BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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Petition No. III-2024-29

In the Matter of

United States Steel Corporation, Mon Valley Works, Clairton Plant

Permit No. 0050-OP22a

Issued by the Allegheny County Health Department

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ORDER GRANTING IN PART AND DENYING IN PART A PETITION FOR OBJECTION TO A TITLE V OPERATING PERMIT

I. INTRODUCTION

The U.S. Environmental Protection Agency (EPA) received a petition dated November 19, 2024 (the "Petition") from the United States Steel Corporation ("U.S. Steel" or the "Petitioner") pursuant to Clean Air Act (CAA) § 505(b)(2), 42 United States Code (U.S.C.) § 7661d(b)(2). The Petition requests that the EPA Administrator object to operating permit No. 0050-OP22a (the "Amended Permit") issued by the Allegheny County Health Department (ACHD) to U.S. Steel's Mon Valley Works Clairton Plant (the "Clairton Plant") in Allegheny County, Pennsylvania. The Amended Permit was issued pursuant to title V of the CAA, 42 U.S.C. §§ 7661–7661f, and ACHD Rules and Regulations Article XXI § 2103.01 *et seq*. *See also* 40 Code of Federal Regulations (C.F.R.) part 70 (title V implementing regulations). This type of operating permit is also known as a title V permit or part 70 permit.

Based on a review of the Petition and other relevant materials, including the Amended Permit, the permit record, and relevant statutory and regulatory authorities, and as explained in Section IV of this Order, the EPA grants in part and denies in part the Petition and objects to the issuance of the Amended Permit. Specifically, the EPA grants Claims 2 and 3 and denies Claim 1.

II. STATUTORY AND REGULATORY FRAMEWORK

A. Title V Permits

CAA § 502(d)(1), 42 U.S.C. § 7661a(d)(1), requires each state to develop and submit to the EPA an operating permit program to meet the requirements of title V of the CAA and the EPA's implementing regulations at 40 C.F.R. part 70. The Commonwealth of Pennsylvania submitted a title V operating permit program on behalf of Allegheny County in 1998 and amended the submitted program in 2001. The EPA granted full approval of Allegheny County's title V operating permit program in 2001. 66 Fed. Reg. 55112–15 (Nov. 1, 2001). Allegheny County's program, which became effective on December 17, 2001, is codified in Article XXI § 2103.01 *et seq*. of ACHD's Rules and Regulations.

All major stationary sources of air pollution and certain other sources are required to apply for and operate in accordance with title V operating permits that include emission limitations and other conditions as necessary to assure compliance with applicable requirements of the CAA, including the requirements of the applicable implementation plan. 42 U.S.C. §§ 7661a(a), 7661b, 7661c(a). The title V operating permit program generally does not impose new substantive air quality control requirements, but does require permits to contain adequate monitoring, recordkeeping, reporting, and other requirements to assure compliance with applicable requirements. 40 C.F.R. § 70.1(b); 42 U.S.C. § 7661c(c). One purpose of the title V operating permit program is to "enable the source, States, EPA, and the public to understand better the requirements to which the source is subject, and whether the source is meeting those requirements." 57 Fed. Reg. 32250, 32251 (July 21, 1992). Thus, the title V operating permit program is a vehicle for compiling the air quality control requirements as they apply to the source's emission units and for providing adequate monitoring, recordkeeping, and reporting to assure compliance with such requirements.

B. Review of Issues in a Petition

State and local permitting authorities issue title V permits pursuant to their EPA-approved title V operating permit programs. Under CAA § 505(a) and the relevant implementing regulations found at 40 C.F.R. § 70.8(a), states are required to submit each proposed title V operating permit to the EPA for review. 42 U.S.C. § 7661d(a). Upon receipt of a proposed permit, the EPA has 45 days to object to final issuance of the proposed permit if the EPA determines that the proposed permit is not in compliance with applicable requirements under the CAA. 42 U.S.C. § 7661d(b)(1); *see also* 40 C.F.R. § 70.8(c). If the EPA does not object to a permit on its own initiative, any person may, within 60 days of the expiration of the EPA's 45-day review period, petition the Administrator to object to the permit. 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(d).

Each petition must identify the proposed permit on which the petition is based and identify the petition claims. 40 C.F.R. § 70.12(a). Any issue raised in the petition as grounds for an objection must be based on a claim that the permit, permit record, or permit process is not in compliance with applicable requirements or requirements under 40 C.F.R. part 70. 40 C.F.R. § 70.12(a)(2). Any arguments or claims the petitioner

wishes the EPA to consider in support of each issue raised must generally be contained within the body of the petition.[1] *Id.*

The petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the permitting authority (unless the petitioner demonstrates in the petition to the Administrator that it was impracticable to raise such objections within such period or unless the grounds for such objection arose after such period). 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(d); *see also* 40 C.F.R. § 70.12(a)(2)(v).

In response to such a petition, the CAA requires the Administrator to issue an objection if a petitioner demonstrates that a permit is not in compliance with the requirements of the CAA. 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(c)(1).[2] Under CAA § 505(b)(2), the burden is on the petitioner to make the required demonstration to the EPA.[3] The petitioner's demonstration burden is a critical component of CAA § 505(b)(2). As courts have recognized, CAA § 505(b)(2) contains both a "discretionary component," under which the Administrator determines whether a petition demonstrates that a permit is not in compliance with the requirements of the Act, and a nondiscretionary duty on the Administrator's part to object if such a demonstration is made. *Sierra Club v. Johnson*, 541 F.3d at 1265–66 ("[I]t is undeniable [that CAA § 505(b)(2)] also contains a discretionary component: it requires the Administrator to make a judgment of whether a petition demonstrates a permit does not comply with clean air requirements."); *NYPIRG*, 321 F.3d at 333. Courts have also made clear that the Administrator is only obligated to grant a petition to object under CAA § 505(b)(2) if the Administrator determines that the petitioner has demonstrated that the permit is not in compliance with requirements of the CAA. *Citizens Against Ruining the Environment*, 535 F.3d at 677 (stating that CAA § 505(b)(2) "clearly obligates the Administrator to (1) determine whether the petition demonstrates noncompliance and (2) object *if* such a demonstration is made" (emphasis added)).[4] When courts have reviewed the EPA's interpretation of the ambiguous term "demonstrates" and its determination as to whether the demonstration has been made, they have applied a deferential standard of

[1] If reference is made to an attached document, the body of the petition must provide a specific citation to the referenced information, along with a description of how that information supports the claim. In determining whether to object, the Administrator will not consider arguments, assertions, claims, or other information incorporated into the petition by reference. *Id*.

[2] *See also New York Public Interest Research Group, Inc. v. Whitman*, 321 F.3d 316, 333 n.11 (2d Cir. 2003) (*NYPIRG*).

[3] *See also WildEarth Guardians v. EPA*, 728 F.3d 1075, 1081–82 (10th Cir. 2013); *MacClarence v. EPA*, 596 F.3d 1123, 1130–33 (9th Cir. 2010); *Sierra Club v. EPA*, 557 F.3d 401, 405–07 (6th Cir. 2009); *Sierra Club v. Johnson*, 541 F.3d 1257, 1266–67 (11th Cir. 2008); *Citizens Against Ruining the Environment v. EPA*, 535 F.3d 670, 677–78 (7th Cir. 2008); *cf. NYPIRG*, 321 F.3d at 333 n.11.

[4] *See also Sierra Club v. Johnson*, 541 F.3d at 1265 ("Congress's use of the word 'shall' . . . plainly mandates an objection *whenever* a petitioner demonstrates noncompliance." (emphasis added)).

review. *See, e.g.*, *MacClarence*, 596 F.3d at 1130–31.[5] Certain aspects of the petitioner's demonstration burden are discussed in the following paragraph. A more detailed discussion can be found in the preamble to the EPA's proposed petitions rule. *See* 81 Fed. Reg. 57822, 57829–31 (Aug. 24, 2016); *see also In the Matter of Consolidated Environmental Management, Inc., Nucor Steel Louisiana*, Order on Petition Nos. VI-2011-06 and VI-2012-07 at 4–7 (June 19, 2013) (*Nucor II Order*).

The EPA considers a number of criteria in determining whether a petitioner has demonstrated noncompliance with the CAA. *See generally Nucor II Order* at 7. For example, one such criterion is whether a petitioner has provided the relevant analyses and citations to support its claims. For each claim, the petitioner must identify (1) the specific grounds for an objection, citing to a specific permit term or condition where applicable; (2) the applicable requirement as defined in 40 C.F.R. § 70.2, or requirement under 40 C.F.R. part 70, that is not met; and (3) an explanation of how the term or condition in the permit, or relevant portion of the permit record or permit process, is not adequate to comply with the corresponding applicable requirement or requirement under 40 C.F.R. part 70. 40 C.F.R. § 70.12(a)(2)(i)–(iii). If a petitioner does not identify these elements, the EPA is left to work out the basis for the petitioner's objection, contrary to Congress's express allocation of the burden of demonstration to the petitioner in CAA § 505(b)(2). *See MacClarence*, 596 F.3d at 1131 ("[T]he Administrator's requirement that [a title V petitioner] support his allegations with legal reasoning, evidence, and references is reasonable and persuasive.").[6] Relatedly, the EPA has pointed out in numerous previous orders that general assertions or allegations did not meet the demonstration standard. *See, e.g.*, *In the Matter of Luminant Generation Co., Sandow 5 Generating Plant*, Order on Petition Number VI-2011-05 at 9 (Jan. 15, 2013).[7] Also, the failure to address a key element of a particular issue presents further grounds for the EPA to determine that a petitioner has not demonstrated a flaw in the permit. *See, e.g.*, *In the Matter of EME Homer City Generation LP and First Energy Generation Corp.*, Order on Petition Nos. III-2012-06, III-2012-07, and III-2013-02 at 48 (July 30, 2014).[8]

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[5] *See also Sierra Club v. Johnson*, 541 F.3d at 1265–66; *Citizens Against Ruining the Environment*, 535 F.3d at 678.

[6] *See also In the Matter of Murphy Oil USA, Inc.*, Order on Petition No. VI-2011-02 at 12 (Sept. 21, 2011) (denying a title V petition claim where petitioners did not cite any specific applicable requirement that lacked required monitoring); *In the Matter of Portland Generating Station*, Order on Petition at 7 (June 20, 2007) (*Portland Generating Station Order*).

[7] *See also Portland Generating Station Order* at 7 ("[C]onclusory statements alone are insufficient to establish the applicability of [an applicable requirement]."); *In the Matter of BP Exploration (Alaska) Inc., Gathering Center #1*, Order on Petition Number VII-2004-02 at 8 (Apr. 20, 2007); *In the Matter of Georgia Power Company*, Order on Petitions at 9–13 (Jan. 8, 2007) (*Georgia Power Plants Order*); *In the Matter of Chevron Products Co., Richmond, Calif. Facility*, Order on Petition No. IX-2004–10 at 12, 24 (Mar. 15, 2005).

[8] *See also In the Matter of Hu Honua Bioenergy*, Order on Petition No. IX-2011-1 at 19–20 (Feb. 7, 2014); *Georgia Power Plants Order* at 10.

Another factor the EPA examines is whether the petitioner has addressed the state or local permitting authority's decision and reasoning contained in the permit record. 81 Fed. Reg. at 57832; *see Voigt v. EPA*, 46 F.4th 895, 901–02 (8th Cir. 2022); *MacClarence*, 596 F.3d at 1132–33.[9] This includes a requirement that petitioners address the permitting authority's final decision and final reasoning (including the state's response to comments) where these documents were available during the timeframe for filing the petition. 40 C.F.R. § 70.12(a)(2)(vi). Specifically, the petition must identify where the permitting authority responded to the public comment and explain how the permitting authority's response is inadequate to address (or does not address) the issue raised in the public comment. *Id*.

The information that the EPA considers in determining whether to grant or deny a petition submitted under 40 C.F.R. § 70.8(d) generally includes, but is not limited to, the administrative record for the proposed permit and the petition, including attachments to the petition. 40 C.F.R. § 70.13. The administrative record for a particular proposed permit includes the draft and proposed permits, any permit applications that relate to the draft or proposed permits, the statement required by 40 C.F.R. § 70.7(a)(5) (sometimes referred to as the "statement of basis"), any comments the permitting authority received during the public participation process on the draft permit, the permitting authority's written responses to comments, including responses to all significant comments raised during the public participation process on the draft permit, and all materials available to the permitting authority that are relevant to the permitting decision and that the permitting authority made available to the public according to § 70.7(h)(2). *Id.* If a final permit and a statement of basis for the final permit are available during the EPA's review of a petition on a proposed permit, those documents may also be considered when determining whether to grant or deny the petition. *Id*.

If the EPA grants a title V petition and objects to the issuance of a permit, a permitting authority may address the EPA's objection by, among other things, providing the EPA with a revised permit. 42 U.S.C. § 7661d(b)(3), (c); 40 C.F.R. § 70.8(d); *see id*. §§ 70.7(g)(4), 70.8(c)(4); *see generally* 81 Fed. Reg. at 57842 (describing post-petition procedures); *Nucor II Order* at 14–15 (same). In some cases, the permitting authority's response to an EPA objection may not involve a revision to the permit terms and conditions themselves, but may instead involve revisions to the permit record. For example, when the EPA has issued a title V objection on the grounds that the permit

[9] *See also, e.g.*, *Finger Lakes Zero Waste Coalition v. EPA*, 734 Fed. App'x *11, *15 (2d Cir. 2018) (summary order); *In the Matter of Noranda Alumina, LLC*, Order on Petition No. VI-2011-04 at 20–21 (Dec. 14, 2012) (denying a title V petition issue where petitioners did not respond to the state's explanation in response to comments or explain why the state erred or why the permit was deficient); *In the Matter of Kentucky Syngas, LLC*, Order on Petition No. IV-2010-9 at 41 (June 22, 2012) (denying a title V petition issue where petitioners did not acknowledge or reply to the state's response to comments or provide a particularized rationale for why the state erred or the permit was deficient); *Georgia Power Plants Order* at 9–13 (denying a title V petition issue where petitioners did not address a potential defense that the state had pointed out in the response to comments).

record does not adequately support the permitting decision, it may be acceptable for the permitting authority to respond only by providing an additional rationale to support its permitting decision.

When the permitting authority revises a permit or permit record to resolve an EPA objection, it must go through the appropriate procedures for that revision. If a final permit has been issued prior to the EPA's objection, the permitting authority should determine whether its response to the EPA's objection requires a minor modification or a significant modification to the title V permit, as described in 40 C.F.R. § 70.7(e)(2) and (4) or the corresponding regulations in the state's EPA-approved title V operating permit program. If the permitting authority determines that the revision is a significant modification, then the permitting authority must provide for notice and opportunity for public comment for the significant modification consistent with 40 C.F.R. § 70.7(h) or the state's corresponding regulations.

In any case, whether the permitting authority submits revised permit terms, a revised permit record, or other revisions to the permit, and regardless of the procedures used to make such revisions, the permitting authority's response is generally treated as a new proposed permit for purposes of CAA § 505(b) and 40 C.F.R. § 70.8(c) and (d). *See Nucor II Order* at 14. As such, it would be subject to the EPA's 45-day review per CAA § 505(b)(1) and 40 C.F.R. § 70.8(c), and an opportunity for the public to petition under CAA § 505(b)(2) and 40 C.F.R. § 70.8(d) if the EPA does not object during its 45-day review period.

When a permitting authority responds to an EPA objection, it may choose to do so by modifying the permit terms or conditions or the permit record with respect to the specific deficiencies that the EPA identified; permitting authorities need not address elements of the permit or the permit record that are unrelated to the EPA's objection. As described in various title V petition orders, the scope of the EPA's review (and accordingly, the appropriate scope of a petition) on such a response would be limited to the specific permit terms or conditions or elements of the permit record modified in that permit action. *See In the Matter of Hu Honua Bioenergy, LLC*, Order on Petition No. VI-2014-10 at 38–40 (Sept. 14, 2016); *In the Matter of WPSC, Weston*, Order on Petition No. V-2006-4 at 5–6, 10 (Dec. 19, 2007).

III. BACKGROUND

A. The Clairton Plant

The Clairton Plant in Allegheny County, Pennsylvania is the largest by-products coke plant in the United States. The Clairton Plant was built in 1901, and U.S. Steel has operated it since 1904. The Clairton Plant operates seven coke batteries, seven quench towers, and six boilers, among other emission units. The Clairton Plant produces approximately 13,000 tons of coke per day from the distillation of more than 18,000

tons of coal and approximately 145,000 gallons of crude coal tar, 55,000 gallons of light oil, 50 tons of anhydrous ammonia, and 35 tons of elemental sulfur per day from the coke oven gas produced by the coking process. The coke produced is then used in blast furnace operations in the production of molten iron for steel production. The Clairton Plant is a major source of carbon monoxide (CO), nitrogen oxides (NO_x), particulate matter (PM), PM <10 µm in diameter (PM_{10}), PM <2.5 µm in diameter ($PM_{2.5}$), sulfur dioxide (SO_2), volatile organic compounds (VOC), and hazardous air pollutants (HAP). The Clairton Plant is subject to various ACHD rules and regulations, New Source Performance Standards (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAP), and other requirements.

B. Permitting History

U.S. Steel first obtained a title V permit for the Clairton Plant in 2012. On November 21, 2022, ACHD issued a renewal permit for the Clairton Plant (Permit No. 0050-OP22, the "Renewal Permit"). In response to two petitions, the EPA objected to the Renewal Permit and directed ACHD to make various revisions to the Renewal Permit and permit record. *See In the Matter of U.S. Steel Corp., Clairton Coke Works*, Order on Petition Nos. III-2023-5 & III-2023-6 at 10 (Sept. 18, 2023) (*U.S. Steel Clairton I Order*).

In response to the *U.S. Steel Clairton I Order*, ACHD published notice of a draft permit amendment and technical support document (TSD) on December 7, 2023, subject to a public comment period that ended on January 18, 2024.[10] On August 7, 2024, ACHD submitted a proposed Amended Permit, along with its responses to public comments (RTC), to the EPA for its 45-day review. The EPA's website indicated that the EPA's 45-day review period ended on September 20, 2024, during which time the EPA did not object to the Amended Permit. On October 10, 2024, ACHD issued the final Amended Permit for the Clairton Plant (along with final versions of the TSD and RTC).

C. Timeliness of Petition

Pursuant to the CAA, if the EPA does not object to a proposed permit during its 45-day review period, any person may petition the Administrator within 60 days after the expiration of the 45-day review period to object. 42 U.S.C § 7661d(b)(2). The EPA's website indicated that the EPA's 45-day review period ended on September 20, 2024. Thus, the EPA's website indicated that any petition seeking the EPA's objection to the Amended Permit was due on or before November 19, 2024. The Petition was submitted on November 19, 2024. Therefore, the EPA finds that the Petitioner timely filed the Petition.

[10] ACHD indicates that the action to amend the permit was also motivated by a still-pending permit appeal filed by U.S. Steel through a parallel administrative proceeding before the ACHD Hearing Officer. *See* TSD at 2.

IV. EPA DETERMINATIONS ON PETITION CLAIMS

The Petition includes three claims. These are found in sections III.a, III.b, and III.c of the Petition;[11] this Order labels these Claim 1, Claim 2, and Claim 3, respectively.

A. Claim 1: The Petitioner's Claim Involving Challenged Emission Limits

Petition Claim: The Petitioner's first claim contests the inclusion of approximately one hundred different "Challenged Emission Limits" in the Amended Permit. The Petitioner argues that these limits are not "applicable requirements" of the CAA, and that ACHD's permit record does not support their inclusion in the Amended Permit. *See* Petition at 4–34.

The Petitioner argues: "In broad terms, Title V permits must identify and assure compliance with existing applicable requirements—they do not impose new ones." *Id*. at 7 (citing 40 C.F.R. § 70.1(b)). The Petitioner invokes various statements by the EPA and courts addressing limitations on the extent to which title V permits can or should be used to establish new requirements. *See id*. at 5, 23–24, 26 (citing 40 C.F.R. § 70.6(b)(2); *Applicable Requirements Rule*, 89 Fed. Reg. 1150, 1151, 1154 (proposed Jan. 9, 2024); *Operating Permit Program; Proposed Rule*, 56 Fed. Reg. 21712, 21729 (May 10, 1991); *In the Matter of Cargill Inc., Blair Facility*, Order on Petition No. VII-2022-9 at 13 (Feb. 16, 2023); EPA, *White Paper for Streamlined Development of Part 70 Permit Applications* at 1 (July 10, 1995); *Utility Air Regul. Grp. v. EPA*, 573 U.S. 302, 309 (2014); *Env't Integrity Project v. EPA*, 969 F.3d 529, 536 (5th Cir. 2020); *Sierra Club v. Johnson*, 541 F.3d 1257, 1260 (11th Cir. 2008); *Appalachian Power Co. v. EPA*, 208 F.3d 1015, 1028 (D.C. Cir. 2000); *Virginia v. Browner*, 80 F.3d 869, 873 (4th Cir. 1996); *Clean Air Council v. Cnty. of Allegheny*, No. 515 C.D. 2018, 2018 WL 6036820 (Pa. Cmwlth. Nov. 19, 2018)).

The Petitioner states that when ACHD issued the Renewal Permit in 2022, it created, for the first time, approximately one hundred new emission limits. *Id*. at 2. The Petitioner states that these limits were carried over into the Amended Permit. *Id*. at 3; s*ee id*. at 8–11 (table identifying all Challenged Emission Limits). The Petitioner reproduces comments originally challenging the establishment of these limits in a draft version of the Renewal Permit, *id*. at 11–16, followed by a reproduction of ACHD's responses to

[11] In addition to background information presented before the three claims, the Petition discusses additional topics after the three claims. The Petition includes two sections (sections III.d and IV) that present support for the three petition claims and a section (section III.e), titled "ACHD's Title V permitting program does not comport with the terms on which the EPA's approval is conditioned because judicial review is not available." *See* Petition at 49–51. The purpose of this section of the Petition, and any relief that U.S. Steel wants the EPA to provide, is unclear. This section addresses whether ACHD's title V permitting program satisfies the minimum elements that state and local programs must meet to receive EPA approval. Nothing in the title or body of this section requests, or alleges any basis for, the EPA's objection to this particular Amended Permit. Thus, this section of the Petition does not present any issue that the EPA must address in the present Order.

those comments, *id*. at 16–17.[12] Next, the Petitioner reproduces its comments challenging these limits as carried over in a draft version of the Amended Permit, *id*. at 17–20, followed by a reproduction of ACHD's responses to those comments, *id*. at 20–22. As the Petitioner states, ACHD's responses to the comments on the Amended Permit repeatedly stated, for example, that the Challenged Emission Limits were "not modified as part of this permit amendment. Therefore, this comment is not within the purview of this amendment." *Id*. at 20 (quoting RTC at 2). In an earlier part of the Petition, the Petitioner addresses this response and states that "U.S. Steel neither understands nor agrees with the Department's rationale as stated." *Id*. at 7. Additionally, in a later subsection within this claim, the Petitioner notes that the Petitioner filed an appeal of both the Renewal Permit and Amended Permit through the state and local process for judicial review. *Id*. at 23. The Petitioner argues that "Because the filing of a Notice of Appeal with ACHD prevents the Department's underlying action from becoming 'final,' and both appeals remain pending, the Renewed Permit and the Amended Permit and Objectionable Conditions therein remain subject to review." *Id*.

The Petitioner argues that the Challenged Emission Limits should not be included in the Amended Permit because these limits are not "applicable requirements" of the CAA. *Id*. at 4, 23–26. The Petitioner includes the EPA's regulatory definition of "applicable requirement," which lists thirteen types of requirements. *Id*. at 24–25 (citing 40 C.F.R. § 70.2). The Petitioner also addresses the ACHD definition of "applicable requirement," which includes additional provisions, including "all provisions of Article XXI." *See id*. at 25 n.10 (citing ACHD Rules and Regulations Art. XXI § 2101.20). The Petitioner argues that the Challenged Emission Limits "do not fit within any of the acceptable types of applicable requirements enumerated in 40 C.F.R. §§ 70.2(1)–(13)." *Id*. at 8. In various places throughout the Petition, the Petitioner observes that the limits do not derive from any NSPS under CAA § 111, any NESHAP under CAA § 112, or any preconstruction permit. *Id*. at 5, 8, 23, 25. The Petitioner claims that the Challenged Emission Limits "were not established by any categorical or other standard under Article XXI of the Department's Rules and Regulations," "are not provided for in the applicable implementation plan submitted or approved or promulgated by EPA through rulemaking," and "are not based on any federal, state, or local categorical requirement required by Article XXI and the CAA programs that ACHD is delegated the authority to administer." *Id*. at 5, 8, 23. The Petitioner concludes that "[t]he Challenged Emission Limits are simply not 'applicable requirements' under the CAA." *Id*. at 25; *see id*. at 5.

The Petitioner focuses on ACHD's "attempt[] to justify" the Challenged Emission limits based on Reasonably Available Control Technology (RACT) requirements under ACHD Rules and Regulations Art. XXI § 2103.12.a.2.B. *Id*. at 25. The Petitioner acknowledges ACHD's position that this regulation requires ACHD to ensure that "[t]he source

[12] The Petitioner also asserts that in the *U.S. Steel Clairton I Order* (which addressed the Renewal Permit) the "EPA questioned the very basis on which the limits were set." *Id*. at 22 (citing *U.S. Steel Clairton I Order* at 16, 20, 23, 27–28).

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 those pollutants regulated by this Article." *Id*. at 11 (quoting RTC on Renewal Permit at 1); *see id*. at 30 (reproducing similar language from ACHD Rules and Regulations Art. XXI § 2103.12.a.2.B).

The Petitioner claims that ACHD "has distorted the concept of RACT [within ACHD Rules and Regulations Art. XXI § 2103.12.a.2.B] so as to improperly give itself carte blanche authority to impose any emission limits that the Department wants, at any time and for any reason." *Id*. at 5–6. The Petitioner characterizes ACHD's application of this regulation to establish the Challenged Emission Limits as "novel," "new," "unique," "improper," "unlawful," "legally incorrect," "contrary to the CAA," and "arbitrary and capricious." *Id*. at 8, 11, 27, 31.

In a footnote, the Petitioner discusses how the Hearing Officer for ACHD treated this issue as part of the Petitioner's still-pending appeal through the state and local administrative process:

> ACHD's outgoing Hearing Officer opined that wholly new emission limits included in the permit 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. 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 decision did not address whether ACHD engaged in a proper RACT analysis in setting the Challenged Emission Limits.

Id. at 29 n.13 (citing Petition Ex. 18 at 18–19, 30).

The Petitioner's argument centers on its position that the "RACT" requirement in ACHD Rules and Regulations Art. XXI § 2103.12.a.2.B must be interpreted consistent with federal RACT requirements, and that ACHD's interpretation of RACT goes beyond and is inconsistent with federal RACT requirements. *See id*. at 5, 11, 30, 31.

The Petitioner argues that the CAA sets forth procedures for establishing RACT, which generally involve approval into the state implementation plan (SIP). *Id*. at 27. The Petitioner asserts that these procedures were not followed here. *Id*. Further, the

Petitioner explains that "RACT is a specific term of art under the CAA that allows for permitting agencies to require emission reductions from existing major sources that are located in nonattainment areas in certain circumstances, following a formal process set forth in the CAA that considers the technological and economic feasibility of control measures and resulting reductions." *Id*. at 5; *see id*. at 25, 28 (citing *Sierra Club v. EPA*, 972 F.3d 290, 294 (3d. Cir. 2020)). The Petitioner states that, consistent with federal requirements, RACT is defined in ACHD Rules and Regulations Art. XXI as the following:

> [A]ny 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 maintenance* of the [National Ambient Air Quality Standards] NAAQS's [sic].

Id. (quoting ACHD Rules and Regulations Art. XXI § 2101.20) (emphasis in Petition; misspelling in regulation).

The Petitioner argues that "in a proper RACT analysis, for each source, the permitting authority will select a control technology that is reasonably available, considering technological and economic feasibility, and then identify the lowest emission limit that the particular source is capable of achieving by application of that technology." *Id*. at 29.

Here, the Petitioner argues that "ACHD gave no such explanation in the Response to Comment Document or Technical Support Document for the Renewed Permit or the Amended 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." *Id*. at 29 (citing *Keystone-Conemaugh Projects LLC v. EPA*, 100 F.4th 434, 440 (3d Cir. 2024); *see id*. at 31, 34.[13] Specifically, the Petitioner states that ACHD provided no analysis regarding technological or economic feasibility. *Id*. at 29. Instead, the Petitioner asserts that ACHD "blankly" stated that the Challenged Emissions Limits were RACT, "without providing the required analysis." *Id*. at 31; *see id*. at 5. According to the Petitioner:

[13] Among citations to various authorities, the Petitioner restates the following from a Pennsylvania administrative appeals board, which stated: "When 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." *Id*. at 28 (quoting *Berks Cnty. v. DEP*, 2012 EHB 23, 26–27, 2012 WL 1108235 at *3 (Mar. 16, 2012) (alterations in Petition)).

> RACT does not support the imposition of the new Challenged 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.

Id. at 27.

The Petitioner provides several reasons why the Challenged Emission Limits do not reflect RACT. The Petitioner argues that "the plain language of the RACT definition in Article XXI dictates that emission limits or other standards proffered as RACT must demonstrate that the limits are necessary and appropriate for attainment and maintenance of the NAAQS." *Id*. at 30. The Petitioner claims that "for each pollutant for which the Department created a Challenged Emission Limit, the Department had previously performed RACT evaluations and determined that the Challenged Emission Limits were not necessary in order to attain and maintain the NAAQS." *Id*. at 31. The Petitioner elaborates on this argument for each of the pollutants at issue. *See id*. at 31–34. In sum, for CO and PM_{10}, the Petitioner argues that "Allegheny County is in attainment of the CO and PM_{10} NAAQS, and therefore the Department cannot use any argument of non-attainment as a basis for imposing the Challenged Emission Limits." *Id*. at 31; *see id*. at 31–32. For $PM_{2.5}$ and SO_2, the Petitioner notes that ACHD requested that the EPA redesignate Allegheny County as being in attainment with the NAAQS for these pollutants; "Both requests demonstrate that RACT does not require further reductions in emissions to attain and maintain the NAAQS . . . ." *Id*. at 32. The Petitioner discusses additional SIP actions related to these pollutants, in which the Petitioner asserts that the EPA determined that prior RACT determinations for the Clairton Plant were sufficient. *See id*. at 32–33. For VOC and NO_x, the Petitioner asserts that ACHD previously performed multiple RACT evaluations and determined that the Challenged Emission Limits were not required to attain the ozone NAAQS. *Id*. at 34.[14] The Petitioner argues that nothing about the Clairton Plant's operations has changed such that a new RACT evaluation or new emission limits would be necessary or appropriate. *Id*.

The Petitioner offers the following conclusion:

> For the foregoing reasons, the Challenged Emission Limits are unlawful. The inclusion of the Challenged Emission Limits in the Renewed Permit and Amended Permit is arbitrary, capricious, and contrary to law because they are not based on applicable requirements. ACHD's justification that the Challenged Emission Limits are RACT fails because Allegheny County is in attainment of the NAAQS for CO and PM_{10}; and the "new RACT" limits

[14] The Petitioner also argues that the Challenged Emission Limits are not necessary to attain the NAAQS because "Allegheny County has measured ambient air concentrations below the ozone NAAQS in recent years." *Id*. at 34.

> conflict with performed proper RACT evaluations for NOx, VOCs, $PM_{2.5}$, and SO_2, which did not establish or require applicable emission limits. In addition, ACHD has not offered a robust technical justification for the Challenged Emission limits. U.S. Steel respectfully requests that EPA grant its request to object to the Challenged Emission Limits and direct ACHD to remove them from the Amended Permit.

Id. at 34.

In addition to its discussion of RACT, the Petitioner explains why a subset of the Challenged Emission Limits—limits on condensable PM emissions from Coke Oven Batteries 13–15 and Quench Tower B—should not have been included in the Amended Permit. *Id*. at 27. The Petitioner claims that condensable PM, which is a fraction of PM_{10} and $PM_{2.5}$, is not itself defined as a regulated pollutant and is not subject to any applicable requirement established under the CAA or ACHD Rules and Regulations Article XXI. *Id*.

EPA Response: For the following reasons, the EPA denies the Petitioner's request for an objection on this claim.

The Petition requests that the EPA object to the Amended Permit on the basis that ACHD improperly established the Challenged Emission Limits. However, the Challenged Emission Limits were not established or revised in the Amended Permit. Therefore, as explained further below, the Petitioner's concerns with these limits are beyond the scope of issues to which the EPA could object in the present Order.

In petitions challenging title V permit revisions (as opposed to initial permits or permit renewals), the scope of issues subject to review is limited. Since the EPA first promulgated regulations governing the title V program in 1992, the Agency has limited the scope of petitions on permit revisions to issues that are directly related to the permit revision—that is, to portions of the permit being changed. *See* 57 FR 32250, 32290 (July 21, 1992) ("Public objections to a draft permit, permit revision, or permit renewal must be germane to the applicable requirements implicated by the permit action in question. For example, objections addressed to portions of an existing permit that would no way be affected by a proposed permit revision would not be germane."); *see also, e.g.*, *In the Matter of WPSC, Weston*, Order on Petition No. V-2006-4 at 5–6 (Dec. 19, 2007).

This principle is also relevant when a state reopens a permit for cause. The EPA's (and ACHD's) regulations pertaining to reopening for cause are explicit: "Proceedings to reopen and issue a permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists." 40 CFR § 70.7(f)(2); *see* ACHD Rules and Regulations Art. XXI § 2103.15(a)(2) (substantively identical text); *see also In the Matter Tennessee Valley Authority,*

Shawnee Fossil Plant, Order on Petition No. IV-2011-1 at 5–7 (Aug. 31, 2012) (*TVA Shawnee Order*).

In addition to permit revisions and reopenings initiated by a source or state, this principle also applies to permit revisions precipitated by an EPA objection. A state's response to an EPA objection typically involves a new permit action consisting of narrowly targeted revisions to the previously issued permit. Accordingly, only the revised permit terms would be subject to subsequent petition challenges. Notably, here, the *U.S. Steel Clairton I Order* that gave rise to the Amended Permit specifically indicated:

> When a permitting authority responds to an EPA objection, it may choose to do so by modifying the permit terms or conditions or the permit record with respect to the specific deficiencies that EPA identified; permitting authorities need not address elements of the permit or the permit record that are unrelated to EPA's objection. As described in various title V petition orders, the scope of EPA's review (and accordingly, the appropriate scope of a petition) on such a response would be limited to the specific permit terms or conditions or elements of the permit record modified in that permit action.

U.S. Steel Clairton I Order at 5–6. The EPA has included similar language in numerous other petition orders over the last decade.

Here, as stated in Section III.B of this Order, the Amended Permit is a result of ACHD's action to reopen and revise the previously issued Renewal Permit. The Amended Permit is a distinct permit action from the Renewal Permit, with a separate permit number, a separate public comment period, a separate EPA review period, and a separate public petition opportunity.

ACHD's permit record is clear regarding the scope of changes made in the present permit action (*i.e.*, in the Amended Permit), and thus the scope of issues properly subject to review in the present permit action. ACHD's TSD clearly stated that "This permit is for the amendment of the U.S. Steel Mon Valley Works Clairton Plant Title V Operating Permit No. 0052-OP22, issued on November 21, 2022, pursuant to Article XXI, §2103.14.b. The amendment is a result of U.S. Steel's appeal of the issued Title V Operating permit and reopening for cause under §2103.15.a and §2103.25 in response to US EPA response to Petition Nos. III-2023-5 and III-2023-6." TSD at 2. The TSD then identifies 61 specific changes to the Renewal Permit that were processed in the present permit action. *See id*. at 2–6. The Petitioner does not challenge any of those changes in Claim 1.

It appears undisputed that the permit terms challenged by the Petitioner in Claim 1—the numerous Challenged Emission Limits—were not established, or revised in any

relevant way, by the present Amended Permit. Instead, these permit terms were previously established in the Renewal Permit. *See Petition* at 2–3 (stating that the "Challenged Emission Limits had not been included in any prior permit issued by ACHD," but instead were "established for the first time through the Renewed Permit," and then subsequently "carrie[d] over" into the Amended Permit); *see also id*. at 6, 11.

When the Petitioner raised its concerns with the Challenged Emission Limits in comments on the draft Amended Permit and requested that the limits be removed, ACHD clearly, repeatedly, and correctly explained that "this condition was not modified as part of this permit amendment. Therefore, this comment is not within the purview of this amendment." RTC at 2 (Comment 9).[15] In the Petition, the Petitioner acknowledges and restates ACHD responses to its comments. Petition at 20–22. The Petitioner presents no direct rebuttal to ACHD's position that these issues are not germane to this permit action beyond a brief statement that "U.S. Steel neither understands nor agrees with the Department's rationale as stated." *Id*. at 7.

Although the Petitioner does not directly address the limited scope of issues subject to review during a permit revision or reopening, the Petition includes several points that might be indirectly related to this principle. None of these points provide a basis for the EPA to address concerns with permit terms that were substantively unchanged during the present permit action.

First, as the Petitioner briefly notes, but does not discuss, several of the permit terms that include the Challenged Emission Limits were slightly modified in the present permit action to remove a footnote associated with those limits. *See* Renewal Permit, Petition Ex. 2, at 56; TSD at 2 (item 8); RTC at 5, 7 (comments 19, 31). However, the Petitioner does not raise any concerns with that change. Instead, the Petitioner's claim solely concerns aspects of the Challenged Emission Limits that were not changed in the present permit action. Thus, the fact that some relatively minor aspects of the permit terms containing the Challenged Emission Limits were revised does not change the EPA's conclusion that the Petitioner's challenges to the overall existence of (and legal basis for) the Challenged Emission Limits are not properly subject to review in the present permit action. *See, e.g.*, *TVA Shawnee Order* at 7.[16]

[15] ACHD provided similar responses to the other comments that form the basis for Claim 1 of the Petition, *see id*. at 4–5, 6, 7, 9, 10–11 (comments 19, 20, 27, 31, 43, 51), as well as various other comments unrelated to this claim, *see id*. at 5, 7, 8, 10, 11, 13, 18, 19, 26, 32 (comments 21, 32, 37), 10 (comment 49), 11 (comments 52, 53, 59, 85, 88, 103, 121, 122).

[16] As the EPA explained in the *TVA Shawnee Order,* "The EPA does not believe the limitation of proceedings in 40 CFR § 70.7(f)(2) to 'those parts of the permit for which cause to reopen exists' should be interpreted to involve a mechanical exercise of determining whether there are any changes at all in any parts of a broad permit condition subject to a citizen [petition]. Rather, consistent with the purpose and structure of 40 CFR § 70.7(f), it is more reasonable to evaluate whether the substantive concerns raised in a petition regarding particular provisions are related to the cause for reopening and associated permit revisions ultimately adopted." *TVA Shawnee Order* at 7.

Second, within Claim 1, the Petitioner includes a paragraph titled "The Challenged Emission Limits are not final and are therefore subject to EPA's authority to object pursuant to CAA § 505(b)(2)." Petition at 23. In full, the Petitioner's argument is that "The Challenged Emission Limits are among the issues raised in U.S. Steel's Renewed Permit Appeal and in its Amended Permit Appeal. Because the filing of a Notice of Appeal with ACHD prevents the Department's underlying action from becoming 'final,' and both appeals remain pending, the Renewed Permit and the Amended Permit and Objectionable Conditions therein remain subject to review." *Id*. (citations and explanatory parentheticals omitted). Even accepting, for the sake of argument, that neither the Renewal Permit nor the Amended Permit have yet become "final," it is unclear why that would have any bearing on the scope of issues properly subject to review in a title V petition on a narrow permit revision like the Amended Permit.

Third, the Petition includes a section—outside of Claim I—titled "The Objectionable Conditions are within EPA's scope of review for a Title V petition to object." Petition at 49. This section invokes statements made by the EPA in a preamble to a proposed rulemaking, which "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." *Id*. (citing 89 Fed. Reg. 1150, 1154, 1158 (Jan. 9, 2024)). The Petitioner claims that "[t]hat is what ACHD has attempted to do here, which subjects the Objectionable Conditions to EPA review." *Id*. The Petitioner is generally correct that the permit terms implicated by all three Petition claims are not barred from further review by virtue of being "applicable requirements" established outside of title V, but that is beside the point. There may be other bars to challenging title V permit terms, including the one discussed above: the only permit terms subject to review in a title V permit revision (or reopening) are those that are changed by the revision (or reopening).

The proper forum for the Petitioner to seek an EPA objection to the Challenged Emission Limits would have been a petition requesting the EPA's objection to the Renewal Permit that established the limits. The Petitioner filed comments on the draft Renewal Permit, and the Petitioner is currently in the process of seeking local administrative review of that permit action. *See* Petition at 3–4, 6–7, 11–16, 23, 49–51. However, the Petitioner filed no petition requesting that the EPA object to the Renewal Permit.[17] If the Petitioner's parallel local administrative challenge to the Renewal Permit and Amended Permit does not result in the relief the Petitioner seeks, and if ACHD does not voluntarily take action on the Challenged Emission Limits in response to the EPA's suggestions below, then the Petitioner may have additional opportunities to seek relief from the EPA

[17] The Petitioner does not present any reason for why such a petition was not filed on the Renewal Permit, and the EPA is not aware of any impediment to such a filing. As noted in Section III.B of this Order, public interest groups filed two petitions requesting the EPA's objection to the Renewal Permit (which the EPA granted in part).

during a subsequent title V permit renewal, or a subsequent title V permit revision in which the relevant permit terms are materially changed.

In summary, the Petitioner's concerns regarding the legal authority for the substantively unchanged Challenged Emission Limits are beyond the scope of issues properly raised in a petition on the Amended Permit. Therefore, the EPA denies Claim 1.

Notwithstanding the EPA's denial of this claim on procedural grounds, the EPA notes that the Agency is unsure whether the Challenged Emission Limits are properly based on, or consistent with, any federally enforceable applicable requirement of the CAA (such as the "RACT" provisions of ACHD Rules and Regulations Art. XXI §§ 2103.12.a.2.B and 2101.20)[18] It is not clear to the EPA whether ACHD Rules and Regulations Art. XXI § 2103.12.a.2.B establishes the authority for ACHD to impose any of the Challenged Emission Limits. *See U.S. Steel Edgar Thomson Order* at 29–31, 32–34 (questioning whether certain limits were required by ACHD Rules and Regulations Article XXI § 2103.12.a.2.B). To the extent this regulation provides such authority, it is not clear that the short-term (hourly) and long-term (annual) Challenged Emission Limits are consistent with the criteria in the definition of RACT in ACHD Rules and Regulations Art. XXI § 2101.20. As the Petitioner correctly explains, the permit record is essentially devoid of any explanation for how the Challenged Emission Limits are related to the regulatory criteria governing RACT.

When ACHD takes action on the Amended Permit to resolve the EPA's objections related to Claims 2 and 3, the EPA encourages ACHD to use that opportunity to reconsider the legal authority underlying the Challenged Emission Limits. Depending on the results of that reconsideration, ACHD may be able to remove the limits from the permit, designate the limits not federally enforceable, retain the limits, or revise the limits. In all cases, the EPA encourages ACHD to explain the relationship between the requirements retained (or removed) from the Amended Permit and any underlying applicable requirements upon which they are based.

B. Claim 2: The Petitioner's Claim Involving Continuous Emission Monitoring System (CEMS) Requirements

Petition Claim: The Petitioner claims that ACHD lacks the authority to impose requirements for CEMS on numerous coke oven batteries and boilers. *See* Petition at 34–42.

[18] These regulatory provisions are included in the EPA-approved SIP and therefore could reflect "applicable requirements" that provide a basis for imposing limits on the Clairton Plant. *See* 40 C.F.R. § 70.2 (definition of "applicable requirement," paragraph (1)); 40 C.F.R. § 52.2020(c); 69 Fed. Reg. 52831 (Aug. 30, 2004); *In the Matter of U.S. Steel Corporation, Edgar Thomson Plant*, Order on Petition No. III-2023-15 at 29–30 (Feb. 7, 2024) (*U.S. Steel Edgar Thomson Order*); Petition Ex. 12 at 18.

The Petitioner states that in the Amended Permit, ACHD imposed new requirements mandating CEMS for a variety of different pollutants on every coke oven battery and on Boiler Nos. 1 and 2. *Id*. at 34–35, 40.[19] The Petitioner claims that these CEMS requirements are not based on any applicable requirement. *Id*. at 35. The Petitioner also claims that the CEMS requirements are neither appropriate nor necessary. *Id*. at 7. The Petitioner asserts the requirements to install CEMS are burdensome, duplicative, unnecessary, and lack a sound legal or technical basis. *Id*. at 7, 40.

The Petitioner argues that the EPA's *U.S. Steel Clairton I Order* did not require and does not support the installation of CEMS. *Id*. at 39. The Petitioner states that the "EPA ordered ACHD to reevaluate the monitoring and testing requirements for specific sources and either revise the Renewed Permit and/or the permit record to ensure that it contains sufficient testing and monitoring to assure compliance with the emission limits contained in the Permit." *Id*. More specifically, the EPA's order "directed ACHD to five factors that permitting authorities can consider to determine appropriate monitoring requirements," including:

> (1) the variability of emissions from the unit in question; (2) the likelihood of a violation of the requirements; (3) whether add-on controls are being used for the unit to meet the emission limit; (4) the type of monitoring, process, maintenance, or control equipment data already available for the emission unit; and (5) the type and frequency of the monitoring requirements for similar emission units at other facilities.

Id. (quoting *U.S. Steel Clairton I Order* at 9).

The Petitioner claims that the "Technical Support Document and its application of the factors EPA directed ACHD to consider in the Order on Petitions continues to support ACHD's original determination that CEMS are not needed." *Id*. at 40. The Petitioner provides a chart summarizing ACHD's updated analysis of monitoring requirements, provided in response to the EPA's *U.S. Steel Clairton I Order*. *Id*. at 39–40. For each emission unit and relevant pollutant subject to CEMS, the Petitioner's chart summarizes information from the TSD addressing three of the aforementioned five factors outlined in the *U.S. Steel Clairton I Order*. *Id*.[20] The Petitioner summarizes this information as follows: "Specifically, in many cases ACHD determined that the likelihood of violation is low, that stack testing is sufficient to assure compliance with emission limits, that fuel use can often be used for continuous parametric monitoring, and that other coke

[19] Specifically, the Petitioner challenges the CEMS requirements in Permit Conditions V.A.6.o (NO_x, CO, and SO_2 CEMS on Battery Nos. 13, 14, and 15), V.C.6.p (NO_x, CO, SO_2 CEMS on Battery Nos. 19 and 20), V.E.6.o (CO and SO_2 CEMS on Battery B), V.G.6.p (CO, VOC, and SO_2 CEMS on Battery C), V.EE.6.b, and V.FF.6.b (PM, CO, and SO_2 CEMS on Boiler Nos. 1 and 2).

[20] In a footnote, the Petitioner addresses the two additional factors not included in the chart. *See* Petition at 39 n.16.

batteries in the Allegheny County and the United States demonstrate compliance with emission limits without CEMS; as such, CEMS are not required or appropriate." *Id*. at 39.

Throughout this claim, the Petitioner criticizes ACHD's alleged failure to substantiate that CEMS are necessary to assure compliance and to evaluate technical considerations regarding feasibility, cost, operational success, or availability. *See id*. at 7, 39, 41–42 (citing 40 C.F.R. §§ 70.7(h)(6), 70.7(a)(5)). The Petitioner characterizes ACHD's justifications as "insubstantial." *Id*. at 35, 41 (citing RTC at 6, 9, 12).

For the emission limits that are not Challenged Emission Limits—the CO and VOC CEMS for Battery C and the PM and SO_2 CEMS for Boiler Nos. 1 and 2—the Petitioner outlines various technical difficulties associated with the use of these CEMS and outlines other methods of compliance that can be used. *See id*. at 41–42. For most of these limits, the Petitioner also argues that it is burdensome and unnecessary to require both CEMS as well as existing stack testing and other monitoring requirements. *Id*. The Petitioner concludes that "ACHD's own analysis demonstrates that CEMS are wholly unnecessary," warranting the EPA's objection to the Amended Permit. *Id*. at 42.

For the CEMS requirements associated with the Challenged Emission Limits, the Petitioner further argues that ACHD lacks the authority to impose any monitoring requirements to assure compliance with emission limits that were improperly included in the Amended Permit, asserting that such monitoring requirements are "unlawful and premature." *Id*. at 41; *see id*. at 35, 40. The Petitioner claims that because the underlying Challenged Emission Limits are allegedly unlawful, any corresponding monitoring requirements are therefore similarly unlawful. *Id*. More specifically, the Petitioner argues that the *U.S. Steel Clairton I Order* could not "require that ACHD consider or impose enhancement to monitoring conditions relating to an underlying standard that is not an applicable requirement" because "[t]o do so would not comport with 40 C.F.R. § 70.6(a)(3)(i)." *Id*. (citing *U.S. Steel Clairton I Order* at 31). The Petitioner further asserts that because the Challenged Emission Limits are under appeal, they are not final. *Id*. (citing 42 U.S.C. §7661a(b)(6) and ACHD Rules and Regulations Art. XXI § 1104.D). The Petitioner contends that the imposition of CEMS requirements was premature, and that U.S. Steel should not be required to comply with CEMS "without first being entitled to review the legality of the underlying limits which those CEMS are intended to monitor." *Id*.

EPA Response: For the following reasons, the EPA grants this Petition claim and objects to the issuance of the Amended Permit.

Title V permits must include sufficient monitoring (and similar compliance assurance measures) to assure compliance with all applicable requirements and permit terms. 42 U.S.C. § 7661c(c); *see* 40 C.F.R. § 70.6(c)(1). As the CAA recognizes, "continuous emissions monitoring need not be required if alternative methods are available that provide sufficiently reliable and timely information for determining compliance." 42

U.S.C. § 7661c(b). Decisions about what type and amount of monitoring is sufficient to assure compliance with a given limit are inherently dependent on circumstance. The EPA has recommended that state and local permitting authorities consider various factors, including the following non-exhaustive list:

> (1) the variability of emissions from the unit in question; (2) the likelihood of a violation of the requirements; (3) whether add-on controls are being used for the unit to meet the emission limit; (4) the type of monitoring, process, maintenance, or control equipment data already available for the emission unit; and (5) the type and frequency of the monitoring requirements for similar emission units at other facilities.

In the Matter of CITGO Refining and Chemicals Company L.P., Order on Petition No. VI-2007-01 at 7–8 (May 28, 2009) (*CITGO Order*); *U.S. Steel Clairton I Order* at 9.

The EPA has previously indicated that the "EPA generally will not substitute its judgment for that of a state where the state exercises its discretion and documents its decision that additional monitoring is necessary to assure compliance, and a petitioner challenges the selected monitoring as being more stringent than necessary." *In the Matter of Cargill Inc., Blair Facility*, Order on Petition No. VII-2022-9 at 18 (Feb. 16, 2023) (*Cargill Blair Order*); *see generally id*. at 10–18. Nonetheless, the authority of state and local permitting authorities to use the title V permitting process to establish additional monitoring requirements is not unlimited. Permitting authorities must still comply with the requirements to document the basis for their permitting decisions and to respond to significant public comments. Specifically, as the EPA explained in the *Cargill Blair Order*, 40 C.F.R. § 70.7(a)(5) requires that permitting authorities "provide a statement that sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions)," and therefore "it is important that permitting authorities explain the basis for their permitting decisions, including the selected monitoring." 40 C.F.R. § 70.7(a)(5); *Cargill Blair Order* at 17 (citing *CITGO Order* at 7). Further, as noted in the *Cargill Blair Order*, the EPA's regulations require that "[t]he permitting authority must respond in writing to all significant comments raised during the public participation process . . . ." 40 C.F.R. § 70.7(h)(6); *Cargill Blair Order* at 37.[21]

Here, the Petitioner has demonstrated that ACHD's permit record does not satisfy these requirements and accordingly does not support ACHD's decision to require U.S. Steel to install and operate the numerous CEMS devices. The problem is not simply that the

[21] Within the *Cargill Blair Order*, the EPA explored various other limitations on state authority to establish more stringent permitting requirements. In one instance, the EPA found that a change to a testing requirement may have resulted in a change to the stringency of an underlying emission limit, warranting the EPA's objection. *See Cargill Blair Order* at 26–28. In another instance, the EPA objected based on the lack of legal authority to establish testing or monitoring requirements that were not associated with an underlying federally enforceable applicable requirement or permit limit. *See id*. at 29–30.

permit record lacks sufficient justification for the CEMS, but rather that the technical analysis within ACHD's permit record either undermines or is internally inconsistent regarding ACHD's decision to require CEMS.

It is important to note that the *U.S. Steel Clairton I Order* did not mandate that ACHD impose the CEMS requirements at issue or even supplement the monitoring previously contained in the Renewal Permit; the EPA left ACHD with the option to instead justify the Renewal Permit's stack test-based compliance regime. *See U.S. Steel Clairton I Order* at 11, 14, 17, 20–21, 24, 28–29, 33. The *U.S. Steel Clairton I Order* also addressed the misconception that ACHD lacked a title V-based legal authority to impose additional monitoring requirements, like CEMS, if necessary to assure compliance. *See id*. at 10 ("The Petitioners do not allege in the Petition that it is necessary to install and operate a CEMS in order to assure compliance with the limits at issue, so EPA need not reach that issue here. However, *if ACHD determines that operation of a CEMS is necessary to assure compliance* with all applicable requirements, it could incorporate such requirements through the title V process." (emphasis added)); *see id*. at 13, 16, 20, 24.

In response to the *U.S. Steel Clairton I Order*, ACHD amended the Renewal Permit and added requirements for U.S. Steel to install and operate over a dozen CEMS. ACHD's permit record is notably devoid of express determinations that CEMS are necessary to assure compliance with the associated emission limits.[22] In the TSD accompanying the draft Amended Permit, ACHD ostensibly provided an analysis of the key factors from the *CITGO Order* that the EPA recommends permitting authorities consider when selecting monitoring.[23] However, as the Petitioner states, nearly all of ACHD's analysis undermines, rather than supports, its decision to impose CEMS.

For example, as noted by the Petitioner, for almost every CEMS requirement at issue, ACHD's TSD concludes that there is a "low," "significantly low," or "very low" likelihood of violation of the associated emission limits. TSD at 7, 8, 9, 11, 12, 13, 16, 17, 18, 21, 22,

[22] There is one exception, where the permit record includes a statement that ACHD "deems it necessary to implement Continuous Emission Monitoring Systems (CEMS) for Battery C due to its potential VOC emissions of 12.31 lbs/hr and 54 tons/yr, surpassing the major threshold." RTC at 23. It is not clear to the EPA why the magnitude of emissions alone would present a basis for determining that CEMS are necessary to assure compliance with a given emission limit. *See In the Matter of Suncor Energy (U.S.A.), Inc., Commerce City Refinery, Plant 1 (West) & Plant 3 (Asphalt Unit)*, Order on Petition no. VIII-2024-18 at 17–20 (Dec. 30, 2024).

[23] To be clear, the EPA, while referencing the factors from the *CITGO Order*, stated that it "generally agree[d] that such a case-by-case evaluation is the most appropriate approach in most situations, particularly when determining whether monitoring requirements are inadequate and *must* be supplemented." But then the EPA clarified that "it would be an overstatement to suggest that any particular procedure is required by CAA § 504(c) or 40 C.F.R. § 70.6(c)(1) when determining whether a state may supplement existing monitoring . . . ." *Cargill Blair Order* at 17. However, the fact remains that ACHD did apply some of the factors from the *CITGO Order*, and the permit record should contain sufficient explanation to support ACHD's determinations.

23, 27, 28, 35.[24] A low likelihood of violation would support a decision to impose less stringent monitoring, not more stringent monitoring, such as CEMS.

Next, ACHD also addresses other available means of demonstrating ongoing compliance—specifically, parametric monitoring. For most of the emission limits, ACHD explains that "the content of criteria pollutants in the exhaust gas is consistent, so monitoring of fuel use can be used as parametric continuous monitoring of CO." *Id*. at 9. For the SO_2 limits, ACHD requires the Clairton Plant to "[d]etermine emissions by converting [hydrogen sulfide] H_2S grain loading of fuel burned and fuel flow rate to lb/hr" and "[k]eep records of hourly fuel use and hourly H_2S conc. used." *Id*. at 8.[25] Nothing in the permit record indicates that this this type of parametric monitoring is insufficient and must be supplemented (*e.g.*, that emissions depend on operational parameters beyond fuel use or content or that this system is otherwise not sufficiently accurate to assure compliance on an ongoing basis). Overall, the availability of alternative parametric monitoring regimes would support a decision to impose less stringent monitoring, not more stringent monitoring.[26]

In addition, for the NO_x and CO limits, ACHD notes that other similar facilities do not have limits on these pollutants, much less any monitoring. *See id*. at 9, 12. To the extent no similar facilities are subject to limits on these pollutants—let alone any monitoring regimes as stringent as CEMS—that fact underscores the departure of the Amended Permit from what otherwise appears to be standard practice. This acknowledgement should warrant more, not less, explanation from ACHD. For the SO_2 limits, ACHD notes that other facilities monitor H_2S in the fuel. *Id*. at 8.[27] The fact that monitoring H_2S in fuel is an accepted practice for determining SO_2 emissions elsewhere again undermines ACHD's conclusion to impose SO_2 CEMS for the Clairton Plant.

Of the factors addressed in ACHD's TSD, only one might be interpreted to support ACHD's decision to require CEMS, but even that factor is presented in a way that undermines ACHD's decision. Regarding emissions variability, ACHD repeatedly notes that there is variability in emissions based on the type, heat content, and amount of fuel used. *E.g.*, *id*. at 7. But if, as ACHD's record suggests, these fuel-based parameters are

[24] To the extent ACHD's TSD differs from the examples provided herein, the TSD is simply silent and contains no information about the facts or factors relevant to ACHD's monitoring decision.
[25] ACHD's permit record is silent with respect to this consideration for the PM and VOC CEMS requirements at issue.
[26] The EPA is not herein concluding that the parametric monitoring approaches selected by ACHD are sufficient to assure compliance, as that question is not currently before the EPA. Instead, the EPA is concluding simply that ACHD's limited discussion of the availability of other parametric monitoring approaches undermines, rather than supports, the imposition of CEMS in this case.
[27] Again, ACHD's permit record is silent with respect to this consideration for the PM and VOC CEMS requirements at issue.

the only source of emissions variability, this could be accounted for by monitoring those parameters, as discussed above.[28]

The Petitioner submitted public comments contesting the CEMS requirements and highlighting that the factors addressed in the TSD undermined, rather than supported, the imposition of CEMS. *See* Comments from U.S. Steel, Petition Ex. 14, at 4. In response, ACHD's RTC does not substantively address that concern or explain how its multi-factor analysis in the TSD supports the CEMS requirements. *See* RTC at 15. Instead, the RTC contains several general, conclusory statements that are either directly contradicted by other statements in the permit record (namely, the TSD sections discussed above) or unsupported and do not provide a reasoned basis for the imposition of CEMS.

ACHD first states that "With a lack of sufficient parametric monitoring, CEMS are required to demonstrate continuous compliance." RTC at 6. But this statement is contradicted by the aforementioned statements in the TSD, which indicate parametric monitoring is available. Nothing in ACHD's permit record explains why the available parametric monitoring is insufficient.

Next, ACHD states that "U.S. Steel has not provided other means of demonstrating continuous compliance and CEMS provide the most accurate method." RTC at 9. The first half of this statement is again contradicted by the aforementioned statements in the TSD, which indicate that parametric monitoring is available. The second half of this statement is true, in a general sense, as CEMS may be the most accurate method of assuring compliance in many cases. But this does not mean that CEMS must be required in every case. *See* 42 U.S.C. § 7661c(b) ("continuous emissions monitoring need not be required if alternative methods are available that provide sufficiently reliable and timely information for determining compliance"). For example, increased accuracy could provide a reasoned basis for imposing CEMS if other methods of assuring compliance suffer from inaccuracies that are so significant as to render them incapable of providing a reasonable assurance of compliance at a time scale relevant to the affected emission limits. But nothing in ACHD's permit record indicates that such is the case here.

Finally, ACHD states that "Routine stack testing is required [to] show compliance. However, it is only a snapshot in time and does not show ongoing or continuous compliance." RTC at 15. This statement, too, is valid in a general sense, but its relevance here is not clear. The prior permit terms did not rely exclusively on stack testing, but rather on a combination of stack testing and ongoing parametric monitoring of relevant

[28] Again, the EPA is not herein concluding that the sources of variability (based on fuel usage and content) are the only possible sources of emissions variability, or that the existing monitoring requirements adequately account for such variability. Instead, the EPA is concluding simply that ACHD's limited one-sentence discussion of these sources of variability, combined with ACHD's limited discussion of the available parametric monitoring approaches, collectively undermines, rather than supports, the imposition of CEMS in this case.

operational parameters (which could be used to show compliance in between stack tests).

In public comments, the Petitioner raised various other technical concerns related to specific CEMS requirements. ACHD's RTC contains no substantive response to those technical concerns. *See* RTC at 9, 15.

Overall, ACHD's permit record is insufficient to justify its decision to mandate CEMS, and its RTC is not responsive to significant public comments on this topic. 40 C.F.R. § 70.7(a)(5), 70.7(h)(6). Therefore, the EPA grants this claim and objects to the issuance of the Amended Permit.[29]

Regarding the Petitioner's claim that ACHD lacks the authority, or that it is premature, to impose any monitoring requirements to assure compliance with the Challenged Emission Limits, this does not currently present a basis for the EPA to object to the Amended Permit. As noted in the EPA's response to Claim 1, it is unclear whether the Challenged Emission Limits are authorized by, or consistent with, the legal authority cited by ACHD—specifically, ACHD Rules and Regulations Art. XXI § 2103.12.a.2.B. However, at present the limits remain in the Amended Permit, and as such they must be supported by sufficient compliance assurance provisions. To the extent any of the

[29] The EPA notes that the facts here, upon which the EPA's decision is based, are distinguishable from those the EPA considered in the *Cargill Blair Order*. In the *Cargill Blair Order*, "[t]he state determined that the additional monitoring requirements were necessary after evaluating various site-specific factors, including some of those identified in the *CITGO Order*." *Cargill Blair Order* at 17. The EPA concluded that the state satisfied the requirements of 40 C.F.R. § 70.7(a)(5) because the state "explain[ed] the basis for its decision to impose additional monitoring across seven pages dedicated to this issue" and "supplemented this rationale throughout its RTC." *Id*. The EPA determined that the petitioner's disagreement with certain individual technical elements of the state's rationale were insufficient to demonstrate that the state failed to satisfy 40 C.F.R. § 70.7(a)(5), while noting that if the state had "failed to provide any basis for its decision to impose additional monitoring, EPA's response might have been different insofar as 40 C.F.R. § 70.7(a)(5) is concerned." *Id*. at 17, 17 n.36. By contrast, here, the analysis provided by ACHD is internally inconsistent and generally undermines the need for CEMS, as explained above. Additionally, in the *Cargill Blair Order*, the state "provided responses addressing the commenter's overarching concerns, underlying legal authorities, and many of the fact-specific issues raised in public comments (as well as other fact-specific issues not raised in public comments)." *Id*. at 38. The EPA found that the petitioner failed to demonstrate that the state's failure to respond to specific sub-arguments raised in comments amounted to a violation of 40 C.F.R. § 70.7(h)(6). *Id*. By contrast, here the Petitioner has demonstrated that ACHD failed to meaningfully respond to significant public comments, as explained above. Finally, the monitoring requirements at issue here also reflect a much more significant departure from the monitoring requirements in the Renewal Permit, compared to those at issue in the *Cargill Blair Order*. The Amended Permit requires U.S. Steel to install over a dozen CEMS, whereas the *Cargill Blair Order* involved a relatively modest change from "monitoring three operating parameters and monitoring a fourth, closely related operating parameter." *Cargill Blair Order* at 17. The relatively significant changes to the Amended Permit render ACHD's lack of sufficient justification particularly troubling.

Challenged Emission Limits are eventually removed from the Amended Permit, the corresponding monitoring requirements would also need to be removed.[30]

Direction to ACHD: ACHD could resolve this objection in several ways. ACHD could reevaluate the CEMS requirements at issue—for NO_x, CO, and SO_2 on Batteries 13, 14, 15, 19, and 20; for CO and SO_2 on Battery B; for VOC, CO, and SO_2 on Battery C; and for PM, CO, and SO_2 on Boiler Nos. 1 and 2—and either replace those CEMS requirements with other monitoring requirements that are sufficient to assure compliance with the relevant limits, or retain the CEMS requirements. In either case, ACHD must provide a justification for why the selected monitoring requirements are appropriate to assure compliance, while addressing all significant public comments that argued that CEMS are not necessary to assure compliance.

With respect to the CEMS requirements associated with the Challenged Emission Limits, if ACHD determines that it lacks a federally enforceable legal authority or obligation to establish those limits, it could remove those limits and the corresponding CEMS requirements from the Amended Permit. Or, if the Challenged Emission Limits remain in the Amended Permit but are designed state-only enforceable, then any corresponding monitoring requirements that ACHD retains in the Amended Permit would also need to be designated state-only enforceable.

C. Claim 3: The Petitioner's Claim Involving Compliance Plan Requirements

Petition Claim: The Petitioner claims that ACHD erred in including a "compliance plan" that requires U.S. Steel to undertake a broad range of purported compliance activities. *See* Petition at 43–49.

In general, the Petitioner accuses ACHD of using the compliance plan "as a blank slate for the creation of new and ongoing permit obligations that have no basis in applicable requirements." *Id*. at 43. According to the Petitioner, a legal prerequisite for imposing a compliance plan is that the facility must be out of compliance at the time of permit issuance. *Id*. at 48. The Petitioner states that the *U.S. Steel Clairton I Order* "was clear that 'a compliance schedule is not necessary if a violation is intermittent, not ongoing, and has been corrected before the permit is issued.'" *Id*. at 43 (quoting *U.S. Steel Clairton I Order* at 37). Here, the Petitioner contends that "ACHD has not demonstrated that a compliance plan is appropriate here" because "ACHD has not demonstrated that any alleged violations are ongoing, that they rise to the level of requiring a compliance plan, or that the purported compliance measures inserted into the Amended Permit are appropriate." *Id*. The Petitioner contends that the compliance plan obligations "fail[] to

[30] The EPA also observes that both the Challenged Emission Limits and corresponding CEMS requirements are currently stayed pursuant to an administrative order from the ACHD Hearing Officer while U.S. Steel's administrative appeal of the Amended Permit proceeds. *See* Petition Ex. 32.

meet the objectives of 40 C.F.R. §70.5(c)(8)(iii)(C), which envisions an enforceable 'sequence of actions with milestones, leading to compliance.'" *Id*.

The Petitioner takes issue with three sets of compliance plan requirements.

First, the Petitioner addresses work practice standards for charging operations, contained in Permit Condition IV.36.f. *Id*. The Petitioner reiterates concerns it raised in public comments: that these requirements are based on Occupational Safety and Health Administration (OSHA) regulations that cannot form the legal basis of title V permit conditions. *Id*. The Petitioner states that ACHD removed the draft Amended Permit's citation to the OSHA regulations but did not insert any new legal authority that would justify the challenged condition. The Petitioner addresses ACHD's assertion (from the RTC) that the permit condition reflects RACT, arguing that it does not reflect RACT. *Id*.

Second, the Petitioner addresses a requirement "to investigate all opacity exceedances that occurred in the 12-month period prior to the issuance of this permit and create and implement a plan to eliminate future exceedances," contained in Permit Condition IV.36.j.[31] *Id*. The Petitioner states that the Clairton Plant operates a Continuous Opacity Monitoring Systems (COMS) and argues that "a condition that would purport to require the elimination of opacity exceedances that are continuously monitored is infeasible and entirely inconsistent with real world operations." *Id*. The Petitioner further argues that the retroactive investigation of exceedances "would be unduly burdensome, excessive, and would serve no purpose toward compliance." *Id*. The Petitioner argues that this "is a disproportionate response to allegations of past non-compliance," and that a compliance plan is inappropriate, given that the Clairton Plant maintained 99.8% compliance in 2023 and 99.84% compliance year-to-date in 2024. *Id*.

Third, the Petitioner addresses a backup power requirement to "avoid loss of power to control equipment," contained in Permit Condition IV.36.k. *Id*. at 44. The Petitioner argues that the backup power requirement was not required by the *U.S. Steel Clairton I Order*, and that neither that Order nor the petition underlying that Order raised concerns with the alleged noncompliance underlying this requirement. *Id*. at 46. The Petitioner contends that the Clairton Plant is not, and was not at the time of Renewal Permit, out of compliance—the legal prerequisite to require a compliance plan. *Id*. at 48. The Petitioner discusses several exchanges it had with ACHD related to this requirement. *See id*. at 44–45. From these exchanges, the Petitioner argues that the underlying noncompliance, "such as the outages in July 2022 and August 2023" that resulted in uncontrolled emissions, "had been separate, unrelated and isolated events . . . and that all relevant pollution control equipment was operational at the time the Renewed Permit was issued." *Id*. at 44 (quoting Petition Ex. 29; citing Petition Ex. 30). The Petitioner also documents public comments contesting the requirement. *Id*. at 44–

[31] The Petitioner cites Permit Condition IV.26.j; this appears to be a typographical error, as the corresponding Permit Condition is IV.36.j.

45. The Petitioner characterizes ACHD's response to these comments as "cavalier and superficial," and argues that the requirement was added to the Amended Permit "without any justification or technical support." *Id*. at 45, 44. The Petitioner then discusses various reasons why, in the Petitioner's view, the backup power requirement "is technically impossible," "would create a safety risk to equipment and personnel," burdens outweigh any benefits, and timeframe for installation cannot be met. *Id*. at 46–48. The Petitioner also asserts that the backup power requirements go beyond the requirements imposed by a March 2024 Consent Decree, which was intended to resolve allegations of noncompliance associated with outage periods. *Id*. at 48 (citing Petition Ex. 31).

EPA Response: For the following reasons, the EPA grants this Petition claim and objects to the issuance of the Amended Permit.

In the *U.S. Steel Clairton I Order*, the EPA objected to the Renewal Permit because the permit record was not clear whether a compliance schedule was necessary. In response, ACHD added various "compliance plans" to the Amended Permit. But ACHD's inclusion of those plans suffers the same flaw that motivated the EPA's objection to the Renewal Permit: ACHD has again failed to provide sufficient information to substantiate a predicate finding of noncompliance that would justify the inclusion of a compliance schedule or compliance plan.

As the EPA explained in the *U.S. Steel Clairton I Order*:

> For "sources that are not in compliance with all applicable requirements *at the time of permit issuance*," a title V permit must contain a compliance schedule that includes "a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance." 40 C.F.R. § 70.5(c)(8)(iii)(C); ACHD Rules and Regulations Article XXI § 2103.11(b)(8)(E)(i); *see also* 40 C.F.R. § 70.6(c)(3). . . . In previous Orders, EPA has stated *that a compliance schedule is not necessary if a violation is intermittent, not ongoing, and has been corrected before the permit is issued*.

U.S. Steel Clairton I Order at 36–37 (emphasis added) (citing *In the Matter of New York Organic Fertilizer Company*, Order on Petition No. II-2002-12 at 47–48 (May 24, 2004); *In the Matter of Tesoro Refining and Marketing Co., Martinez, California Facility*, Order on Petition No. IX-2004-6 at 15, 17 (Mar. 15, 2005) (*Tesoro Order*); *In the Matter of Valero Refining Co., Benicia, California Facility*, Order on Petition No. IX-2004-07 at 14, 16 (Mar. 15, 2005) (*Valero Order*); *In the Matter of ETC Texas Pipeline, LTD WAHA Gas Plant*, Order on Petition No. VI2020-3 at 8–9 (Jan. 28, 2022)); *see also* 42 U.S.C. 7661c(a),

7661(3); ACHD Rules and Regulations Art. XXI § 2103.12.d, h.3.[32]

The EPA granted this petition claim in the *Clairton I Order* because "the permit record is not clear as to whether the source is or is not in compliance with all applicable requirements, specifically the emission standards in Article XXI § 2105.21.a–i and, thus, whether the Permit must include a compliance schedule . . . ." *U.S. Steel Clairton I Order* at 37.

In the present Amended Permit, neither the permit nor the permit record documents the necessary predicate finding that the Clairton Plant was out of compliance with applicable requirements at the time of permit issuance.

Permit Condition IV.36 (which addresses all the different compliance plan requirements) states the following:

> ACHD has identified four specific types of noncompliant conditions at the Clairton Coke Plant, necessitating the development of a compliance plan. To ensure timely remediation of those conditions[,] U.S. Steel must undertake the measures outlined below within the time frames specified in order [to] ensure proper operation of all processes at the facility and come into full compliance with all applicable requirements of this permit and Article XXI. Completion of these prescribed measures is anticipated to bring the permittee into compliance with the requirements of this permit and Article XXI.

Amended Permit at 53.

ACHD's general reference to "noncompliant conditions" does not equate to an express finding of noncompliance at the time of permit issuance. ACHD's suggestions that the compliance plan requirements will "ensure timely remediation of those [noncompliant] conditions" to "come into full compliance with" or "bring the permittee into compliance

[32] A portion of ACHD's regulations contains the same predicate requirement as the EPA's regulations: noncompliance "at the time of permit issuance." 40 C.F.R. § 70.5(c)(8)(iii)(C); ACHD Rules and Regulations Art. XXI § 2103.11(b)(8)(E)(i). Another portion of ACHD's regulations contains a unique provision, not found in the EPA's regulations: "An Operating Permit may be issued under this Subpart for an existing source *which cannot demonstrate compliance* with the applicable emission limitations established by this Article if such permit, in addition to meeting all other applicable requirements under this Part, also expressly includes conditions constituting an enforceable compliance schedule for achieving, demonstrating, and maintaining compliance with such emissions limitations." ACHD Rules and Regulations Art. XXI § 2103.12.d (emphasis added). Although this requirement does not contain the exact same language regarding the timing of noncompliance as the federal regulations, this distinction does not appear relevant for present purposes. Under either formulation—noncompliance "at the time of permit issuance," or a source that "cannot demonstrate compliance"—the predicate finding would not be satisfied in circumstances where a source was in compliance at the time of permit issuance.

with" all applicable requirements, come closer to, but still fall short of, the necessary predicate finding.

The permit record contains essentially no additional supporting information, notwithstanding the prompting of multiple different commenters. U.S. Steel raised concerns about the necessary predicate finding of noncompliance in public comments. U.S. Steel asserted, among other things, that "All of the alleged noncompliance for which ACHD has included compliance plan requirements falls into one or more of the categories for which a compliance plan is not required." ACHD's RTC does not contain any acknowledgement or response to this comment.

Another commenter raised similar questions about the lack of documentation of compliance status in the draft TSD. ACHD's RTC is nonresponsive. *See* RTC at 19 (response to Comment 86).

EPA Region 3 raised similar questions about the Clairton Plant's compliance status at the time of permit issuance. ACHD summarizes the EPA's comment as follows:

> In the Order, EPA directed ACHD to revise the record and/or the permit to clarify the facility's compliance status, and, if necessary, incorporate a compliance schedule into the permit in accordance with 40 CFR 70.5(c)(8)(iii)(C), and 70.6(c)(3). In response, ACHD added the requirements of Condition IV.36 which is presented as a compliance plan and contains requirements for various units. EPA notes that the current compliance status of the units covered by the additional requirements is still unclear, and therefore, it is not clear that the new condition meets the requirements of 40 CFR 70.5(c)(8)(iii)(C), and 70.6(c)(3). EPA recommends that ACHD first clearly document the facility's compliance status, and then incorporate an adequate compliance plan as necessary.

RTC at 17.

ACHD's response was that "Condition IV.36 has been amended to clarify the compliance requirements. Furthermore, a section has been added to the Technical Support Document ('Compliance History and Status') to address the current compliance status and the schedule to address any outstanding or ongoing issues." *Id*. The problem is that there is no such section in the TSD. This may have been an inadvertent oversight, or a version control issue, but it is a critical one. The TSD contains no substantive discussion of the compliance plan requirements, much less the predicate finding requested by the EPA.[33]

[33] The only mention of compliance plans in the final version of the TSD is the following: "Condition IV.36: Added. Compliance Plan Requirements." TSD at 2.

Additionally, neither the Amended Permit nor the permit record contain a predicate finding for any of the three specific compliance plans challenged in the Petition. Regarding the compliance plan associated with charging operations, Permit Condition IV.36.f states "Charging Operation for all the coke oven batteries. ACHD has regularly observed, and assessed penalties attributable to, exceedances of opacity limits for the coke oven batteries and thus reflects a non-compliant condition under Article XXI, Section 2105.21.a." Permit at 55. ACHD does not explain how "regularly observing" exceedances equates to definitive noncompliance at the time of permit issuance. The EPA has routinely denied petition claims that make similar arguments without specifically demonstrating that noncompliance persists at the time of permit issuance. *See, e.g.*, *In the Matter of Torrance Refining Company, LLC*, Order on Petition No. IX-2024-13 at 61 (Jan. 7, 2025) ("An alleged pattern of non-compliance does not, in and of itself, provide a basis for the EPA to mandate a compliance schedule. The EPA has denied similar claims involving a pattern of alleged chronic but intermittent noncompliance, where petitioners did not demonstrate that noncompliance persisted at the time of permit issuance.").[34] No other portions of the permit record squarely address the predicate finding with respect to the compliance plan for charging operations.[35] Overall, the Petitioner has demonstrated that ACHD has not established the necessary predicate finding, or identified a legal authority, that would justify the imposition of this compliance plan.

Regarding the compliance plan addressing opacity from combustion stacks, Permit Condition IV.36.j contains an explanation similar to the one above: "Combustion Stacks for All Coke Oven Batteries. ACHD has regularly observed, and assessed penalties attributable to, exceedances of limits for the coke oven batteries and thus reflects a noncompliant condition under Article XXI, Section 2105.21.f.5 & 6." Permit at 58. This explanation is insufficient for the reasons discussed in the preceding paragraph. Further, the Petitioner argues that "U.S. Steel maintained 99.8% compliance in 2023; and has maintained 99.84% compliance year-to-date in 2024 as measured by its COMS, which underscores the impropriety of the imposition of a compliance plan on this basis." Petition at 43. Overall, the Petitioner has demonstrated that ACHD has not established

[34] *See also In the Matter of Suncor Energy (U.S.A.), Inc., Commerce City Refinery, Plant 2 (East)*, Order on Petition Nos. VIII– 2022–13 & VIII–2022–14 at 12, 20–21 (July 31, 2023); *Tesoro Order* at 17; *Valero Order* at 16.

[35] Leading up to the Petition, there was much back-and-forth about the legal authority underlying these particular compliance plan requirements, which appear to derive from OSHA rules. ACHD removed the reference to OSHA, stating in the RTC: "The Department believes that the conditions are necessary for demonstrating compliance and are therefore included as Reasonably Achievable Control Technology under §2103.12.a.2.B. Alternatively, U.S. Steel may submit a compliance plan to address the charging emissions." This response appears to suggest that these compliance plan requirements are not, in fact, compliance plan requirements, but instead were imposed under ACHD's purported RACT authority, discussed in Claim 1. Another part of the RTC addresses a different comment on this particular compliance plan and indicates that these requirements "are also conditions suited for pollution prevention. A section has been added to the Technical Support Document to address the compliance schedule." But again, the TSD contains no such discussion.

the necessary predicate finding of noncompliance at the time of permit issuance that would justify the imposition of this compliance plan.

Regarding the backup power compliance plan requirements, the relevant permit condition contains even less discussion of the Clairton Plant's compliance status. The Amended Permit does not identify and contains no conclusions regarding noncompliance with specific permit terms. *See* Permit at 58–59 (Permit Condition IV.36.k). Neither the RTC nor TSD provide any further information about this predicate issue. The Petitioner provided petition exhibits documenting the U.S. Steel's exchanges with ACHD. These exchanges tend to support the Petitioner's view that the underlying noncompliance, "such as the outages in July 2022 and August 2023" that resulted in uncontrolled emissions, "had been separate, unrelated and isolated events . . . and that all relevant pollution control equipment was operational at the time the Renewed Permit was issued." Petition at 44 (quoting Petition Ex. 29; citing Petition Ex. 30). Overall, the Petitioner has demonstrated that ACHD has not established the necessary predicate finding of noncompliance at the time of permit issuance that would justify the imposition of this compliance plan.

Overall, ACHD's permit record is insufficient to establish the predicate finding of noncompliance necessary to justify its decision to mandate these three compliance plans, and its RTC is not responsive to significant public comments on this topic. 40 C.F.R. § 70.7(a)(5), 70.7(h)(6). Therefore, the EPA grants this claim and objects to the issuance of the Amended Permit.[36]

Direction to ACHD: ACHD must reevaluate and explain the legal and factual basis for the three contested compliance plan requirements in the Amended Permit. ACHD must specifically address whether the Clairton Plant is in compliance with the relevant applicable requirements at the time of permit issuance, and document this in the permit record, while responding to all significant comments. Depending on the outcome of this reevaluation, ACHD may need to revise the Amended Permit to remove or revise the affected compliance plans accordingly. If ACHD retains any of the compliance plans, ACHD must consider and address the specific concerns raised by commenters (including U.S. Steel) regarding the content of the compliance plans and ensure that the compliance plans are consistent with the applicable statutory and regulatory authorities governing compliance schedules.

[36] The EPA also observes that the section of the Amended Permit that includes all compliance plan requirements does not appear to cite the legal authorities that govern title V compliance schedules or compliance plans. *See* Permit at 53 (citing ACHD Rules and Regulations Art. XXI §§ 2101.02.b, 2103.12.a.2.B, 2103.12.f).

V. CONCLUSION

For the reasons set forth in this Order and pursuant to CAA § 505(b)(2) and 40 C.F.R. § 70.8(d), I hereby grant in part and deny in part the Petition and object to the issuance of the Amended Permit as described in this Order.

Dated: September 16, 2025

Lee Zeldin
Administrator