has abused its discretion and acted unreasonably, arbitrarily, capriciously, contrary to fact and law and in a manner not supported by evidence, and is not in compliance with its Title V program delegation. We request EPA's concurrence by granting the Petition, with instruction to ACHD to issue a revised Permit that excludes the Hot Strip Mill Emission Limits and Flare Usage Restrictions.

II. LEGAL AND FACTUAL ARGUMENTS

a. U.S. Steel's Petition to Object satisfies the public petition requirements in 40 C.F.R. § 70.12 as to the claims identified

i. Permit Conditions to which U.S. Steel Objects

U.S. Steel objects to ACHD's imposition of the Hot Strip Mill Emission Limits, which are new emission limits imposed upon the 80" Hot Strip Mill reheat furnaces. The new emission limits are set forth at Conditions V.A.1.f. and Table V-A-1 of the Permit at pages 40-41, consisting of new hourly and annual emission limits for CO and VOC.

TABLE V-A-1:
Emission Limitations for each Hot Strip Mill Reheat Furnace

POLLUTANT	HOURLY EMISSION LIMIT (lb/hr)	ANNUAL EMISSION LIMIT (tons/year)*
PM (filterable)	7.0	18.25
PM_{10} (filterable)	7.0	18.25
NO_X	19.1	83.5
CO	12.88	56.41
Volatile Organic Compound	0.28	1.33

*A year is defined as any consecutive 12-month period.

[8] *See* Art.XI, §1111. In addition, ACHD has communicated quite clearly through its counsel that ACHD is not willing to agree to stay the appealed conditions pending Appeal. *See* Nov. 8, 2024 Email from Counsel for ACHD to U.S. Steel, attached hereto as Exhibit 10.

In addition, U.S. Steel objects to the new Flare Usage Restrictions, which are set forth at Condition V.J.1.a of the Permit at page 79.

ii. General Grounds for the Objections

(Specific grounds for objections are set forth below in section II.b.)

As set forth in detail below, ACHD imposed the Hot Strip Mill Emission Limits and the Flare Usage Restrictions upon the Facility for the first time through the Permit.[9] ACHD did not properly establish the Hot Strip Mill Emission Limits or Flare Usage Restrictions via a prior installation or operating permit issued to the Facility. In imposing the entirely new Hot Strip Mill Emission Limits and Flare Usage Restrictions through the Permit, ACHD has exceeded its delegated authority to implement the Title V program under the CAA. In addition, ACHD has failed to provide an adequate regulatory or technical basis or justification for the Hot Strip Mill Emission Limits or Flare Usage Restrictions. The new Hot Strip Mill Emission Limits and Flare Usage Restrictions are contrary to the Clean Air Act, the APCA, 35 P.S. §4001*et. seq.*, and Articles XXI and XI of ACHD's Rules and Regulations.

iii. Identification of Issues Raised During Public Comment Period

U.S. Steel raised its objection to the new Hot Strip Mill Emission Limits with reasonable specificity during the public comment period. By letter dated November 14, 2023 (hereinafter "Comment Letter," attached hereto as Exhibit 11), U.S. Steel expressly objected to the inclusion of the newly proposed Hot Strip Mill Emission Limits within the Permit. ACHD responded to U.S. Steel's comments via its *Summary of Public Comments and Department Responses on the Proposed Issuance of United States Steel Corporation Mon Valley Works Irvin Plant Title V Operating Permit No.0050-OP24* (hereinafter "Response to Comment Document," attached hereto as Exhibit 12). For ease of reference, U.S. Steel's comments and ACHD's responses are set forth in tandem below:

Ex. 11, U.S. Steel Comment Letter, at 1–2, comment #4:

> On page 42, U. S. Steel requests that the newly created emission limits (PM filterable, CO and VOC) in Table V-A-1 be removed entirely for the Hot Strip Mill. ACHD has exceeded its authority on creating new limits and conditions. ACHD improperly created new emission limits that are not existing applicable requirements. With no legal basis and based upon an improper and fatally flawed technical analysis, the Department has created new emission limits for the Hot Strip Mill, including PM filterable, CO and VOC, with no sound legal or technical justification by ACHD. U. S. Steel objects to the Department's creation of the limits that are not existing applicable requirements. The Title V permit program was designed as a tool to compile all existing applicable permit requirements into one operating

[9] As noted above, slightly different limits appeared in the 2005 permit and were subsequently removed.

permit. The Title V operating permit program does not authorize new substantive applicable requirements, but does require permits to contain monitoring, recordkeeping, reporting, and other compliance requirements to assure compliance by sources with existing applicable requirements. (*See, e.g.*, 57 Fed. Reg. 32250, 32251 (July 21, 1992). The primary purpose of the Title V program is to enable the source, EPA, States, and the public to better understand the applicable requirements to which the source is subject and whether the source is meeting those requirements.

Ex. 12, ACHD Response to Comment Document, at 2:

40 CFR Part §70.1(b) says "… While Title V does not impose substantive new requirements, …" Part 70 §70.1(a) states "…These regulations define the minimum elements required by the Act for State Operating Permit Programs ...", and §70.1(c) states "Nothing in this part shall prevent a State, or interstate permitting authority, from establishing additional or more stringent requirements not inconsistent with this Act. The EPA will approve State Program submittals to the extent that they are not inconsistent with the Act and these regulations…". There is no definition or explanation of substantive new requirements. The EPA has approved the Department's Operating Permit Programs for major and minor sources.

Short-term and annual emission limits may be needed as enforceable limits in State Implementation Plan (SIP) submittals. They are needed in modeling for significant impact levels. These limits are needed to determine regulatory applicability (e.g., NSR/PSD, stack testing (§2108.02).

The Title V Operating Permit issued on December 9, 2016, required the facility to conduct emissions testing and evaluations for NOX, CO, and VOC to develop emission factors that can quantify NOX, CO, and VOC emissions. On May 4, 2023, U.S. Steel submitted an installation permit application to establish NOX emissions limits for the Hot Strip Mill (HSM). The permit was subsequently issued on September 12, 2023, and the NOX limit was incorporated into the Title V Permit. The Department used the results of the 2017 stack testing to establish CO and VOC limits, while the PM limit was established in accordance with Article XXI, §2104.02. Please refer to the Response to Comment No. 2 above for the Department's Authority to incorporate additional permit requirements, including limits on existing sources.

Ex. 11, U.S. Steel Comment Letter, at 2, comment #5:

Even if it had the authority to add the new limits, which it does not, ACHD's attempt to establish new limits is technically flawed, inconsistent, and not supported by existing information. Again, notwithstanding the fact that there is no legal basis for the establishment of the new limits, even if there

were, ACHD has made technical errors that do not support ACHD's attempt to derive a new limit. ACHD has inappropriately relied on insufficient data in its attempt to derive a new limit, and U.S. Steel is unable to replicate the proposed CO and VOC emission limits. In U.S. Steel's submitted PTE calculations included in the Title V Renewal Application, CO was calculated at 12.65 lb/hr and 55.4 tpy; VOC was 0.83 lb/hr and 3.6 tpy based on AP-42 Table 1.4-2, assuming 100% natural gas combustion. ACHD has proposed new, significantly lower limits of 6.72 lb/hr and 29.43 tpy for CO, and 0.14 lb/hr and 0.61 tpy for VOC, supposedly based on a single stack test result that was representative of the fuel blend at the time of the test. Reviewing the stack test results, it is unclear how ACHD derived the proposed limits, and the corresponding emission calculations for these new limits are not provided in the technical support document. Stack test data suggests that ACHD's proposed emission limits are too low. It is also not clear if ACHD added a safety factor or calculated a 99th percentile or upper predictive limit (UPL). For these reasons, and other reasons explained herein, the new proposed limits need to be removed, or at a minimum revised, from the permit before it is issued.

Ex. 12, ACHD Response to Comment Document, at 2:

> *The CO and VOC limits for the Hot Strip Mill (HSM), established in the Title V Operating Permit, were determined based on the 2017 stack testing, which is the highest between the 2017 and 2021 stack results, assuming 100% natural gas combustion. However, the Department has revised these limits to account for the inclusion of coke oven gas. Derivation of these limits are included in the spreadsheet included as part of the Technical Support Document.*[10]

U.S. Steel did not have an opportunity to raise an objection to the Flare Usage Restrictions during the public comment period for the Permit, because the Flare Usage Restrictions were not included in the proposed draft permit, and therefore U.S. Steel had no notice that ACHD was considering the inclusion of the Flare Usage Restrictions within the Permit. Accordingly, it was impracticable for U.S. Steel to comment on the Flare Usage Restrictions during the public comment period, and the procedural grounds for U.S. Steel's objections to the Flare Usage Restrictions arose after the close of the comment period.

iv. U.S. Steel's Petition is Timely

In accordance with 40 C.F.R. §§ 70.8(d) and 70.12(b), this Petition is timely filed. ACHD commenced a public comment period with respect to the draft Title V permit for the Facility ending on November 14, 2023. A copy of the proposed draft Title V Permit for the Facility is attached hereto as Exhibit 15, and ACHD's draft Technical Support Document dated October 11, 2023 is attached hereto as Exhibit 16. As indicated on EPA's Title V petition

[10] The Technical Support Document and accompanying spreadsheet are attached hereto as Exhibits 13 and 14, respectively.

webpage, EPA's 45-day review period for the Permit commenced on August 1, 2024, and expired on September 16, 2024. *See Title V Operating Permit Public Petition Deadlines*, EPA, https://www.epa.gov/caa-permitting/title-v-operating-permit-public-petition-deadlines (Nov. 14, 2024). EPA did not object to the Permit during the 45-day review period. The 60-day period for filing a public petition to object to the Permit therefore commenced on September 17, 2024, and ends on November 15, 2024. *Id.* EPA's Title V Petition website currently directs for petitions to be filed via email to titleVpetitions@epa.gov. The email transmitting U.S. Steel's Petition to EPA bears the date and time of submittal, thereby demonstrating the timeliness of the filing.

b. Specific grounds for objections to the new Hot Strip Mill Emission Limits

i. The Hot Strip Mill Emission Limits are Inconsistent with ACHD's Title V Authority as Delegated by EPA

As EPA is aware, the Title V permitting process is largely procedural – it is intended to identify and record existing substantive requirements applicable to regulated sources and assure compliance with these existing requirements in one comprehensive document. *See, e.g.*, *Sierra Club v. Johnson*, 541 F.3d 1257, 1260 (11th Cir. 2008). In imposing the new Hot Strip Mill Emission Limits through the Permit, ACHD upends this basic principle by unlawfully imposing new emission limits on existing and unmodified sources at the Facility. ACHD did not establish the Hot Strip Mill Emission Limits through a preconstruction or installation permit, and they are not based on any federal, state, or local categorical requirement mandated by Article XXI and the CAA programs that ACHD is delegated the authority to administer.

As noted by EPA, "operating permits required by Title V are meant to accomplish the largely procedural task of identifying and recording existing substantive requirements applicable to regulated sources and to assure compliance with these existing requirements." *See* EPA, *White Paper for Streamlined Development of Part 70 Permit Applications*, at 1 (July 10, 1995) (attached hereto as Exhibit 17); *see also* 40 C.F.R. § 70.1(b) (stating, in relevant part, that "title V does not impose substantive new requirements… ."). "[T]he title V operating permit program is a vehicle for compiling air quality control requirements from other CAA programs and for providing requirements necessary to assure compliance with such requirements, but not for creating or changing applicable requirements. Put simply, Title V is a catch-all, not a cure-all." Applicable Requirements Rule at 1154; *see also Utility Air Regul. Grp. v. EPA*, 573 U.S. 302, 309 (2014) ("Title V generally does not impose any substantive pollution-control requirements. Instead, it is designed to facilitate compliance and enforcement by consolidating into a single document all of a facility's obligations under the [CAA]"); *Clean Air Council v. Cnty. of Allegheny*, No. 515 C.D. 2018, 2018 WL 6036820 (Pa. Cmwlth. Nov. 19, 2018) ("The purpose of a Title V operating permit is to incorporate into one document all the requirements that are included in a facility's existing installation (construction) permits, and any applicable regulatory requirements."); *Sierra Club*, 541 F.3d at 1260 ("Title V does not generally impose new substantive air quality control requirements" and instead provides for individual operating permits that "contain certain monitoring, record keeping, reporting and other conditions" in one place) (internal citations omitted). In a sense, a Title V permit "is a source-specific bible for Clean Air Act compliance," that lists all applicable emission limits, monitoring, recording

keeping, reporting, and other conditions in a single comprehensive document. *Virginia v. Browner*, 80 F.3d 869, 873 (4th Cir. 1996).

The purpose of Title V permits is to identify and to assure compliance with ***existing*** "applicable requirements" to which the permittee is subject. "It is important to recognize that 'applicable requirement' is a legal term of art that is unique to Title V. Its meaning is closely aligned with the primary function of Title V permits: to consolidate and assure compliance with substantive requirements established under other CAA programs." Applicable Requirements Rule at 1154. EPA defines an "applicable requirement" as any of the following, as they apply to emission units at a major source:

(1) Any standard or other requirement provided for in the… [SIP]… that implements the relevant requirements of the [CAA], including any revisions to [the SIP] promulgated in [40 C.F.R. Part 52];
(2) Any term or condition of any preconstruction permits issued pursuant to regulations approved or promulgated through rulemaking under title I, including parts C or D, of the [CAA];
(3) Any standard or other requirement under section 111 of the [CAA], including section 111(d);
(4) Any standard or other requirement under section 112 of the [CAA], including any requirement concerning accident prevention under section 112(r)(7) of the [CAA];
(5) Any standard or other requirement of the acid rain program under title IV of the [CAA] or the regulations promulgated thereunder;
(6) Any requirements established pursuant to section 504(b) or section 114(a)(3) of the [CAA];
(7) Any standard or other requirement under section 126(a)(1) and (c) of the [CAA];
(8) Any standard or other requirement governing solid waste incineration, under section 129 of the [CAA];
(9) Any standard or other requirement for consumer and commercial products, under section 183(e) of the [CAA];
(10) Any standard or other requirement for tank vessels under section 183(f) of the [CAA];
(11) Any standard or other requirement of the program to control air pollution from outer continental shelf sources, under section 328 of the [CAA];
(12) Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under title VI of the [CAA], unless [EPA] has determined that such requirements need not be contained in a title V permit; and
(13) Any [NAAQS] or increment or visibility requirement under part C of title I of the [CAA], but only as it would apply to temporary sources permitted pursuant to section 504(e) of the [CAA].

40 C.F.R. § 70.2.[11] Thus to be an "applicable requirement" for Title V purposes, "the requirement must be based on the CAA and, more specifically, one of the CAA sections

[11] The Department defines an "applicable requirement" as (1) all provisions of Article XXI, (2) all provisions of the CAA and Air Pollution Control Act, (3) all provisions of all regulations approved or promulgated by EPA through rulemaking under the CAA, and (4) all terms and conditions of any permit, license, or order issued pursuant to Article

specifically identified in the definition. Requirements that are not based on (*i.e.*, derived from) the CAA are not 'applicable requirements' of the CAA with which a Title V permit must assure compliance." Applicable Requirements Rule at 1154.

The Hot Strip Mill Emission Limits are simply not "applicable requirements" under the CAA because they are not properly derived from any of the above-referenced categories of requirements. As set forth below, although ACHD cites certain regulatory requirements from Article XXI in support of the Hot Strip Mill Emission Limits, those authorities do not justify the imposition of the limits. ACHD did not establish these limits in any preconstruction permit, they are not based on any NSPS promulgated pursuant to Section 111 of the CAA, they are not based on any standard or other requirement promulgated under Section 112 of the CAA, and they are not based on any other standard or requirement of the CAA or the Pennsylvania SIP that is applicable to the Hot Strip Mill reheat furnaces, and accordingly must be removed from the Permit.

Given EPA's recent clear articulation in the Applicable Requirements Rule of its position that Title V permits are not the intended vehicle for creating new substantive requirements, it is not surprising that EPA previously applied the same rationale in responding to other petitions to object. Responding to a Petition to Object from Cargill, EPA recognized that notwithstanding the fact that neither the CAA nor EPA's regulations limit states' authority to establish more stringent permitting requirements (as explained earlier), EPA agrees with the Petitioner that there are some limitations on the extent to which Title V permits can or should be used to establish new requirements. The Title V permitting program was designed primarily as a tool to aid implementation and enforcement of—and compliance with—existing CAA requirements, not as a program to establish new substantive requirements on a source. *See* 40 C.F.R. § 70.1(b); *In re Cargill Inc.*, Order on Petition No. VII-2022-9, 13 (2023).[12] Indeed, reviewing courts have repeatedly held that "[t]itle V does not generally impose new substantive air quality control requirements." *See, e.g.*, *Sierra Club v. Johnson*, 541 F.3d 1257, 1260 (11th Cir. 2008) (citations omitted; cleaned up); *Appalachian Power Co. v. EPA*, 208 F.3d 1015, 1028 (D.C. Cir. 2000) (holding that EPA's Periodic Monitoring Guidance impermissibly broadened the Part 70 regulations by imposing substantive modifications). Instead, it provides for individual operating permits that "contain monitoring, record keeping, reporting, and other conditions" in one place. *Id.* (citations omitted). "In a sense," then, a Title V permit "is a source-specific bible for Clean Air Act compliance." *Virginia v. Browner*, 80 F.3d 869, 873 (4th Cir. 1996). *Env't Integrity Project v. EPA*, 969 F.3d 529, 536 (5th Cir. 2020). Furthermore, EPA has gone on record with its disbelief that Congress intended Title V to be a forum for the State to establish any additional requirements that would become federally enforceable. The primary purpose of the Title V

XXI, the CAA, the Air Pollution Control Act, or any regulations approved or promulgated by EPA through rulemaking under the CAA. Exhibit 2, Art. XXI § 2101.20.

[12] EPA conducted an evaluation of ACHD's title V program in August 2017 as part of EPA's routine oversight of state/local permitting activities. On May 29, 2018, EPA sent to ACHD's Air Quality Program the final report for the Title V program evaluation (the "Air Program Report"). Among the recommended improvements identified by EPA in the Air Program Report was "more strategic integration of the multiple permit types so as to not delay title V permit issuance", rather than ACHD's historic approach of prioritizing installation permits over title V renewals. Exhibit 6, at 1–4. EPA's audit findings confirm EPA's interpretation that in implementing a Title V permit program, installation permits and Title V renewals are distinct; *i.e.*, Title V permits integrate multiple types of previously-issued permits, such as installation permits, but Title V permits do not take the place of installation permits.

permitting program is to assure that subject sources comply with all requirements of the Act. *Operating Permit Program; Proposed Rule*, 56 Fed. Reg. 21712, 21729 (May 10, 1991).

EPA must grant this Petition, because allowing delegated permitting authorities to establish substantive new requirements in a Title V permit, particularly emission limits with no clear authority, creates an impermissible risk for permittees and an inability to appropriately predict the costs and burdens of regulatory requirements. Essentially, Title V permitting would revert to the pre-1990 permitting era, when "regulators and industry were left to wander through this regulatory maze in search of the emission limits and monitoring requirements that might apply to a particular source. Congress addressed this confusion in the 1990 Amendments by adding title V of the Act…." Applicable Requirements Rule at 1153 (quoting *Sierra Club. v. EPA*, 536 F.2d 673, 674 (D.C. Cir. 2008)). EPA must insert itself into the permitting process in this case to preclude such a potential future outcome.

ii. Neither ACHD's Response to Comment Nor the Cited Authorities in the Permit Justify the New Hot Strip Mill Emission Limits

ACHD's response to U.S. Steel's comment requesting removal of the Hot Strip Mill Emission Limits does not adequately explain either the regulatory or technical basis for the limits. First, ACHD very simply argues that it is free to establish more stringent requirements so long as they are "not inconsistent with the Act and these regulations" and notes that "EPA has approved the Department's Operating Programs for major and minor sources." Exhibit 11, at 2. Second, ACHD vaguely suggests that "short-term and annual emission limits may be needed as enforceable limits in State Implementation Plan (SIP) submittals. They are needed in modeling for significant impact levels. These limits are needed to determine regulatory applicability (e.g. NSR/PSD, stack testing (2108.02)." *Id.* Third, ACHD provides the history of the establishment via installation permit of the NOx limit for the Hot Strip Mills (which U.S. Steel did not object to in its comment). *Id.* And finally, ACHD noted that the results of 2017 stack testing were used to derive the limits for CO and VOC. *Id.*

Many of these explanations are merely generic statements that have no specific application here, and none of them support the inclusion of the Hot Strip Mill Emission Limits in the Permit. While it is well understood that a state program may be more stringent than the Clean Air Act, it must do so clearly and deliberately, and not by surprise, or by the imposition of new emission limits in a Title V permit, without specifying and substantiating the exact authority under which they were imposed. Here, importantly, none of ACHD's citations of regulatory authority in the Permit appear to apply to the Hot Strip Mill Emission Limits at all. Specifically, at V.A.1.f of the Permit, on page 40, ACHD cites to the following purported authorities to support the Hot Strip Mill Emission Limits: IP#0050-I009; V.A.1.d.; §2104.02; and §2103.12a.2.D. *See* Exhibit 1, at 40. None of these citations would support the imposition of new CO or VOC limits upon existing sources. First, IP#0050-I009, which was issued to the Facility in September 2023, established new NOx hourly and annual emission limits for the Hot Strip Mills. *See* IP#0050-I009 (attached hereto as Exhibit 18). Indeed, if ACHD likewise determined that hourly and annual CO and VOC limits were needed and appropriate, is unclear why ACHD did not attempt to establish such limits through the installation permit process at that time. Second, V.A.1. simply cites back to a VOC weight content limit for lubricating oil used in the

hot strip mill scale breaking /roughing and finishing mill stands, but that weight content neither dictates the imposition of VOC hourly and annual emission limits nor would appear to apply to the reheat furnaces. Section 2104.02 pertains to the PM-10 filterable limit, which U.S. Steel does not include in its objection herein. And finally, §2103.12a.2.D refers to the application of Best Available Control Technology ("BACT") to new sources. There is no dispute here that the Hot Strip Mills are existing sources, that the Hot Strip Mill Emission Limits were not established via installation permit at the time of their construction, and thus this citation cannot apply.

Further, ACHD's comment response does not provide an adequate technical basis for the imposition of the limits in response to U.S. Steel's comment, noting only that the CO and VOC limits were based on 2017 stack testing, and that the CO limit was adjusted to "account for the inclusion of coke oven gas." Exhibit 12, at 2. Neither the Technical Support Document nor its accompanying spreadsheet offer any more detail or technical justification for these limits. *See* Exhibits 12 and 13.

iii. RACT Does Not Support the Imposition of the Hot Strip Mill Emission Limits

In issuing Title V permits to U.S. Steel's Clairton and Edgar Thomson facilities, ACHD has previously cited to its general RACT provision set forth at §2103.12.a.2.B as a justification for the imposition of wholly new emission limits. Here, although ACHD appears to have cited to this general RACT authority in Response #2 in its Response to Comment Document, the citation was not responsive to U.S. Steel's comment objecting to the Hot Strip Mill Emission Limits, nor does the Permit actually cite to §2103.12.a.2.B as authority for these limits. ACHD Response to Comment #2 states, in pertinent part:

> *For limits not from an installation permit, Article XXI requires all sources to meet Reasonably Achievable Control Technology (as defined in Article XXI, §2101.20) under §2103.12.a.2.B. Section 2103.12 is included in the Allegheny County Health Department's approved Title V Operating Permit Program as well as the Federally Enforceable State Operating Permit (FESOP) Program, which was approved by the EPA as a revision to the Pennsylvania State Implementation Plan (SIP). See 68 FR 37973.*

Exhibit 12, at 1.

This statement is curious for two reasons. First, "Reasonably *Achievable* Control Technology" is not a concept that exists in Allegheny County's Article XXI – instead, RACT stands for Reasonably *Available* Control Technology. *See* Exhibit 2, § 2101.20. Second, ACHD's RACT response appears to be misplaced, because U.S. Steel's comment to which ACHD purports to respond did not relate to the Hot Strip Mill Emission Limits at all, and instead was focused on the NOx limit for the Hot Strip Mill, wherein U.S. Steel asked ACHD to remove

its erroneous citation to ACHD's BACT authority for that limit, but did not otherwise object to the limit.[13]

To the extent that ACHD relies on RACT, as set forth in Article XXI, to justify the Hot Strip Mill Emission Limits, the permitting record does not appropriately reflect this justification of ACHD's authority for the new Hot Strip Mill Emission Limits. Further, RACT does not support the imposition of the new Hot Strip Mill Emission Limits because they are inconsistent with the definition of RACT as set forth in the CAA and in Article XXI, inconsistent with the procedures set forth in the CAA and Article XXI for establishing RACT, and have not been demonstrated to be necessary to attain or maintain the NAAQS. "It is well-established that the NAAQS are not an 'emission standard or limitation' as defined in the CAA." *Cate v. Transcon. Gas Pipe Line Corp.*, 904 F.Supp. 526, 530 (W.D. Va. 1995). Even if the Hot Strip Mill Emission Limits were related to NAAQS attainment, which they are not, "[w]hen it comes to imposing permit conditions designed to ensure that an area achieves compliance with the NAAQS, the Department must normally proceed in accordance with the federal/state SIP process for attaining the NAAQS that is set forth in the federal [CAA]… [and] [i]t will generally not be appropriate to attempt to bypass or ignore that process, cherry-pick a standard out of context, and impose permit conditions outside of or in advance of the federally mandated process." *Berks Cnty. v. DEP*, 2012 EHB 23, 26-27, 2012 WL 1108235 at *3 (March 16, 2012).

RACT is a specific term of art codified by Congress in the CAA. *See Sierra Club v. EPA*, 972 F.3d 290, 294 (3d. Cir. 2020) ("[RACT] is a term of art at the foundation of the EPA's decision-making… ."). Specifically, states that are in nonattainment of the NAAQS or located in the ozone transport region are required by the CAA to include in their SIPs provisions that "provide for the implementation of all reasonably available control measures as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of [RACT]) and shall provide for attainment of the [NAAQS]."[14] *See* 42 U.S.C. §§ 7502(c)(1), 7511c(b)(1)(B). RACT is not defined in the CAA but has been interpreted by EPA to mean "the lowest emission limit that a particular source is capable of meeting by the application of technology that is reasonably available considering technological and economic feasibility." *Sierra Club*, 972 F.3d at 294; *see also* Allegheny County Portion of the Pennsylvania RACT II SIP Revision for the 1997 and 2008 8-Hour Ozone NAAQS, at 4 (April 23, 2020) (attached hereto as Exhibit 19). "RACT is a technology-forcing standard designed to induce improvements and reductions in pollution for existing sources." *Sierra Club*, 972 F.3d at 294.

Each time EPA promulgates a new NAAQS, promulgates new control technology guidelines, or finds that an applicable implementation plan is substantially inadequate to attain the NAAQS, the CAA requires states to revise their SIP to implement RACT. *See e.g.*, 42 U.S.C.

[13] Although ACHD's response to Comment appears to suggest that U.S. Steel's comment included Condition V.A.1.f. (which referenced the new Hot Strip Mill Emission Limits in Table V-A-1), it did not—U.S. Steel's comment cited **only** to V.A1.e, which sets forth the NOx limit. *See* Exhibit 11, at 1, comment #2.

[14] EPA has interpreted "reasonably available," as used in the terms "reasonably available control measures" and "RACT," to mean only control technologies that advance attainment, such that if the imposition of control technologies would not hasten achievement of the NAAQS, no control technologies may be necessary to implement RACT. *Nat. Res. Def. Council v. EPA*, 571 F.3d 1245, 1253 (D.D.C. 2009).

§§ 7410(k)(5) and 7511a(b)(2). "RACT for a particular source is determined on a case-by-case basis, considering the technological and economic circumstances of the individual source." *Federal Implementation Plan Addressing RACT Requirements for Certain Sources in Pennsylvania*, 87 Fed. Reg. 53382, 53387 (Aug. 31, 2022). States implement RACT for existing sources in two ways – either by the promulgation of categorical regulations establishing presumptive RACT requirements for certain categories of existing sources, or through source-specific evaluations, referred to as case-by-case determinations. *See, e.g.*, Exhibit 2, Art. XXI § 2105.08. To conduct a RACT analysis, the permitting authority is required to first identify all technologically feasible controls, considering the source's process and operating procedures, raw materials, physical plant layout, and other site-specific conditions. *State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,* 57 Fed. Reg. 18070, 18073 (April 28, 1992); *see also Sierra Club*, 972 F.3d at 295. Then, the permitting authority must evaluate whether each technologically feasible control is economically feasible, considering the cost of reducing emissions and the difference in costs between the particular source and other similar sources that have implemented emission reductions. *Id.* Therefore, in a proper RACT analysis, for each source, the permitting authority will select a control technology that is reasonably available, considering technical and economic feasibility, and then identify the lowest emission limit that the particular source is capable of achieving by application of that technology (i.e., that a plant operator applying the selected technology is capable of achieving economically and technologically). *See, e.g.*, *Federal Implementation Plan Addressing RACT Requirements for Certain Sources in Pennsylvania,* 87 Fed. Reg. at 53387.

Typically, source-specific RACT requirements are incorporated into a preconstruction permit, accompanied by a review memo that summarizes the RACT evaluations performed, which are then submitted to EPA for incorporation into the SIP. *See Berks Cnty.*, 2012 EHB at 26-27, 2012 WL 1108235, at *3 (stating that "[w]hen it comes to imposing permit conditions designed to ensure that an area achieves compliance with the NAAQS, the Department must normally proceed in accordance with the federal/state SIP process for attaining the NAAQS that is set forth in the federal [CAA]. … There may be special circumstances that warrant disregard of SIP planning, but if… the Department deviate[s] from otherwise clearly applicable federal and state standards and procedures for setting permit limits for a particular facility, it must carefully explain and justify such deviation both factually and legally."). ACHD gave no such explanation in the Response to Comment Document or Technical Support Document for the Permit and did not follow any of the well-understood procedural and evaluative steps typically associated with RACT that have long been recognized by EPA and courts alike. "A SIP must satisfy Reasonably Available Control Technology ("RACT") requirements," and "[t]o be RACT-compliant, an implementation plan must satisfy technological and economic feasibility." *Keystone-Conemaugh Projects LLC v. EPA*, 100 F.4th 434, 440 (3d Cir. 2024) ("Technological feasibility concerns the application of an emission reduction method to a particular source and 'consider[s] the source's process and operating procedures, raw materials, physical plant layout….'"). "Economic feasibility is 'largely determined by evidence that other sources in a source category have in fact applied the control technology in question…'" *Id.* ACHD did no such analysis and made no such showing here. Instead, ACHD takes the incorrect position that a general statement of RACT in Article XXI takes on a more expansive scope and application than it is elsewhere applied,

including with respect to its own typical RACT procedures, and would allow the creation of new emission limits out of whole cloth. [15]

Section 2103.12.a.2.B of the ACHD Rules and Regulations, relating to operating permits, and its analogous provision found in Section 2102.04.b.5, relating to installation permits, do not support an assertion that the Hot Strip Mill Emission Limits are RACT. These sections can only reasonably be interpreted as ensuring that the Department implements RACT in a manner consistent with the CAA. ACHD is delegated limited authority under the CAA by EPA and therefore is required to implement RACT requirements in Allegheny County consistent with how EPA implements those requirements. And while ACHD asserts that it may be more stringent than EPA, there is nothing in either EPA's approval of ACHD's Title V program or the history of ACHD's application of these requirements that would support ACHD's assertion that such stringency was intended in the language of Article XXI. For example, in issuing its approval of ACHD as a delegated Title V authority, EPA specifically called out certain aspects of ACHD's program that differed from Part 70 in "scope and stringency" but were determined nonetheless to be consistent with Part 70; neither RACT nor the establishment of new emission limits in a Title V permit were among these differences. *See Clean Air Act Full Approval of Partial Operating Permit Program; Allegheny County; Pennsylvania*, 66 Fed. Reg. 55112, 55113 (Nov. 1, 2001). Likewise, there is nothing in EPA's approval of ACHD's Federally Enforceable State Operating Permit Program that mentions RACT at all. *Id.* Moreover, the Pennsylvania Air Pollution Control Act ("APCA"), pursuant to which ACHD has also been delegated authority to implement its air regulatory program, provides at Section 4.2 that actions under the APCA to meet the NAAQS generally "shall be no more stringent than those required under the Clean Air Act[.]" *See* APCA, 35 P.S. § 4.2.

Section 2103.12.a.2.B of the ACHD Rules and Regulations states, in relevant part, that the Department shall not issue or reissue any operating permit unless it demonstrates that "[t]he source complies with all applicable emission limitations established by this Article, or where no such limitations have been established by this Article, RACT has been applied to existing sources with respect to pollutants regulated by this Article." *Id.* RACT is defined in Article XXI as "any air pollution control equipment, process modifications, operating and maintenance standards, or other apparatus or techniques which may reduce emissions and which the Department determines is available for use by the source affected in consideration of the necessity for obtaining the emission reductions, the social and economic impact of such reductions, and the availability of alternative means of providing for the attainment and

[15] In parallel orders denying motions for Summary Disposition in the above-referenced Clairton and Edgar Thomson appeals, which remain pending, ACHD's outgoing Hearing Officer opined that wholly new emission limits included in those permits in the name of RACT constitute "applicable requirements" within the meaning of Article XXI and Part 70 and therefore it was not impermissible for ACHD to impose these limits for the first time in a Title V permit. Both orders are available here: Clairton Opinion; Edgar Thompson Opinion. U.S. Steel disagrees with the Hearing Officer's analysis because ACHD's creation of new emission limits in a Title V permit under the guise of an expanded RACT authority that exceeds far beyond the practical, legal and well understood meaning of RACT, cannot be upheld. Indeed, the mere citation to generalized language in Article XXI that would allow for the imposition of substantive new limits in a Title V permit does not satisfy the definition of applicable requirement and runs afoul of ACHD's constitutional duty to provide due process and fair notice to permittees of the regulatory obligations that may apply. Importantly, the Hearing Officer's Clairton decision did not address whether ACHD engaged in a proper RACT analysis in setting the challenged new emission limits. *See, e.g.*, Clairton Opinion, at 30.

maintenance of the NAAQS's." Exhibit 2, § 2101.20. In other words, RACT must provide for the attainment or maintenance of the NAAQS via the identification of air pollution control equipment, process modifications, operating and maintenance standards or other apparatus or techniques. On its face, this language is entirely consistent with the requirements of the CAA, and the manner in which ACHD has properly applied RACT to existing sources. In fact, ACHD has promulgated specific regulations establishing presumptive RACT requirements for major sources of NOx and VOC emissions, and reasonably available control measure requirements for specific types of operations that emit PM and PM10 to ensure compliance with the CAA. *See, e.g.*, Exhibit 2, Art. XXI §§ 2104.02, 2105.06, 2105.08, and 2105.21. ACHD's own RACT regulations further support that RACT, as defined and incorporated into Article XXI, was intended to ensure that ACHD was complying with its obligations under the CAA. *Compare* Exhibit 2, Art. XXI § 2103.12.a.2.B (stating "where no such limitations have been established by this Article, RACT has been applied to existing sources…") with § 2105.06.a (stating "[t]his Section applies to all major sources of [NOx] or VOCs…, for which no applicable emission limitations have been established by regulations under this Article.").

By contrast, the Hot Strip Mill Emission Limits do not comport with RACT. ACHD has not attempted to justify the limits as consistent with the definition of RACT, and has made no showing at all that it evaluated control equipment, process modifications or apparatus, or that the emission limits are necessary to attain or maintain the NAAQS. The Permit record is entirely devoid of any such rationale. Instead, it appears that ACHD simply selected emission limits and called them "RACT." Indeed, Allegheny County is in attainment of the CO NAAQS, and therefore ACHD cannot use any argument of non-attainment as a basis for imposing the Hot Strip Mill Emission Limits. *See Pennsylvania Redesignation of the Allegheny County Carbon Monoxide Nonattainment Area*, 67 Fed. Reg. 68521 (Nov. 12, 2002). Further, ACHD has not made any showing that the CO limit is necessary to maintain the NAAQS, nor is the Facility even mentioned in ACHD's maintenance plan for the CO NAAQS. *See Revision to Allegheny County's Portion of the Pennsylvania State Implementation Plan for the Maintenance of the Carbon Monoxide National Ambient Air Quality Standards*, (June 10, 2011), attached hereto as Exhibit 20, and EPA's *Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Carbon Monoxide Second Limited Maintenance Plan for the Pittsburgh Area*, 79 Fed. Reg. 17054-17059 (March 27, 2014).

With respect to VOC, ACHD has expressly considered RACT for the Facility in the context of attainment demonstrations for the ground level ozone NAAQS. In EPA's listing of SIP-approved source-specific RACT measures for the Irvin Facility, **no VOC limits** are listed for the Hot Strip Mills reheat furnaces. *See EPA Approved Pennsylvania Source-Specific Requirements,* https://www.epa.gov/air-quality-implementation-plans/epa-approved-pennsylvania-source-specific-requirements (Nov. 13, 2024). Most recently, ACHD evaluated RACT for ground level ozone, including VOC, in accordance with the "RACT III" requirements set forth at 25 Pa. Code §§ 129.111-115 and Article XXI §2105.08 for purposes of ensuring attainment of the 2015 NAAQS for ground level ozone. In a memo dated June 30, 2023 *Reasonable Available Control Technology (RACT III) Determination US Steel Irvin* (attached hereto as Exhibit 21), ACHD identifies VOC RACT for the Hot Strip Mill reheat furnaces as presumptive RACT set forth at 25 Pa. Code §129.112(d), which is "maintain and operate the source in accordance with the manufacturer's specifications and good operating practices."

Moreover, ACHD identified a potential to emit VOC of 6.2 tons per year for each Hot Strip Mill reheat furnace, a value that is four and a half times **higher** than the new limit now imposed through the Permit with no basis or justification. The Pennsylvania Department Environmental Protection agreed with ACHD's RACT III determination for the Facility, and submitted it to EPA for approval. *See Intent to Submit Pennsylvania SIP Revisions to EPA*, 54 Pa. Bull. 1018 (Feb. 24, 2024). Now, less than a year later and with no modifications to the Hot Strip Mill, ACHD appears to have inexplicably changed that RACT determination and claims that it is authorized to do so. Neither Article XXI nor Title V would allow such a result via the Permit.

In sum, Article XXI and cannot be interpreted as ACHD suggests in justifying the Hot Strip Mill Emission Limits, to allow for the wholesale creation of new limits entirely outside of the normal RACT process, and call them RACT, without express statutory authority, which does not exist.

iv. The Hot Strip Mill Emission Limits are within EPA's scope of review for a title V petition to object.

As discussed above, U.S. Steel strongly disagrees with any suggestion that the Hot Strip Mill Emission limits are "applicable requirements" as that term is defined under Article XXI, the CAA and the part 70 implementing regulations. Nonetheless, EPA has the authority to object to the Permit in response to this petition based on the fact that ACHD incorporated the emission limits into the Irvin Plant Permit for the first time (upon renewal, no less), without properly establishing the basis for emission limits or even referencing the correct state regulation that ACHD argues justifies the emission limits in a preconstruction or prior operating permit for the Facility. As such, ACHD has not complied with its obligations under Part 70.

Further, EPA's own recent Applicable Requirements Rule confirms that its Title V oversight authority is properly invoked in circumstances in which applicable requirements are established either in full or in part for the first time through the title V permitting process. Applicable Requirements Rule at 1154, 1158. That is what ACHD has attempted to do here, which subjects the Hot Strip Mill Emission Limits to EPA review. In such cases, EPA explains, the applicable requirements are properly within the scope of EPA oversight authority through the title V petition process. *Id.* at 1152. By way of example, EPA oversight would extend to the case- or unit-specific details of an applicable requirement appearing for the first time in a Title V permit and the specific Title V content of certain self-implementing standards contained in SIPs. *Id.* at 1157.

With respect to the Hot Strip Mill Emission Limits, ACHD opines that its RACT authority—which it claims is distinct and different from the well-understood RACT established under the CAA—serves as the justification for establishing the emission limits in the Irvin Plant Permit. U.S. Steel disagrees for all of the reasons discussed above and requests that EPA object to the Hot Strip Mill Emission Limits and require ACHD to remove them from the Permit.

c. Specific grounds for Objection to the Flare Usage Restrictions

U. S. Steel objects to the newly imposed restriction on flare operation set forth within Condition V.J.1.a. of the Permit to only combusting coke oven gas not combusted in the Hot Strip Mill Reheat furnaces, HPH Batch Annealing Furnaces, Open Coil Annealing Furnaces, Continuous Annealing, No. 2 Continuous Galvanizing preheat furnace, and Boiler Nos. 1–4. The Flare Usage Restrictions condition was not established in any prior installation or operating permit, and ACHD provided no notice to U.S. Steel in the draft permit that it was considering this restriction. Further, ACHD is aware that the Facility flares combust excess coke oven gas that is generated at the Clairton Coke Works Facility. Accordingly, this limitation is impracticable and vague, and has no basis in any applicable requirement for the Facility. More importantly, the Flare Usage Restrictions may unduly burden operational flexibility and safety by limiting the circumstances under which the flares may be used.

ACHD cites to its generalized RACT language of Article XXI, §2103.12a.2.b. as support within the Permit for the Flare Usage Restrictions. This citation again demonstrates just how far ACHD believes it can stretch this so-called RACT authority. There is no showing anywhere in the Permit record that would tie the Flare Usage Restriction to the attainment or maintenance of the NAAQS – or even which pollutant it is intended to address – in contravention of the clear definition and application of RACT as set forth at length above. U.S. Steel requests that EPA object to the Flare Usage Limitations and require ACHD to remove this limitation from the Permit.

d. ACHD's Title V permitting program does not comport with the terms on which EPA's approval is conditioned because judicial review is not available.

Section 502(b) of the CAA sets forth the "minimum elements of a [title V] permit program to be administered by any air pollution control agency." 42 U.S.C. § 7661a(b). Critical to the current Petition is the requirement that an air pollution control agency's Title V program include, in relevant part, "[a]dequate, streamlined, and reasonable procedures for …expeditious review of permit actions, including applications, renewals, or revisions, and including an opportunity for judicial review in State court of the final permit action by the applicant, any person who participated in the public comment process, and any other person who could obtain judicial review of that action under applicable law." *Id.* at § 7661a(b)(6). The federal regulations establishing requirements for state Title V permit programs build on the statutory language, stating that any state that wants to administer its own Title V program must submit, among other information, a demonstration of adequate legal authority to "[p]rovide an opportunity for judicial review in State court of the final permit action by the applicant, any person who participated in the public participation process provided pursuant to § 70.7(h) of this part [addressing public notice and comment procedures], and any other person who could obtain judicial review of such actions under State laws." 40 C.F.R. § 70.4(b)(3)(x).

The state of Pennsylvania sought and was granted in 1996 EPA's full approval to administer its own part 70 permit program. *See Full Approval of Partial Operating Permit Program*, 66 Fed. Reg. at 55113 (citing 61 Fed. Reg. 39,597) (Aug. 26, 1996)). The Pennsylvania Department of Environmental Protection's ("PADEP") program governed Title V permitting in Allegheny County until EPA ultimately approved a separate partial program for Allegheny County in 2001. *See* 66 Fed. Reg. at 55113. EPA's approval of Allegheny County's

program was necessarily conditioned on the County's demonstration that its program would include the required elements set forth in CAA section 502(b) and 40 C.F.R. § 70.4(b), including providing an opportunity for judicial review of a final permit action. As noted above in the Introduction, ACHD's Rules and Regulations establish the right of a permit applicant to seek review of a final permit action before the Hearing Officer, Art. XXI § 2102.03.h.2.B., but also require ACHD's "Director or Hearing Officer [to] schedule a full evidentiary hearing to determine any material or substantial issue of fact raised in any Notice of Appeal filed under the provisions of Section 1104 of [Article XI]." Exhibit 3, Art. XI § 1105.A. Once heard according to these administrative procedures, appeal may be taken to the Allegheny County Court of Common Pleas. *Id.* § 1110. EPA's approval of Article XXI indicated its determination that these procedures would satisfy the statutory obligation to provide an opportunity for judicial review of a final permit action. But in practice, ACHD is providing no such opportunity at this time.

Art. XI § 1105.A. purports to permit either the Director of the ACHD or the Hearing Officer to schedule a hearing in response to a Notice of Appeal, but Art. XXI § 2102.03.h.2.B. clarifies that only the Hearing Officer may preside over such a hearing. *See* Exhibits 2 and 3. Accordingly, if ACHD does not have a Hearing Officer, as is currently the case, then a permittee like U.S. Steel who has filed a Notice of Appeal of a final permit action, has no clear opportunity for prompt resolution of its appeal. This means that ACHD's administration of its part 70 operating permit program no longer conforms to the terms on which EPA's approval thereof was based. In this way, ACHD's program does not comply with the CAA, the part 70 permit program regulations, applicable provisions of the Pennsylvania SIP, and ACHD's own Rules and Regulations. As a practical matter, this failure harms U.S. Steel because the Permit is effective pending appeal, even though U.S. Steel will not have an opportunity for judicial review as contemplated by the Clean Air Act unless and until the Hearing Officer renders a decision and U.S. Steel is able to appeal that decision to the Allegheny County Court of Common Pleas, in accordance with § 1110 of Article XI and CAA § 7661a(b)(6). The absence of a Hearing Officer within the ACHD, as provided by Articles XI and XXI of the ACHD Rules and Regulations, arose after the close of the public comment period on the Permit.

III. CONCLUSION

For the foregoing reasons, U.S. Steel requests that the Administrator grant the Petition.

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Respectfully submitted,

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TABLE OF EXHIBITS

1. U.S. Steel, Irvin Facility Title V Operating Permit No. 0050-OP24, issued by the Allegheny County Health Department on September 27, 2024

2. Allegheny County Health Department, Rules and Regulations, Article XXI – Air Pollution Control

3. Allegheny County Health Department, Rules and Regulations, Article XI – Hearings and Appeals

4. U.S. Steel, Irvin Facility Title V Operating Permit No. 0050, issued by the Allegheny County Health Department on February 18, 2005

5. U.S. Steel, Irvin Facility Title V Operating Permit No. 0050 issued by the Allegheny County Health Department on December 9, 2016

6. Letter from Cristina Fernandez, Director, U.S. EPA Region III, to Jayme Graham, Air Quality Program Manager, ACHD (May 29, 2018) (transmitting EPA's final report for the ACHD Title V program evaluation)

7. U.S. Steel October 28, 2024 Notice of Appeal of Irvin Facility Permit No. 0050-OP24

8. October 16, 2024 Email from Hearing Officer, alerting U.S. Steel and ACHD that Hearing Officer was leaving the position

9. October 18, 2024 Email from Hearing Officer to U.S. Steel, advising U.S. Steel and ACHD that Hearing Officer would not be issuing any rulings prior to departure

10. November 8, 2024 Email from Counsel for ACHD indicating that ACHD is not willing to stay the Title V Operating Permit No. 0050-OP24 conditions pending appeal

11. U.S. Steel's November 14, 2023 Comment Letter objecting to new Hot Strip Mill Emission Limits

12. Summary of Public Comments and Department Responses on the Proposes Issuance of United States Steel Corporation Mon Valley Work Irvin Plant Title V Operating Permit No. 0050-OP24 ("Response to Comment Document")

13. Technical Support Document for Permit No. 0050-OP24

14. Accompanying Spreadsheet to Ex. 13, Technical Support Document for Permit No. 0050-OP24

15. U.S. Steel, Irvin Facility Draft Title V Operating Permit No. 0050-OP23

16. Draft Technical Support Document for Ex. 15, Draft Permit No. 0050-OP23

17. EPA, *White Paper for Streamlined Development of Part 70 Permit Applications* (July 10, 1995)

18. U.S. Steel Irvin Facility Minor Source/Minor Modification Permit No. IP#0050-I009, issued by the Allegheny County Health Department on September 12, 2023

19. Allegheny County Portion of the Pennsylvania RACT II SIP Revision for the 1997 and 2008 8-Hour Ozone NAAQS (April 23, 2020)

20. *Revision to Allegheny County's Portion of the Pennsylvania State Implementation Plan for the Maintenance of the Carbon Monoxide National Ambient Air Quality Standards*, (June 10, 2011)

21. ACHD, *Reasonably Available Control Technology (RACT III) Determination US Steel Irvin* (June 30, 2023)