

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
BEFORE THE ADMINISTRATOR**

IN THE MATTER OF	)	PETITION FOR OBJECTION
	)	
Clean Air Act Title V Permit For	)	
	)	
<b>U.S. STEEL SEAMLESS TUBULAR OPERATIONS, LLC-FAIRFIELD WORKS, PIPE MILL</b>	)	Permit No. 4-07-0371-09
	)	
Final Title V/State Operating Permit	)	
In Jefferson County, AL	)	
	)	
Issued by the Jefferson County Department of Health	)	

**PETITION REQUESTING THAT THE ADMINISTRATOR OBJECT TO THE  
ISSUANCE OF TITLE V PERMIT NO. 4-07-0371-09 FOR U.S. STEEL SEAMLESS  
TUBULAR OPERATIONS, LLC-FAIRFIELD WORKS, PIPE MILL**

Pursuant to Clean Air Act § 505(b)(2) and 40 CFR § 70.8(d), Greater-Birmingham Alliance to Stop Pollution (“GASP” or “the Petitioner”) petitions the Administrator of the United States Environmental Protection Agency (“EPA” or “the Agency”) to object to the reissuance of proposed Title V Operating Permit for U.S. Steel’s Seamless Tubular Operations, LLC-Fairfield Works, Pipe Mill (hereinafter, “U.S. Steel-Fairfield Works”) Permit, Permit Number 4-07-0371-09. The permit was issued by the Jefferson County Department of Health (“JCDH”). A copy of the final permit is attached as Exhibit A. GASP provided comments to JCDH on the draft permit. A copy of GASP’s comments are attached as Exhibit B. JCDH’s Response to Comments (hereinafter “RTC”) is attached as Exhibit C.

## INTRODUCTION

While Jefferson County currently does not have non-attainment status for any of the criteria pollutants<sup>1</sup>, this does not mean that there are not very harmful health ramifications from the current levels of pollutants.<sup>2</sup> Discussed in detail below, there are serious environmental justice concerns with this Title V permit due to the demographics and pollution percentile in the area surrounding U.S. Steel-Fairfield Works.

Jefferson County's<sup>3</sup> population is approximately 49.5% white, 43.5% black, and approximately 50.5% identifying as not solely white.<sup>4</sup> Approximately 16.2% of the total

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<sup>1</sup> *Current Nonattainment Counties for All Criteria Pollutants*, EPA, <https://www3.epa.gov/airquality/greenbook/ancl.html#TX> (last updated May 31, 2021)

<sup>2</sup> *See, e.g., North Carolina v. EPA*, 531 F.3d 896, 903 (D.C.Cir.2008) (“NOx emissions contribute to the formation of fine particulate matter, also known as PM<sub>2.5</sub>, as well as ground-level ozone, a primary component of smog.”); *Catawba Cnty. v. EPA*, 571 F.3d 20, 26 (D.C.Cir.2009) (“Elevated levels of fine particulate matter have been linked to “adverse human health consequences such as premature death, lung and cardiovascular disease, and asthma.”); *Ass'n of Irrigated Residents v. EPA*, 686 F.3d 668, 671 n. 1 (9th Cir.2012) (“And ‘even at very low levels,’ inhalation of ozone ‘can cause serious health problems by damaging lung tissue and sensitizing lungs to other irritants.’”); *North Carolina v. TVA*, 593 F.Supp.2d 812, 822 (W.D.N.C. 2009) *rev'd on other grounds*, 615 F.3d 291 (4th Cir. 2010) (In tort case against coal-fired power plants “Court finds that, at a minimum, there is an increased risk of incidences of premature mortality in the general public associated with PM<sub>2.5</sub> exposure, even for levels at or below the NAAQS standard of 15 [u]g/m<sup>3</sup>.”); *Ohio Power Co. v. EPA*, 729 F.2d 1096, 1098 (6th Cir. 1984) (in challenge to Clean Air Act regulation of power plants 25 years ago, court holds “there is now no longer any doubt that high levels of pollution sustained for periods of days can kill. Those aged 45 and over with chronic diseases, particularly of the lungs or heart, seem to be predominantly affected. In addition to these acute episodes, pollutants can attain daily levels which have been shown to have serious consequences to city dwellers.”); *Sierra Club v. TVA*, 592 F.Supp.2d 1357, 1371 (N.D. Al. 2009) (In Clean Air Act enforcement action against coal-fired power plant, court holds “there is no level of primary particulate matter concentration at which it can be determined that no adverse health effects occur.”); *Catawba County v. EPA*, 571 F.3d 20, 26 (D.C. Cir. 2009) (“A ‘significant association’ links elevated levels of PM<sub>2.5</sub> with adverse human health consequences such as premature death, lung and cardiovascular disease, and asthma.”); 70 Fed. Reg. 65,983, 65,988 (Nov. 1, 2005) (“emissions reductions resulting in reduced concentrations below the level of the standards may continue to provide additional health benefits to the local population.”); 71 Fed. Reg. 2620, 2635 (Jan. 17, 2006) (U.S. EPA unable to find evidence supporting the selection of a threshold level of PM<sub>2.5</sub> under which the death and disease associated with PM<sub>2.5</sub> would not occur at the population level).

<sup>3</sup> This is the county in Alabama where U.S. Steel Seamless Tubular Operations, LLC – Fairfield Works is located.

<sup>4</sup> *QuickFacts for Jefferson County, AL*, UNITED STATES CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/jeffersoncountyalabama/IPE120219> (last visited June 4, 2021)

population of Jefferson County is considered to be living in poverty (at or below federal poverty line).<sup>5</sup> Fairfield's<sup>6</sup> population at large is approximately 5.9% white and 91.2% black.<sup>7</sup>

Approximately 21.8% of the total population of Fairfield, AL is considered to be living in poverty (at or below federal poverty line).<sup>8</sup> The percentage of Americans in 2019 living below the federal poverty line was 10.5%.<sup>9</sup> Therefore, the poverty rate of Fairfield is roughly double the national poverty rate. The two-year average rate of poverty in Alabama for 2018-2019 was 14.4%.<sup>10</sup> This means that Fairfield's poverty rate is around 50% higher than the poverty rate for Alabama. Within a 3-mile radius of the U.S. Steel-Fairfield Works, 83% of the population is black, 44% are considered low income, and only 17.15% of the population has a bachelor's degree or higher.<sup>11</sup> It is well-established that poor communities and communities of color are disproportionately affected by air pollution; Black Americans in particular face a 54 percent higher health burden compared with the overall population of the United States.<sup>12</sup>

Additionally, within a 3-mile radius of the U.S. Steel-Fairfield Works, the Environmental Justice index shows that this area is in at least the 87th percentile for every measured pollution

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<sup>5</sup> *Id.*

<sup>6</sup> This is the city in Alabama where U.S. Steel Seamless Tubular Operations, LLC – Fairfield Works is located.

<sup>7</sup> *QuickFacts for Fairfield City, AL*, UNITED STATES CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/fairfieldcityalabama/PST045219> (last visited June 4, 2021)

<sup>8</sup> *Id.*

<sup>9</sup> *Table B-1 - People in Poverty by Selected Characteristics: 2018 and 2019*, UNITED STATES CENSUS BUREAU, (Sept. 2020), <https://www2.census.gov/programs-surveys/demo/tables/p60/270/tableB-1.xlsx>

<sup>10</sup> *Percentage of People in Poverty by State Using 2- and 3-Year Averages: 2016-2017 and 2018-2019*, UNITED STATES CENSUS BUREAU, (Sept. 2020), <https://www2.census.gov/programs-surveys/demo/tables/p60/270/state.xlsx>

<sup>11</sup> *ECHO Detailed Facility Report – U.S. Steel Corporation – Fairfield Works: Demographic Profile of Surrounding Area (3 Miles)*, EPA, <https://echo.epa.gov/detailed-facility-report?fid=110000366318#customize110000366318> (last checked June 4, 2021)

<sup>12</sup> *EPA Scientists Find Black Communities Disproportionately Hit by Pollution*, THE HILL (Feb. 23, 2018), <https://thehill.com/policy/energy-environment/375289-epa-scientists-find-emissions-greater-impact-low-income-communities#>

variable in the state of Alabama.<sup>13</sup> The 3-mile radius is in at least the 79th percentile for EPA Region 4 and the USA.<sup>14</sup>

This Administration’s recent executive order on the climate crisis renews support for Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,<sup>15</sup> and calls for federal agencies to make environmental justice an integral part of their missions.<sup>16</sup> Executive action is to be taken by this Administration to tackle the climate crisis at home by “immediate review of harmful rollbacks of standards that protect our air, water, and communities” as well as increasing environmental justice monitoring and enforcement through new or strengthened offices at the EPA, Department of Justice, and Department of Health and Human Services.<sup>17</sup> The Administration plans on strengthening clean air and water protections holding domestic polluters accountable for their actions and delivering environmental justice to all communities in the United States.<sup>18</sup>

In its Environmental Justice Strategic Plan for 2016-2020 (“EJ 2020”), EPA outlined its goal to deepen its environmental justice practice within its programs to improve the health and environmental of overburdened communities, and stated its aim to establish a framework for

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<sup>13</sup> *EJA Screen Report (Version 2020) – 3 Mile Ring*, EPA, [https://ejscreen.epa.gov/mapper/mobile/EJSCREEN\\_mobile.aspx?geometry={%22x%22:-86.9376,%22y%22:33.4822,%22spatialReference%22:{%22wkid%22:4326}}&unit=9035&areatype=&raid=&basemap=streets&distance=3](https://ejscreen.epa.gov/mapper/mobile/EJSCREEN_mobile.aspx?geometry={%22x%22:-86.9376,%22y%22:33.4822,%22spatialReference%22:{%22wkid%22:4326}}&unit=9035&areatype=&raid=&basemap=streets&distance=3) (last checked June 4, 2017)

<sup>14</sup> *Id.*

<sup>15</sup> Exec. Order No. 12898, § 1-101, 59 Fed. Reg. 7629 (Feb. 16, 1994), as amended by Exec. Order No. 12948, 60 Fed. Reg. 6381 (Feb. 1, 1995).

<sup>16</sup> “Executive Order on Tackling the Climate Crisis at Home and Abroad,” § 201 (Jan. 27, 2021), available at <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/27/executive-order-on-tackling-the-climate-crisis-at-home-and-abroad/>; see also, White House Fact Sheet, “President Biden Takes Executive Actions to Tackle the Climate Crisis at Home and Abroad, Create Jobs, and Restore Scientific Integrity Across Federal Government,” (Jan. 27, 2021), available at <https://www.whitehouse.gov/briefing-room/statementsreleases/2021/01/27/fact-sheet-president-biden-takes-executive-actions-to-tackle-the-climate-crisis-at-home-and-abroad-create-jobs-and-restore-scientific-integrity-across-federal-government/>.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

considering environmental justice in EPA-issued permits.<sup>19</sup> These actions by the EPA underscore the agency’s commitment to ensuring that “vulnerable, environmentally burdened, economically disadvantaged communities”<sup>20</sup> have access to a safe and healthy environment.

The EPA has also recognized that “Title V can help promote environmental justice through its underlying public participation requirements,” as well as through monitoring, compliance certification, reporting and other measures.<sup>21</sup> Indeed, “[f]ocused attention to the adequacy of monitoring and other compliance assurance provisions is warranted” where a facility “is home to a high density of low-income and minority populations and a concentration of industrial activity”.<sup>22</sup>

## BACKGROUND

### I. Facility

U.S. Steel-Fairfield Works is owned by United States Steel Corporation (hereinafter “U.S. Steel”).<sup>23</sup> U.S. Steel was formed in 1901 and was the largest company in the world at the time of its creation.<sup>24</sup> U.S. Steel’s revenue in 2020 was \$9.7 billion.<sup>25</sup> U.S. Steel-Fairfield Works makes pipes which involves “reheating the solid steel cylinders, piercing the rounds with

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<sup>19</sup> EJ 2020 Action Agenda – The U.S. EPA’s Environmental Justice Strategic Plan for 2016-2020, EPA (May 2016), at iii. Hereinafter, “EPA’s EJ 2020 Action Agenda.”

<sup>20</sup> *Id.*

<sup>21</sup> *In re US Steel Corp – Granite City Works*, Petition Number V-2011-2 (Order on Petition) (Dec. 3, 2012), at 5.

<sup>22</sup> *Id.*

<sup>23</sup> Operating Permit Application, U. S. Steel Seamless Tubular Operations, LLC - Fairfield Works Title V Permit Administrative Amendment Application, Permit No. 4-07-0371-09, Aug. 18, 2020, at 1 (pdf p. 3)

<sup>24</sup> *The Founding of U.S. Steel and The Power of Public Opinion*, HARVARD BUSINESS SCHOOL, <https://www.library.hbs.edu/us-steel/exhibition/the-founding-of-u.s.-steel-and-the-power-of-public-opinion> (last visited June 5, 2021)

<sup>25</sup> Patricia Sabatini, *U.S. Steel sees profit in fourth quarter but loses \$1.2 billion during disappointing year*, PITTSBURGH POST-GAZETTE, (Jan. 28, 2021 5:06 p.m.), <https://www.post-gazette.com/business/pittsburgh-company-news/2021/01/28/U-S-Steel-profit-fourth-quarter-Burritt/stories/202101280197>

mandrels, and elongating the hot pierced rounds to form pipes.”<sup>26</sup> The facility then threads the pipes at both ends, applies a protective coating to the threads, and applies a coating of varnish to the outer surface of the pipe before shipping.<sup>27</sup> “The SIC code for the facility is 3317 and the NAICS Code is 331210.”<sup>28</sup> Based upon the Facility-Wide PTE data supplied by U.S. Steel for Fairfield Works, and relied upon by JCDH in determining Title V applicability, it is clear that a Title V permit is required for U.S. Steel-Fairfield Works.<sup>29</sup> U.S. Steel-Fairfield Works is considered a major source of air pollution where it has the potential to emit at least 100 tons per year of PM, PM<sub>10</sub>, PM<sub>2.5</sub>, CO, NO<sub>x</sub>, SO<sub>2</sub>, and VOC<sup>30</sup>.

## II. Permit History

This Petition is filed for the Administrator to object to Permit No, 4-07-0371-09, which is a Major Source Operating Permit (hereinafter “MSOP”) <sup>31</sup>. This permit reopened MSOP No. 4-07-0371-08<sup>32</sup> which was originally issued by JCDH to U.S. Steel–Fairfield Works on February 28, 2020.<sup>33</sup> U.S. Steel-Fairfield Works<sup>34</sup> has been issued a total of six Title V operating permits<sup>35</sup> and a total of seven permits, one of which was a name change.<sup>36</sup> U.S. Steel’s application to JCDH requests an administrative amendment<sup>37</sup> due to discrepancies in the materials they

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<sup>26</sup> Statement of Basis, Major Source Operating Permit Draft for U.S. Steel Seamless Tubular Operations, LLC – Fairfield Works, Pipe Mill, Permit No. 4-07-0371-09 (Nov. 1, 2020) at 2.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at 1

<sup>29</sup> *See* Statement of Basis, *supra* Note 26, at 4 & Permit Application, *supra* note 23, at 13 tbl.2

<sup>30</sup> *See* Statement of Basis at 4

<sup>31</sup> Draft Major Source Operating Permit, Major Source Operating Permit Draft for U.S. Steel Seamless Tubular Operations, LLC – Fairfield Works, Pipe Mill, Permit No. 4-07-0371-09 (Aug. 18, 2020), at 1

<sup>32</sup> *Introductory Email* to U. S. Steel Seamless Tubular Operations, LLC - Fairfield Works Title V Permit Administrative Amendment Application, Permit No. 4-07-0371-09, Aug. 18, 2020

<sup>33</sup> Statement of Basis, *supra* Note 26, at 1,5

<sup>34</sup> The plant was originally operating under United States Steel Corporation-Fairfield Works Pipe Mill. Statement of Basis, *supra* Note 26, at 2.

<sup>35</sup> The first permit was issued in 1996, and there have been five additional Title V permits granted since the first permit, and then a permit for a name change *Id.*

<sup>36</sup> Facility was granted a name change. *See Id.*

<sup>37</sup> Permit Application, *supra* Note 23, at 2

submitted for the current Title V permit.<sup>38</sup> U.S. Steel claims that the amendment is necessary because in the original application there were two different methods used to calculate emissions for the Slag Management baghouse. U.S. Steel claims that one of those emissions rates was correct while the other was incorrect and requests that the incorrect emissions rate be changed.<sup>39</sup> U.S. Steel also seeks to alter an engineering design proposal under the current operating permit where the emissions from the alloy bins will now be routed to the Slag Management Baghouse instead of having bin vent filters.<sup>40</sup>

While U.S. Steel submitted an application for an administration amendment<sup>41</sup>, the Draft Permit specified that this is actually a renewal and revision of the current permit<sup>42,43</sup>. There is some conflicting information in the Draft Permit as one part of the SOB states the current Title V

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<sup>38</sup> Permit Application, *supra* Note 23, at 1

<sup>39</sup> Fairfield claims that the netting emissions rates are correctly listed at .0052 grains/dscf with a corresponding emissions rate of 21.39 lb/hr. However, the Potential to Emit (PTE) calculations incorrectly use a .0001 grains/dscf with a corresponding emissions rate of 4.11 lb/hr. *See Id.*

<sup>40</sup> U.S. Steel claims that there will be no change in the potential emission rate associated with this change in bin emissions control. *See Id.* at 2

<sup>41</sup> *See* Permit Application, *supra* Note 23, at 2

<sup>42</sup> Statement of Basis, *supra* Note 26, at 1

<sup>43</sup> While the Statement of Basis does not specify why they have changed the status of the request, it seems unlikely that the U.S. Steel application could have supported an administrative review when they were changing emissions rates that were being used to calculate PTE and, therefore, whether or not they would be subject to New Source Review. An administrative permit amendment is allowed when the amendments are relatively minor and seemingly do not change the substance of the permit. The revisions are allowed to correct a typographical error, identify changes in name, address, etc., increase in monitoring or reporting, incorporate a general permit into an operating permit, allow for reflection of changes in ownership under certain conditions, incorporate requirements issued under preconstruction review permits, etc. *See* Ala. Admin. Code 335-3-16-.13(1)(a) (2021), JCDH Air Pollution Control Rules and Regs. 18.13.1(a) (2017). When looking at the regulatory standards for when a Title V permit should be reopened (reopening for cause), the basic concept is if any changes made are more serious than mere administrative changes. The regulation potentially used by JCDH (but not explicitly stated) may be the requirement for a reopening of a Title V permit if “[t]he Department, ADEM or EPA determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit.” *See* JCDH Air Pollution Control Rules and Regs. 18.13.5(a)(3), Ala. Admin. Code 335-3-16-.13(5)(a)(3). The important result from a reopening is that the Department must use the same procedures as applied to the initial permit issuance. *See* JCDH Air Pollution Control Rules and Regs. 18.13.5(b), Ala. Admin. Code 335-3-16-.13(5)(b).

permit is 4-07-0371-06 and was issued on September 11, 2012<sup>44</sup>, but JCDH acknowledges in a later paragraph in the SOB that a February 28, 2020 permit<sup>45</sup> was issued for U.S. Steel-Fairfield Works.<sup>46</sup> According to the JCDH website<sup>47</sup>, the current Title V permit under U.S. Steel-Fairfield Works is operating is MSOP No. 4-07-0371-09, and the date of issuance was March 9, 2021.<sup>48</sup> The SOB states that U.S. Steel submitted a permit application on February 27, 2015 to install and operate an electronic arc furnace (hereinafter “EAF”).<sup>49</sup> While the draft application does not directly discuss the current status of the EAF, it appears as though construction on the EAF started in March 2015, was suspended in December of 2015, and U.S. Steel announced the continuance of the project in early 2019.<sup>50</sup> On October 26, 2020, “U.S. Steel announced the successful start-up of its newly constructed...electric arc furnace (EAF) steelmaking facility at its Fairfield, Alabama, operations.”<sup>51</sup> JCDH determined that the EAF itself was a major source that was being added onto an existing major source so an NSR review was required.<sup>52</sup> According

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<sup>44</sup> Statement of Basis, *supra* Note 26, at 1

<sup>45</sup> *Id.* at 5

<sup>46</sup> While the SOB by JCDH does not give the permit no. for the February 28, 2020 permit, U.S. Steel does provide the that permit number (4-07-0371-09) in their application. Fairfield Title V Permit Administrative Amendment Application at 1.

<sup>47</sup> See <https://www.jcdh.org/SitePages/Misc/TitleVAirPermits.aspx>

<sup>48</sup> Final Major Source Operating Permit, Major Source Operating Permit Draft for U.S. Steel Seamless Tubular Operations, LLC – Fairfield Works, Pipe Mill, Permit No. 4-07-0371-09 (March 9, 2021) at 1

<sup>49</sup> Statement of Basis, *supra* Note 26, at 1

<sup>50</sup> DeAnne Toto, U.S. Steel to restart construction on Alabama EAF, RECYCLING TODAY, (Feb. 12, 2019),

<https://www.recyclingtoday.com/article/us-steel-alabama-electric-arc-furnace-construction/>; See also United States Steel Announces Restart of Construction of Electric Arc Furnace, U. S. Steel Tubular Products, (Feb. 11, 2019), <https://usstubular.com/getattachment/84a458c9-f54f-471b-b672-593a20fca96f/2019-006-UNITED-STATES-STEEL-RESTARTS-CONSTRUCTION-ON-EAF.pdf?lang=en-US>

<sup>51</sup> *U.S. Steel Announces Successful Start-Up of New Electronic Arc Furnace at its Alabama Facility*, U. S. Steel Tubular Products, (Oct. 26, 2020),

<https://info.usstubular.com/hubfs/Press%20Releases/U.%20S.%20STEEL%20ANNOUNCES%20SUCCESSFUL%20START-UP%20OF%20NEW%20ELECTRIC%20ARC%20FURNACE%20AT%20ITS%20ALABAMA%20FACILITY.pdf>

<sup>52</sup> Statement of Basis, *supra* Note 26, at 4



to JCDH, the NSR showed that the addition of the EAF did not exceed any significant emission rates to trigger NSR<sup>53</sup>.<sup>54</sup> Finally, JCDH states there was another NSR conducted for the emission rates corrections and changes to the alloy bin emissions collection process requested by U.S. Steel in their recent application.<sup>55</sup> JCDH concluded that neither of these changes would result in any significant emission rates increases to trigger NSR.<sup>56</sup>

### **III. Petitioner**

GASP is a non-profit health advocacy organization fighting for healthy air and environmental justice in the greater-Birmingham area through education, advocacy, and collaboration. GASP is actively involved in addressing community concerns involving air quality and environmental justice throughout Alabama. One way in which GASP seeks to improve air quality and address historic and ongoing environmental justice issues in these communities is through advocating for stronger Title V permits.

### **TIMELINESS**

JCDH sent this permit to EPA on March 9, 2021. The 45-days expired on April 7, 2021. This Petition is filed June 7, 2021 within 60 days following the end of U.S. EPA's 45-day review period as required by Clean Air Act ("CAA") § 505(b)(2). The Administrator must grant or deny this petition within 60 days after it is filed.<sup>57</sup> If the Administrator determines that the permit does

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<sup>53</sup> *Id.*

<sup>54</sup> The Statement of Basis does not address what the applicable NSR significant emissions rates are. There is some interesting language stating that a comprehensive NSR was required and conducted, and the NSR informed JCDH that no emission rates were high enough to trigger an NSR. *See Id.*

<sup>55</sup> *Id.* at 5

<sup>56</sup> *Id.*

<sup>57</sup> 42 U.S.C. § 7661d(b)(2).

not comply with the requirements of the CAA, or fails to include any "applicable requirement," he must object to issuance of the permit.<sup>58</sup>

### SPECIFIC OBJECTIONS

The U.S. EPA Administrator must object to the Title V permit for U.S. Steel-Fairfield Works because it does not comply with 40 CFR Part 70. All of these issues below were raised with reasonable specificity in public comments on the draft permit. In particular:

1. EPA should object to the permit because the public did not have a meaningful opportunity to comment on the applicability of Major and Minor Source Review (hereinafter "NSR") to the source..
2. U.S. Steel's halt in construction for its EAF violated the SIP<sup>59</sup> where construction of the EAF did not commence within 24 months of JCDH's alleged approval to construct and thus required a new construction permit when construction commenced in 2019.
3. JCDH *never* issued a NSR permit for construction the EAF-neither when U.S. Steel initially planned to construct, nor for the re-commencement of construction

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<sup>58</sup> 42 U.S.C. § 7661b(b); *see also* 40 C.F.R. § 70.8(c)(1) ("The [U.S. EPA] Administrator will object to the issuance of any proposed permit determined by the Administrator not to be in compliance with applicable requirements or requirements under this part.").

<sup>59</sup> JCDH's local rules are not a part of the EPA-approved SIP. The approved SIP permit procedures purport to give ADEM authority to delegate the permit program to a local air quality control program using its own permit rules. 335-3-14.01(6)(a). This authority is questionable, as SIP provisions can only be changed through the SIP revision process. *See* CAA sections 110(i) (stationary sources), 110(k), 110(l). In any case, the approved delegation provision clearly states that the local air quality control program's regulations must "insur[e] applicants are required to satisfy the same requirements as contained in the Department's regulations." 335-3-14.01(6)(a)(1). JCDH also cannot argue that they have received a delegation of authority that is contemplated under the SIP. A delegation of authority is valid only if the local program "insure[s] applicants are required to satisfy the same requirements as contained in the Department's regulations." 335-01-14.01(6)(b)(1) (delegation only available if 335-3-14.01(6)(a)(1) is met). In any case a delegation of authority cannot overcome the fundamental principle that SIP requirements can only be modified through the SIP revision process. *See* CAA sections 110(i) (stationary sources), 110(k), 110(l).

after a period greater than 24 months. Therefore, EPA must object to Permit No. 4-07-0371-09 because the Title V permit does not assure compliance with the construction permit requirements in Title I of the Act because there is no SIP construction permit for the EAD that JCDH can reference as an applicable requirement in the Title V permit.

4. EPA must object to Permit No. 4-07-0371-09 because the Title V permit does not assure compliance with a non-existent SIP permit for the EAF.U.S. Steel neither had a valid NSR permit for construction of the EAF, nor for the re-commencement of construction after a period greater than 24 months, and thus no permit was validly incorporated into the Title V permit.

### **ISSUES FOR OBJECTION**

**I. EPA should object to the permit because the public did not have a meaningful opportunity to comment on the applicability of Major and Minor Source Review (hereinafter “NSR”) to the source.**

Under 40 C.F.R. § 70.7(a)(I), a permit may be issued only if, among other things, the permitting authority "has received a complete application" and "has complied with the requirements for public participation under paragraph (h) of this section." The Title V program is structured to “make it easier for the public to learn what requirements are being imposed on sources to facilitate public participation in determining what future requirements to impose.”<sup>60</sup> EPA has recognized that “when a title V petition seeks an objection based on the unavailability of information during the public comment period in violation of title V’s public participation requirements, the petitioner must demonstrate that the unavailability deprived the public of the

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<sup>60</sup> 56 Fed. Reg. 21712, 21713 (May 10, 1991).

opportunity to meaningfully participate during the permitting process.”<sup>61</sup> In determining whether petitioner has met this burden, EPA looks to “whether the petitioner has demonstrated that the alleged flaws resulted in, or may have resulted in, a deficiency in the permit’s content.”<sup>62</sup>

EPA has recognized in numerous prior orders that “the unavailability during the public comment period of information needed to determine the applicability of or to impose an applicable requirement also may result in a deficiency in the permit’s content.”<sup>63</sup> A permitting authority’s failure to provide “all relevant materials” to support the permit’s issuance prevents the public from knowing “how the title V permit might be said to meet” the relevant CAA requirements.<sup>64</sup> Therefore, the unavailability of relevant information during the public comment period may cause a permit not to be in compliance with applicable requirements or the requirements of 40 C.F.R. Part 70.<sup>65</sup>

Petitioner raised in their comments several specific deficiencies in the permit record that resulted in their inability to raise objections during the comment period. Although Draft Permit No. 4-07-0371-09 appeared to be a reopening of Permit No. 4-07-0371-07 due to a material mistake, throughout the Draft Permit and Statement of Basis (hereinafter “SOB”), JCDH referred

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<sup>61</sup> *In the matter of U.S. Department of Energy – Hanford Operations, Benton County, Washington*, Petition No. X-2016-13, Order on Petitioner (Oct. 15, 2018), at 1 [hereinafter “*Hanford 2018 Order*”]. See also *In re Orange Recycling and Ethanol Production Facility, Pencor-Masada Oxynol, LLC*, Petition No. 11-2000-07 (May 2, 2001) (applying the concepts of meaningful public participation and logical outgrowth to title V); cf., e.g., *In re Murphy Oil USA, Inc., Meraux Refinery*, Petition No. 2500-00001-V5, (Sept. 21, 2011) (discussing a response to significant comments as “an inherent component of any meaningful notice and opportunity for comment” (citing *Home Box Office v. FCC*, 567 F.2d 9, 35 (D.C. Cir. 1977))).

<sup>62</sup> *Hanford 2018 Order* at 11.

<sup>63</sup> *Id.* See also *In re Cash Creek Generation, LLC*, Petition No. IV-2010-4, (June 22, 2012), at 9; *In re Louisiana Pacific Corporation*, Petition No. V-2006-3 (November 5, 2007); *In re WE Energies Oak Creek Power Plant*, Petition No. V. 2015-08 (June 12, 2009); *In re Alliant Energy-WPL Edgewater Generating Station*, Petition No. V-2009-02 (August 17, 2010).

<sup>64</sup> *Hanford 2018 Order*, at 12.

<sup>65</sup> *Id.*

to the action as a renewal, and in some instances, an administrative amendment.<sup>66</sup> This resulted in confusion for Petitioner and the public during the public comment stage, and further exacerbated the deficiencies in the SOB. Namely, the SOB did not contain a list of emission units (hereinafter “EUs”) that were shut down in 2015 and a list of those due to be shutdown upon completion of the EAF. Therefore, the public was not able to assess the accuracy of JCDH’s netting analysis. Additionally, in several instances the Draft Permit and SOB did not adequately address JCDH’s PSD applicability analysis, hindering Petitioner and the public’s ability to determine the applicability of major source NSR to the source. Each of these issues are discussed in the subsections below, and Petitioner shows how it was impracticable for Petitioner to raise the enumerated objections during the comment period.

A. **JCDH conflated a permit renewal, administrative amendment and a reopening throughout the SOB and Draft Permit, making unclear to Petitioner and Commenters the impetus for the permit action subject to public comment and the basis for its proposed approval.**

The SOB “must contain a brief description of the origin or basis for each permit condition or exemption.”<sup>67</sup> It is more than a short form of the permit and “must highlight elements that EPA and the public would find important to review.”<sup>68</sup> It should not simply restate the permit, but instead include “a discussion of the decision-making that went into the development of the title V permit and provide the permitting authority, the public, and U.S. EPA a record of the applicability and technical issues surrounding the issuance of the permit.”<sup>69</sup> A permitting authority’s failure to adequately explain its permitting decisions in the SOB or

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<sup>66</sup> Gasp, Comment on U.S. Steel-Fairfield Works Draft Permit (Attachment B), at 2-3 (Dec. 1, 2020).

<sup>67</sup> *In re Midwest Generation, LCC, Waukegan Generating Station*, Petition No. V-2004-5 (Sept. 22, 2005), at 8.

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

elsewhere in the permit record “is such a serious flaw that the adequacy of the permit itself is in question.”<sup>70</sup>

These concerns are especially important because EPA has been involved in expanding public participation in permitting for several years. This lack of information for public comment also goes against EPA’s vision regarding the integration of environmental justice into all aspects of EPA’s work in order to “achiev[e] better environmental outcomes and reduc[e] disparities in the nation’s most overburdened communities.”<sup>71</sup> As discussed in Section IV, the recent Executive Orders underscore and enhance EPA’s responsibility to take EJ considerations into account.<sup>72</sup>

EPA stressed the importance of transparency and dialogue for positive permitting outcomes in any community.<sup>73</sup> These concerns are amplified for overburdened communities that may lack the resources to access information needed to meaningfully engage in the permitting process. Without an adequate SOB and citations to specific permit terms in the underlying construction permit for the EAF, members of these communities – and the public, including those representing the concerns and interests in these communities – cannot ensure that U.S. Steel-Fairfield Works is meeting all applicable requirements. As “meaningful involvement” is a key pillar of environmental justice, a permitting authority’s failure to provide relevant information to the public as part of the public comment process only reinforces the injustices faced by communities of color and low-income communities—depriving them of a fair

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<sup>70</sup> *Id.*

<sup>71</sup> EPA’s EJ 2020 Action Agenda, at iii.

<sup>72</sup> *See, e.g.*, Exec. Order No. 14,008, 86 Fed. Reg. 7619 (Feb. 1, 2021) (e.g., Paragraph 201 requires that agencies must advance and prioritize environmental justice; *See also*, Exec. Order No. 12898, § 1-101, 59 Fed. Reg. 7629 (Feb. 16, 1994), as amended by Exec. Order No. 12948, 60 Fed. Reg. 6381 (Feb. 1, 1995).

<sup>73</sup> *Id.* at 38052.

opportunity to weigh-in on the polluting activities affecting their lived experiences.<sup>74</sup> As such, JCDH’s failure to adequately explain whether this was a permit renewal, administrative amendment<sup>75</sup> or reopening of the Title V permit is a serious flaw because the public has no idea what *type* of permit changes JCDH proposes<sup>76</sup>, which calls into question the adequacy of the permit changes proposed.

**B. JCDH fails to meaningfully engage with Petitioner’s comments regarding specific permit deficiencies.**

It is a general principle of administrative law that an inherent component of any meaningful notice and opportunity for comment is a response by the regulatory authority to significant comments.<sup>77</sup> In the RTC, JCDH entirely fails to respond and inadequately responds to several of Petitioner’s claims. Petitioner’s specific comments and the responses at issue are outlined below.

- i. *Petitioner’s Comment I.A: The section entitled “List of all Units and Emissions Generating Activities” should include a list of the emission*

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<sup>74</sup> For example, a community group raising environmental justice issues in Fairfield—the Fairfield Environmental Justice Alliance (FEJA)—sent a letter to JCDH outlining their concerns, specifically focusing on U.S. Steel-Fairfield Works. The letter said, in part, “FEJA would like to request a virtual meeting with representatives from the Jefferson County Department of Health (JCDH) to gain an understanding of: the current quality of our ambient air, the future of the Fairfield air monitor, and our risk associated with the cumulative impacts of long term exposure to multiple pollutants. In addition, we are interested in learning more about US Steel’s electric arc furnace, expected pollution emissions from the facility, and how the new furnace will impact the overall ambient air quality in the area.” Letter from Gilda Walker (FEJA) to Jonathan Stanton (JCDH) (March 5, 2021)(on file with Author)(Attachment D).

<sup>75</sup> Petitioner raised in their comments that “it is unclear why U.S. Steel’s request for a Title V administrative amendment resulted in a Title V reopening. JCDH should have explained their reasoning for reopening the Title V permit as opposed to following the procedure for a permit amendment as outlined in 40 C.F.R. §70.7(d). Of course, U.S. Steel-Fairfield Works clearly was not entitled to an administrative amendment, as they did not meet the criteria of 40 C.F.R. §70.7(d). GASP reasonably assumes that JCDH recognized that the application error in the emissions rate as part of the netting analysis and the potential to emit (hereinafter “PTE”) calculations for the EAF constituted a material mistake, thus requiring JCDH to reopen the permit pursuant to 40 C.F.R. §70.7(f)(1)(iii).” GASP Comments, *supra* Note 66 (Attachment B) at 2-3.

<sup>76</sup> Moreover, the public has no idea what permit regulations JCDH thinks apply.

<sup>77</sup> *Home Box Office v. FCC*, 567 F.2d 9, 35 (D.C. Cir. 1977) (“the opportunity to comment is meaningless unless the agency responds to significant points raised by the public”). *See, e.g., In re Louisiana Pacific Corporation*, at 4-5 (Nov. 5, 2007).

*units that were shut down in 2015 and a list of those due to be shut down upon completion of the EAF.*

Petitioner learned from JCDH's RTC on the 2019 Title V permit renewal that there was a halt in construction for the EAF in 2015<sup>78</sup>. JCDH's RTC explained that

US Steel first submitted an application for the project in 2014, and *began construction in 2015. The project was put on hold due to economic conditions in late 2015*, with the intention of construction the EAF when economic conditions became favorable.<sup>79</sup>

Neither U.S. Steel in its 2020 application for an administrative amendment nor JCDH in the SOB provided information on when construction began again.

Furthermore, JCDH's RTC did not respond to Petitioner's comments requesting a list of the emission units that were planned to be shut down, and also a list of emission units that actually were shut down. Petitioners requested this information to evaluate JCDH's assertions regarding the EAF netting out of major NSR permitting. JCDH did not respond to this comment and did not provide a reasoned basis for allowing U.S. Steel to escape major source NSR permitting. EPA must object to the permit and require that JCDH provide emission unit information for public to review and comment to ascertain the accuracy of JCDH allowing U.S. Steel to escape major source NSR permitting requirements.

Relatedly, Permit No. 4-07-0371-09 for EU012 (the EAF) does not reference the construction permit that should have been issued to U.S. Steel on or about 2015, prior to the commencement of construction in 2015. In fact, pursuant to a records request from Petitioner,

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<sup>78</sup> "US Steel first submitted an application for the project in 2014, and *began construction in 2015. The project was put on hold due to economic conditions in late 2015*, with the intention of construction the EAF when economic conditions became favorable." JCDH, Response to Comment on U.S. Steel-Fairfield Works Draft Title V Permit at 8 (Oct. 31, 2019) (on file with Author).

<sup>79</sup> *Id.*



JCDH responded that there is no construction permit for the EAF at U.S. Steel-Fairfield Works.<sup>80</sup> SIP-approved permits must remain in effect because they are the legal mechanism through which underlying NSR requirements (from the Act, federal regulations and federally-approved SIP regulations) become applicable, and remain applicable, to individual sources.<sup>81</sup> As such, Permit No. 4-07-0371-09 must reference an underlying construction permit in order to be practically enforceable. Where the EAF was constructed without a valid construction permit, it is evident that the Title V permit does not reference the underlying construction permit because it does not exist. Accordingly, the NSR requirements for the EAF are not legally nor validly incorporated into the Title V permit, warranting its objection by the Administrator.

Petitioner was severely disadvantaged during the public comment stage for the Title V renewal in 2019 and the Title V reopening in 2020 in adequately determining the applicability of NSR to the source due to information that was not available in the permit record nor through the RTC at the time.<sup>82</sup> Not until JCDH's RTC to the Title V reopening was Petitioner able to determine the effect of the halt in construction on the netting analysis, as provided in the "as built netting analysis" in JCDH's RTC.<sup>83</sup> Through this response and JCDH's assertion that they "authorized" the pause in construction without providing further clarity on the applicability of NSR, Petitioner was for the first time aware that the greater than 24 month halt in construction required a new, valid construction permit when construction of the EAF re-commenced in 2019.

Moreover, the duration of the halt in construction of the EAF is critical to the underlying requirements from a construction permit for the EAF. If the duration of the halt is longer than 24

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<sup>80</sup> Letter from Jason Howanitz, JCDH, to Haley Colson Lewis (Jun. 7, 2021) (on file with author).

<sup>81</sup> John S. Seitz, *Env'tl. Prot. Agency, Title V Interface Issues*, Appendix A, EPA.gov at 7 (May 20, 1999), <https://www.epa.gov/sites/production/files/2015-08/documents/hodan7.pdf>

<sup>82</sup> See GASP Comments, *supra* Note 66 (Attachment B).

<sup>83</sup> JCDH, Response to Comment on U.S. Steel-Fairfield Works Draft Title V Permit (Exhibit C) at 1-2 (Mar. 15, 2021).

months, per the SIP, an initial Title I construction permit could not remain in effect for a halt in construction greater than 24 months. U.S. Steel would have been required to obtain a new NSR permit for the EAF when construction re-commenced. Such permit would then be the underlying SIP-approved permit to which the Title V would reference as the underlying NSR requirements for the EAF. However, in several permit cycles, JCDH neglected to ensure that the EAF received a valid construction permit, which resulted in the current Title V permanent not having a legal mechanism to enforce the underlying NSR requirements for the EAF. The technology-based requirements of NSR permits improve over time, which is one of the reasons U.S. Steel and JCDH were required to reexamine the application and permit issued after the 24 month period.

Because the SOB, the entirety of the permit record and JCDH's RTC were silent on the duration of the halt in construction and when construction of the EAF re-commenced, Petitioner and the public were deprived of the opportunity to meaningfully participate during the permitting process. Without knowing whether the halt in construction was longer than 24 months, Petitioner was unable to determine the applicability of NSR to the source<sup>84</sup>, namely whether a SIP-approved construction permit on which Title V must include NSR applicable requirements, remained in effect. Without knowing whether the Title V permit was based on an invalid or valid SIP-approved permit, Petitioner was unable to assess whether that there was a deficiency in permit's content. Namely, that without a new, valid SIP-approved permit upon re-commencement of construction of the EAF the Title V permit is deficient in that it does not legally apply NSR requirements

In sum, EPA must object to the Final Permit because the SOB, permit record and JCDH's RTC are lacking basic information necessary for meaningful public review. Furthermore, JCDH

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<sup>84</sup> See Gasp Comment, *supra* Note 66 (Attachment B).

did not sufficiently respond to Petitioner’s concerns, Petitioner and the public were deprived of the opportunity to meaningfully participate during the permitting process, resulting in a deficiency in the permit’s content.

**II. JCDH lacks authority to allow for a halt in construction greater than 24 months for the EAF, which means U.S. Steel violated the SIP when it commenced construction of the EAF in 2019, more than 24 months after JCDH’s purported initial approval and thus required a new NSR permit in 2019.**

**a. The Title V Permit is deficient because EU012 conditions for the EAF should be incorporated from an NSR permit, which Petitioners learned does not exist.**

Under 40 C.F.R. § 70.7(a)(5), the permitting authority is obligated to set forth the legal and factual basis for the Draft Permit conditions. EPA has stated that while a Title V permit may contain information in reference to a rule or existing permit, it must provide that the information referenced is publicly available and detailed to the extent that it shows how the applicable requirement applies.<sup>85</sup> If this information is not provided as described, it may result in a “deficiency in the permit’s content.”<sup>86</sup>

A Title V permit may incorporate an existing permit or applicable requirement by reference to provide further detail on monitoring, recordkeeping, or reporting, “but only to the extent that the information is publicly available, detailed enough that the manner in which the citation applies to a facility is clear, and is not reasonably subject to misinterpretation.”<sup>87</sup> Material incorporated into a permit by reference must be specific enough to define how the applicable requirement applies, and the referenced material should be unambiguous in how it applies to the permitted facility.<sup>88</sup> Further, EPA has recognized in numerous prior orders that

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<sup>85</sup> *In the Matter of Doe Run Company and Buick Mine and Mill*, Petition No. VII-1999-001, Order on Petition (July 31, 2002), at 12 [hereinafter “*Doe Run*”].

<sup>86</sup> *Hanford 2018 Order*, *supra* note 61, at 11.

<sup>87</sup> *Doe Run*, *supra* note 83, at 12.

<sup>88</sup> *Id.*

“the unavailability during the public comment period of information needed to determine the applicability of or to impose an applicable requirement also may result in a deficiency in the permit’s content.”<sup>89</sup>

The permit record, at the time of public comment, did not contain any clear and documented rationale for any of the monitoring requirements set forth in the Draft Permit for the EAF, EU012. Monitoring, recordkeeping and reporting requirements are important in the Title V context because they provide for oversight by the public, EPA and the permitting authority. Petitioners and other members of the public have demonstrated a keen interest in overseeing and ensuring air pollutant emissions from U.S. Steel and other sources impacting this EJ community are controlled and enforced pursuant to the Act’s requirements.<sup>90</sup> Petitioner attempted to obtain the original construction permit - issued on or before 2015 - establishing these monitoring, recordkeeping and reporting conditions through a records request from JCDH.<sup>91</sup> JCDH indicated on June 7, 2021 that no construction permit had been issued to U.S. Steel for the EAF.<sup>92</sup>

Additionally, the monitoring, recordkeeping and reporting requirements in the Title V permit for the EAF are insufficient and do not meet the Title V requirements because a site specific monitoring plan is referenced but its contents are not attached to the permit nor otherwise referenced in a publicly available way.<sup>93</sup> Additionally, several conditions relevant to

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<sup>89</sup> *Hanford 2018 Order*, *supra* note 61, at 11. See also *In re Cash Creek Generation, LLC*, Petition No. IV-2010-4, Order on Petition (June 22, 2012), at 9; *In re Louisiana Pacific Corporation*, Petition No. V-2006-3, Order on Petition (November 5, 2007); *In re WE Energies Oak Creek Power Plant*, Order on Petition (June 12, 2009); *In re Alliant Energy-WPL Edgewater Generating Station*, Petition No. V-2009-02, Order on Petition (August 17, 2010).

<sup>90</sup> See *supra* Note 74.

<sup>91</sup> Letter from Haley Colson Lewis, GASP to Jason Howanitz & Wade Merritt, JCDH (June 3, 2021) and Response from Jason Howanitz, JCDH to Haley Colson Lewis, GASP (Jun. 7, 2021) (on file with author) (Attachment E).

<sup>92</sup> *Id.*

<sup>93</sup> Final Permit for U.S. Steel-Fairfield Works, *supra* Note 48 at 36 (Attachment A).

reporting requirements are dependent upon the Health Officer's approval.<sup>94</sup> Such references must cite to or include a record of any exercise of the Health Officer's discretion for which monitoring requirements in Jefferson County Board of Health Air Pollution Control Rules & Regulations 2.4<sup>95</sup> are applicable to the source.

EPA must object to the Final Permit because there is no Title I construction permit for the EAF and the requirements that were established in a Title I construction permit, including monitoring, recordkeeping and reporting, are not included in the Title V permit. The Title I construction permit is neither referenced nor publicly available because it does not exist. Petitioner was not aware during the public comment period that the halt in construction was greater than 24 months, requiring a new construction permit when construction re-commenced in 2019. However, it was not until this was confirmed through JCDH's RTC that GASP asked for the construction permits and learned on June 7, 2021 that no such permit exists. The unavailability of this information deprived Petitioner of the ability to comment that the permit conditions relevant to EU012, the EAF, were unenforceable in that the legal mechanism through which underlying NSR requirements become applicable, and remain applicable, to individual sources does not exist. This constitutes a deficiency in the permit's content and warrants objection by the Administrator.

**III. U.S. Steel halted construction of the EAF or greater than 24 months, and violated the SIP by commencing without a new construction permit.**

“An Air Permit authorizing construction shall expire and the application shall be canceled two years from the date of issuance of the Air Permit if the construction has not begun.”<sup>96</sup> These

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<sup>94</sup> *Id.* at 38, Condition 33.

<sup>95</sup> SIP-approved equivalent at Ala. Admin. Code r. 335-3-14-.04

<sup>96</sup> Ala. Admin. Code r. 335-3-14.02(1)(a). According to EPA's online SIP compilation, the approved SIP permit procedures are contained in Ala. Admin. Code r. 335-3-14.

rules do not allow for any extensions of the 24-month period after a construction permit is issued.

At the same time, the approved SIP permit procedures purport to give ADEM authority to delegate the permit program to a local air quality control program using its own permit rules.<sup>97</sup> This authority is questionable, as SIP provisions can only be changed through the SIP revision process.<sup>98</sup> Regardless, the approved delegation provision clearly states that the local air quality control program's regulations must "insur[e] applicants are required to satisfy the same requirements as contained in the Department's regulations."<sup>99</sup> As ADEM's regulations do not allow for extensions, JCDH's purported extension for the U.S. Steel facility violates the SIP requirement that applicants are subject to satisfy the requirements in ADEM's regulations.

Nor can JCDH argue that they have received a delegation of authority that is contemplated under the SIP. A delegation of authority is valid only if the local program "insure[s] applicants are required to satisfy the same requirements as contained in the Department's regulations."<sup>100</sup> Regardless, a delegation of authority cannot overcome the fundamental principle that SIP requirements can only be modified through the SIP revision process.<sup>101</sup>

Petitioner raised in their comments that the Draft Permit and permit record were silent on the duration of the halt in construction, which is critical in determining whether the source would be required to obtain a NSR permit for re-commencement of construction.<sup>102</sup> In its RTC, JCDH

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<sup>97</sup> See Ala. Admin. Code r. 335-3-14.01(6)(a).

<sup>98</sup> See Clean Air Act sections 110(i) (stationary sources), 110(k), 110(l).

<sup>99</sup> Ala. Admin. Code r. 335-3-14.01(6)(a)(1).

<sup>100</sup> Ala. Admin. Code r. 335-01-14.01(6)(b)(1) (delegation only available if 335-3-14.01(6)(a)(1) is met).

<sup>101</sup> See *supra* Note 98.

<sup>102</sup> See *generally* GASP Comment, *supra* note 66 (Attachment A).

responded, without citing to relevant authority: “US Steel informed the Department of the construction delay (as well as the news media) and the reasons for it in a timely manner. The Department may authorize pauses in construction that are longer than 18 months if the reasons for the delay are reasonable and notification occurs less than 18 months after the delay begins. US Steel met the Department’s expectations in this regard, and the Department does not find that construction was not completed within a reasonable time.”<sup>103</sup> JCDH’s RTC is referring to the Source Obligation rule<sup>104</sup> found in their local rules:

An Air Permit authorizing construction shall become invalid if construction is not commenced within twenty-four (24) months after receipt of such approval, if construction is discontinued for a period of twenty-four (24) months or more, or if construction is not completed within a reasonable time. The Health Officer may extend the twenty-four (24) month period upon satisfactory showing that an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project; each phase must commence construction within twenty-four (24) months of the projected and approved commencement date.<sup>105</sup>

After receiving JCDH’s RTC, Petitioner conducted research online through various trade journals and found in a press release that U.S. Steel re-commenced construction on or about February 2019<sup>106</sup>, which constitutes a halt in construction greater than 24 months. If U.S. Steel had received a valid construction permit for the EAF in 2015, that permit would have become

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<sup>103</sup> JCDH Response, *Supra* Note 83 at 3.

<sup>104</sup> Although the RTC refers to 18 months, as required in 40 C.F.R. §52.21(r)(2), the authority of the Department on which JCDH relies is actually derived from their local rules at JEFFERSON COUNTY BOARD OF HEALTH, AIR POLLUTION CONTROL RULES AND REGULATIONS § 2.4.17(a) (revised Apr. 19, 2017), which are not part of an EPA-approved SIP, but are equivalent to Ala. Code 335-3-14-.04(17)(a), which is part of EPA’s approved SIP. *See also* Note 59.

<sup>105</sup> JEFFERSON COUNTY BOARD OF HEALTH, AIR POLLUTION CONTROL RULES AND REGULATIONS § 2.4.17(a) (revised Apr. 19, 2017).

<sup>106</sup> DeAnne Toto, *U.S. Steel to restart construction on Alabama EAF*, RECYCLING TODAY (Feb. 12, 2019), <https://www.recyclingtoday.com/article/us-steel-alabama-electric-arc-furnace-construction/>. *See also*, U.S. Steel 2019 Sustainability Report, (discussion on construction at Alabama facility). [tinyurl.com/3v9pdjm6](https://www.ussteel.com/3v9pdjm6)

invalid on or about March of 2017, 24 months after it halted construction in 2015. The almost four year halt in construction violated the SIP's requirement to obtain a new construction permit.

- a. **Where JCDH has no record of authorizing the halt in construction of the EAF that lasted longer than 24 months, U.S. Steel was required to obtain a new minor NSR permit for the EAF to re-commence construction, which it did not do.**

“Any person building, erecting, altering, or replacing any article, machine, equipment, or other contrivance, the use of which may cause the issuance of or an increase in the issuance of air contaminants or the use of which may eliminate or reduce or control the issuance of air contaminants, shall submit an application for an Air Permit at least 10 days prior to construction.”<sup>107</sup>

Petitioner requested from JCDH records relevant to the halt in construction of the EAF once Petitioner received from JCDH its RTC. Namely, GASP requested “1) [a]s referenced in the RTC, the notification submitted to JCDH prior to the halt in construction of the EAF; 2) [r]elated to 1) above, documentation of JCDH's authorization of the halt in construction.”<sup>108</sup> JCDH produced records pursuant to this request, which did not include either a notification for a halt in construction submitted by U.S. Steel nor JCDH's authorization of the halt in construction.<sup>109</sup> Further, JCDH confirmed that U.S. Steel does not have a construction permit for the EAF.<sup>110</sup>

Where there is no record of the Health Officer extending the period of construction nor a showing by U.S. Steel that such halt is justified, the original air permit would have become

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<sup>107</sup> Ala. Admin. Code r. 335-3-14-.01; JCBH Rules & Regs § 2.1.1(k).

<sup>108</sup> Letter from Haley Colson Lewis, GASP to Jonathan Stanton, JCDH (April 29, 2021) (on file with author).

<sup>109</sup> JCDH produced records in May 18, 2021 which did not include any records responsive to 1) and 2) described in Letter from Haley Colson Lewis, GASP to Jonathan Stanton, JCDH (April 29, 2021) (on file with author).

<sup>110</sup> See *supra* Note 80.



invalid. U.S. Steel was required to obtain a valid, SIP-approved permit to construct the EAF when they re-commenced construction in 2019.

IV. **EPA must object to Permit No. 4-07-0371-09 because the Title V permit does not assure compliance with a non-existent SIP permit for the EAF. U.S. Steel neither had a valid NSR permit for construction of the EAF, nor for the re-commencement of construction after a period greater than 24 months, and thus no permit was validly incorporated into the Title V permit.**

The Prevention of Significant Deterioration (“PSD”) program appears in CAA sections 160-169 and applies in attainment areas such as Jefferson County<sup>111</sup>. NSR requirements apply to newly-constructed sources and to “major modifications.” Applicability of the PSD provisions must be determined in advance of construction and on a pollutant-by-pollutant basis<sup>112</sup>. The federal PSD program is designed “to assure that any decision to permit increased air pollution in [an attainment area] is made only after careful evaluation of all the consequences of such a decision and after adequate procedural opportunities for informed public participation in the decisionmaking process.”<sup>113</sup> As part of the PSD program, “[n]o major emitting facility on which construction is commenced after August 7, 1977, may be constructed in any area to which this part applies unless—(1) a [PSD] permit has been issued for such proposed facility in accordance with this part setting forth emission limitations for such facility which conform to the requirements of this part.”<sup>114</sup>

The PSD program defines “major emitting facility,” also known as a “major source,” as a facility possessing the potential to emit either 100 tons per year or 250 tons per year of the

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<sup>111</sup> As of the date of this Petition, Jefferson County has been in attainment for all criteria pollutants since 2012.

<sup>112</sup> *Id.*

<sup>113</sup> *Id.* § 7470(5).

<sup>114</sup> *Id.* § 7475(a).

regulated pollutant. The threshold depends on the facility's industry source category.<sup>115</sup> Major sources must obtain PSD permits and are subject to stricter regulatory controls and other permitting requirements than sources that do not fall under the definition of “major source.” U.S. Steel is subject to the 100 ton per year threshold.<sup>116</sup>

In enacting title V, Congress did not amend title I of the Act and did not intend the title V permitting program to replace the title I permitting programs.<sup>117</sup> SIP-approved permits<sup>118</sup> must remain in effect because they are the legal mechanism through which underlying NSR requirements (from the Act, federal regulations and federally-approved SIP regulations) become applicable, and remain applicable, to individual sources.<sup>119</sup> NSR programs provide the relevant permitting entity with the authority to impose source-specific NSR terms and conditions in legally enforceable permits, and provide States, EPA and citizens with the authority to enforce these permits.<sup>120</sup> Because State title V programs do not provide the authority for the establishment and maintenance of SIP-approved permit requirements<sup>121</sup>, the title V permit cannot

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<sup>115</sup> *Id.* § 7479(1).

<sup>116</sup> *See* SOB, *supra* Note 26; *See also* JCDH Response, *supra* Note 83 (Attachment C).

<sup>117</sup> John S. Seitz, Env'tl. Prot. Agency, Enclosure A, Title V Interface Issues, EPA.gov at 7 (May 20, 1999), <https://www.epa.gov/sites/production/files/2015-08/documents/hodan7.pdf>

<sup>118</sup> Alabama administers the PSD program through an EPA-approved SIP. Like its federal counterpart, Alabama's PSD program requires would-be permittees to analyze all potential impact of their proposal on air quality, visibility, soils, and vegetation. ADEM EPA-Approved SIP Regulations referenced in this Petition includes: Ala. Admin. Code r. 335-3-1 General Provisions; Ala. Admin. Code r. 335-3-15 Synthetic Minor Permits, available at <https://www.epa.gov/sips-al/epa-approved-statutes-and-regulations-alabama-sip> (codified at 40 C.F.R. § 52.50).

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> Including for example, emission limitations, which are part of minor a major source construction permits. The ability to review and comment on the Title V permit emission limitations for the EAF that are incorporated from an underlying construction permit are important to Petitioners and the impacted EJ community. Furthermore, the public and EPA, must have an opportunity to track and enforce the construction permit emission limitations via the Title V permit.

“assure compliance” with those requirements unless the underlying implementation and enforcement mechanism for the NSR requirements--the SIP-approved permit--remains valid.<sup>122</sup>

As previously mentioned, the duration of the halt in construction was never disclosed, JCDH did not produce the initial construction permit and JCDH produced no evidence that U.S. Steel obtained a new, valid construction permit when construction of the EAF re-commenced in 2019. Such permit would then be the underlying SIP-approved permit to which the Title V would reference as the underlying NSR requirements for the EAF. Petitioner raised in their comments that JCDH must make PSD determinations on reasonable grounds properly supported by the record.<sup>123</sup> Where U.S. Steel-Fairfield Works’ addition of an EAF is a major source of air pollution<sup>124</sup>, they were required to obtain a PSD permit for the construction of the EAF in 2015. When U.S. Steel halted construction of the EAF for greater than 24 months, namely on or about March 2015- to -on or about February of 2019 - the 2015 PSD permit became invalid and expired, requiring them to obtain a new, valid PSD permit before construction re-commenced. Where JCDH’s Draft Permit did not reference the underlying PSD permit, and where JCDH could not produce evidence of a new, valid PSD permit issued in 2019, JCDH lacked the authority to impose source-specific NSR terms and conditions in legally enforceable permits in the Draft Title V permit. Title V does not give a permitting agency the authority to issue construction permits (*i.e.*, combined Title V and construction permits), unless it is expressly authorized. Here, JCDH has no such authorization to issue permits that contain both construction

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<sup>122</sup> *Id.*

<sup>123</sup> GASP Comment, *supra* Note 66 (Attachment A) at 6.

<sup>124</sup> The EAF is a major source of air pollution because air pollutant emissions from it exceed the PTE threshold for SO<sub>2</sub>, CO and VOCs. U.S. Steel estimated that the addition of the EAF would create a 309.3 tpy increase in SO<sub>2</sub> emissions, a 2,566.0 tpy increase in CO emissions and other emissions that contribute to the formation of ozone (341.6 tpy increase of Nox, 200.4 tpy increase in VOCs). U.S. Steel Fairfield Works Title V Application (November 7, 2017) at 4-2.

and Title V requirements. Moreover, the Title V permits fail to contain the construction permit requirements. Accordingly, EPA must object to the final permit and send it back to JCDH to issue a valid PSD permit to U.S. Steel, and re-draft the Title V permit to properly incorporate the EAF-specific construction terms and conditions into the permit.

### **CONCLUSION**

EPA must object to the Final Permit. The Final Permit is deficient because JCDH's failure to adequately explain whether this was a permit renewal, administrative amendment or reopening of the Title V permit is such a serious flaw because the public has no idea what type of permit changes JCDH proposes, which calls into question that the adequacy of the permit changes proposed. Additionally, EPA must object to the Final Permit because the SOB, permit record and JCDH's RTC are lacking basic information necessary for meaningful public review. Furthermore, JCDH did not sufficiently respond to Petitioner's concerns, Petitioner and the public were deprived of the opportunity to meaningfully participate during the permitting process, resulting in a deficiency in the permit's content. Finally, EPA must object to the Final Permit because there is no Title I construction permit for the EAF and the requirements that were established in a Title I construction permit, including monitoring, recordkeeping and reporting, are not included in the Title V permit.



Haley Colson Lewis  
Staff Attorney  
GASP  
2320 Highland Avenue South  
Suite 270  
Birmingham, AL 35205  
[haley@gaspgroup.org](mailto:haley@gaspgroup.org)