BEFORE THE HEARING OFFICER
ALLEGHENY COUNTY HEALTH DEPARTMENT

UNITED STATES STEEL CORPORATION, Appellant, v. ALLEGHENY COUNTY HEALTH DEPARTMENT, Appellee.	))))))))))	In re: Appeal of Title V Federally Enforceable State Operating Permit No. 0051-OP-23 for U.S. Steel Corporation's Edgar Thomson Plant Docket no.: ACHD-23-048

ORDER AND OPINION ON APPELLANT'S MOTION FOR SUMMARY RELIEF

AND NOW, this 30th day of July, 2024, for the reasons stated hereinbelow, it is ORDERED that Appellant United States Steel Corporation's ("U.S. Steel") Motion for Summary Relief filed in the above-captioned matter on January 5, 2024, is DENIED.

Background

U.S. Steel owns and operates the Edgar Thomson Plant, an iron and steel making facility, located at 13th Street and Braddock Avenue, Braddock, Pennsylvania 15104 ("the Edgar Thomson Facility"). Appellee Allegheny County Health Department ("ACHD") issued the Title V Operating Permit & Federally Enforceable State Operating Permit # 0051-OP23 ("the Title V Permit") on August 1, 2023. *See* U.S. Steel Mot. Exhibit 1. Relevant to the instant matter, the Title V Permit contains a multitude of new emission limits (collectively, "the Challenged Emission Limits") for Condensable PM, NOx, CO, VOC, CO, SO2, PM2.5, PM (filterable), PM10 (filterable), PM2.5 (filterable) and VOC at the Edgar Thomson Facility. *See id*. at Condition V.A.1.m, Table V-A-1; Condition V.A.1.p, Table V-A-2; Condition V.A.1.r, Table V-A-3; Condition V.B.1.e, Table V-B-1; Condition V.B.2.f, Table V-B-2; Condition V.D.1.1, Table VD-1; Condition V.D.1.m, Table V-D-2; Condition V.D.1.n, Table V-D-3; Condition

V.D.1.p, Table V-D-4; Condition V.D.1.k, Table V-E-1; Condition V.F.1.c, Table V-F-1; Condition V.H.1.g, Table V-H-1; Condition V.K.1.b, Table V-K-1; Condition V.O.1.c, Table V-O-1.

U.S. Steel filed a Notice of Appeal with this Tribunal on August 31, 2023, objecting to the Title V Permit because, among other things, "it contains numerous enforceable conditions that are arbitrary and capricious, unreasonable, an abuse of [ACHD's] discretion, and contrary to law including but not limited to the Pennsylvania Air Pollution Control Act, 35 P.S. Section 4001 et seq ("APCA"), federal Clean Air Act ("CAA") and Article XXI." Notice of Appeal at 2.

Upon a Joint Motion of the parties, the undersigned Hearing Officer issued an Order on October 23, 2023, holding the case in abeyance until December 7, 2023. Following the end of the abeyance period, ACHD again motioned the Tribunal to hold the case in further abeyance to afford time for the United States Environmental Protection Agency ("EPA") to consider a petition filed by various environmental groups requesting that EPA object to the Title V Permit as issued by ACHD. U.S. Steel opposed ACHD's Motion, and the undersigned Hearing Officer ultimately issued an Order on December 15, 2023, denying the Motion, setting a schedule for the filing of a motion seeking summary relief and/or requesting a stay by U.S. Steel and the subsequent filings in response thereto, and scheduling a Hearing on the Notice of Appeal to begin June 3, 2024. Pursuant to that Order, U.S. Steel filed its Motion for Summary Relief or in the Alternative Motion for Stay with this Tribunal on January 5, 2024. ACHD filed its Reply to U.S. Steel's Motion on January 25, 2024, and then U.S. Steel filed its subsequent Reply thereto on February 5, 2024.

In consideration of the ongoing enforceability of the Challenged Emission Limits, uncertainty surrounding the unresolved ruling from EPA, and potential for a lengthy resolution

of U.S. Steel's Motion for Summary Relief, the undersigned Hearing Officer offered to bifurcate the Motion and resolve U.S. Steel's request for a stay prior to its request for summary relief. U.S. Steel favored bifurcating the Motion, and ACHD opposed bifurcation.[1] Following discussions with the parties, the undersigned Hearing Officer issued an Order Scheduling Oral Argument where the sole issue of granting a stay for the time prior to the final disposition of U.S. Steel's entire Motion would be contested. That Oral Argument was held on February 28, 2024. On March 1, 2024, the undersigned Hearing Officer issued an Order and Opinion on Appellant's Motion for Stay, in which U.S. Steel's request for a stay of the enforceability of the Challenged Emission Limits was denied.

Following this decision, a ruling on Appellant's Motion for Summary Relief remained outstanding by this Tribunal. An Oral Argument was held on March 25, 2024, specifically addressing the Motion for Summary Relief. During a transcribed Status Conference also held on the March 25, U.S. Steel agreed to withdraw its Motion for Stay. Thereafter, on March 29, 2024, the undersigned Hearing Officer issued a formal Order granting U.S. Steel's withdrawal of its Motion for Stay and allowing it to refile. After the Oral Argument, upon the direction of the undersigned Hearing Officer and over the written objection of ACHD, U.S. Steel submitted the Order Granting a Petition for Objection to a Title V Operating Permit that was issued by the United States Environmental Protection Agency ("EPA"), which was admitted into the record as Exhibit 47.

We now address U.S. Steel's Motion for Summary Relief.

[1] ACHD objected to this offer by the Hearing Officer on the basis that it was procedurally incorrect given the ordering of U.S. Steel's Motion and that there is substantial overlap between the issues of summary relief and the stay—specifically U.S. Steel's likelihood of succeeding on the merits of its Appeal—and that, therefore, both issues should be decided together.

Legal Standard

Hearings before this Tribunal are primarily governed by ACHD Article XI – Hearings and Appeals ("Art. XI").[2] Absent from Art. XI is any formalized process for a permittee who seeks dispositive judgment from the Tribunal regarding a specific term in a permit issued by ACHD, as is the case with U.S. Steel in the instant Motion. Instead, sections in Art. XI relating to dispositive relief are limited to two areas: (1) determinations made by the Hearing Officer and (2) motions filed by ACHD or other parties who are not the appellant in the subject matter. Art. XI § 1108 provides that:

> Where only legal questions or physical or technical facts are at issue in an appeal, and the Director or Hearing Officer determines that a formal hearing will not contribute to a resolution of the matters in issue, he or she must conduct or order the conduct of an inspection, examination, or test, or request the filing of written briefs. The Director or Hearing Officer must otherwise comply with every other provision of this Article.

And Art. XI § 1108.1 states:

> The Department, an appellee-intervenor, or the permittee in a third party appeal, may file a motion to dismiss the appeal. The Director or Hearing Officer shall evaluate motions to dismiss in the light most favorable to the appellant, and may only grant the motion against the appellant when there are no material facts in dispute and appellant is incapable of demonstrating a right to relief with respect to issues raised by the moving party.

Despite the absence of a provision allowing for dispositive motions to be filed by an appellant in Art. XI, ACHD did not challenge whether U.S. Steel's Motion was properly before us. *See generally*, ACHD's Reply to U.S. Steel's Mot. at 56-60. Given that there has been substantial time and effort from the parties and the undersigned Hearing Officer surrounding the instant Motion and there is no risk to the due process rights of either party in ruling on the Motion prior to a full hearing on the Notice of Appeal, we will address the Motion for Summary relief now;

[2] In approving ACHD's title V permitting program, EPA specifically noted that the provisions of Art. XI serve to meet the requirements for initiating judicial review required by 40 CFR part 70. *See* Exhibit 3 at 55113.

however, this Order and Opinion should not be viewed as a precedential determination that an appellant may file a motion for summary relief without the direction of the Hearing Officer as is stated in Art. XI § 1108.

Turning to the standard for evaluating a dispositive motion, Art. XI § 1108.1 is in keeping with the general practice found across all jurisdictions that we are aware of: that dispositive relief shall only be granted when there is no dispute over issues of material fact and where the party in favor of the motion for summary disposition is entitled to the requested relief as a matter of law. *See New York Guardian Mortg. Corp. v. Dietzel*, 362 Pa. Super. 426, 429, 524 A.2d 951, 952 (1987) (internal citation omitted). Additionally, "[a] material fact is one that directly affects the outcome of the case." *Stevens Painton Corp. v. First State Ins. Co.*, 746 A.2d 649, 653, 2000 Pa.Super. LEXIS 193, **9–10 (Pa.Super.2000). Further, as noted by ACHD, disputed facts are viewed in the light most favorable to the nonmoving party with all resolution of doubts pertaining to disputed facts being made against the moving party. *See* ACHD's Reply to U.S. Steel's Mot. at. at 56 (citing *Marcellus Shale Coal. v. Dep't of Env't Prot.*, 216 A.3d 448, 458 (Pa. Commw. Ct. 2019)). Pennsylvania Courts have also held that "[t]he moving party has the burden of proving that there is no genuine issue of material fact." *Laich v. Bracey*, 776 A.2d 1022, 1024 (Pa. Commw. Ct. 2001) (citing *Bigansky v. Thomas Jefferson University Hospital*, 442 Pa.Super. 69, 658 A.2d 423 (1995)).

Though not controlling over this Tribunal, we give substantial persuasive consideration to the Pennsylvania Rules of Civil Procedure and Pennsylvania Environmental Hearing Board's ("EHB") Rules of Practices and Procedures.[3] Important to the dispute in this matter, the EHB

[3] The EHB Practices and Procedures further incorporate the Pennsylvania Rules of Civil Procedure pertaining to motions for summary judgment where there is no existing EHB rule governing summary judgment. 25 Pa. Code § 1021.94a(a).

Rules require a party filing a motion for summary judgment to include a statement of undisputed material facts, which should "contain only those material facts to which the movant contends there is no genuine issue together with a citation to the portion of the motion record establishing the fact or demonstrating that it is uncontroverted." 25 Pa. Code § 1021.94a(d). In responding to a motion, the EHB Rules require the nonmoving party to provide

> [a] response to the statement of undisputed material facts either admitting or denying or disputing each of the facts in the movant's statement. Any response must include a citation to the portion of the record controverting a material fact. The citation must identify the document and specify the pages and paragraphs or lines thereof or the specific portions of exhibits relied on demonstrating existence of a genuine issue as to the fact disputed. An opposing party may also include in the responding statement additional facts the party contends are material and as to which there exists a genuine issue.

25 Pa. Code § 1021.94a(g)(2). Pa. R.C.P. 1035.3(a) further states that

> the adverse party may not rest upon the mere allegations or denials of the pleadings but must file a response . . . identifying
>
> (1) one or more issues of fact arising from evidence in the record controverting the evidence cited in support of the motion or from a challenge to the credibility of one or more witnesses testifying in support of the motion, or . . .
>
> (2) evidence in the record establishing the facts essential to the cause of action or defense which the motion cites as not having been produced.

Taken together, these rules establish that a party opposing a motion for summary disposition may not simply allege that a genuine issue of material fact exists but must provide countervailing evidence or identify the insufficiency of evidence submitted by the moving party either because it does not support the claim for summary disposition or lacks credibility. Given the standardization of the application of these rules across litigation in the Commonwealth and their role in ensuring expedient adjudication of matters where no issue of material fact exists, we adopt them when evaluating dispositive motions presented to this Tribunal.

Undisputed Facts Relevant to U.S. Steel's Motion[4]

The Edgar Thomson Facility is a major source of particulate matter ("PM"), particulate matter less than 10 microns in diameter ("PM10"), particulate matter less than 2.5 microns in diameter ("PM2.5"), sulfur dioxide ("SO_2"), carbon monoxide ("CO"), nitrogen oxides ("NOx"), volatile organic compounds ("VOCs"), and hazardous air pollutants ("HAPS"). *See* Exhibit 2 at 2.[5]

EPA has promulgated national ambient air quality standards ("NAAQS") for CO, lead, nitrogen dioxide ("NO_2"), ozone, PM2.5, PM10, and SO_2. *See* 40 C.F.R. §§ 50.4 through 50.19.

The area in which the Edgar Thomson Facility is located is classified as attainment for NO_2, lead, CO and PM10, and nonattainment for ozone, PM2.5, and SO_2. *See* EPA's Greenbook at https://www3.epa.gov/airquality/greenbook/anayo_pa.html (identifying the nonattainment/ maintenance status for Allegheny County by year).[6]

On or about September 26, 2023, ACHD, through the Pennsylvania Department of Environmental Protection ("DEP"), submitted a revision to the Allegheny County portion of the Pennsylvania State Implementation Plan ("SIP") requesting EPA to redesignate Allegheny

[4] In its numbered response to U.S. Steel's Statement of Undisputed Facts, ACHD repeatedly includes generalized, boilerplate statements contesting the facts as asserted by U.S. Steel (e.g., "It is specifically denied that Paragraph 38 of U. S. Steel's Motion is a fair, accurate, and complete statement and summary of the situation"; "[i]t is specifically denied that U. S. Steel's averments constitute a prohibition against ACHD reevaluating and/or changing the testing, monitoring, and reporting requirements and emissions from facilities, such as U. S. Steel's ET Plant"). Responses of this nature do not demonstrate any dispute over material fact and do not create any doubt that is to be resolved in favor of ACHD. Additionally, likely due to a need to create a coherent narrative, U.S. Steel included within its Statement of Undisputed Facts a number of paragraphs that are better characterized as statements of law.

[5] The parties engage in some dispute regarding whether the Edgar Thomson Facility "is considered a major source . . . ." or "is a major source . . . ." *Compare* U.S. Steel's Mot. for Summary Relief at 2 with ACHD's Reply to U.S. Steel's Mot. at 6. This is merely an issue of semantics: Exhibit 2 says that the Edgar Thomson Facility "is a major source" for purposes of regulation under Art. XXI and neither party contests the Edgar Thomson Facility's status as a major source of these pollutants.

[6] ACHD's response to this statement of fact and citation from U.S. Steel's Motion is a general denial of the information provided in the link to the EPA's Greenbook and then further generalized claims that nothing about this fact prevents ongoing maintenance of the NAAQS in Allegheny County through the Challenged Emissions Limits. *See* ACHD's Reply to U.S. Steel's Mot. at 12-13.

County as being in attainment of the SO_2 National Ambient Air Quality Standards ("NAAQS") and approve a maintenance plan to ensure continued attainment. Exhibit 16. As part of the SIP revision, ACHD determined that ambient SO_2 concentrations were below the SO_2 NAAQS and that the permanent and federally enforceable control measures implemented at the Facility, along with other permanent and federally enforceable control measures implemented at other facilities and source shutdowns, would ensure the ongoing attainment of the SO_2 NAAQS. *Id.* at 7, 17. [7] However, the Title V Permit that is the subject of this matter had been issued by the time that ACHD requested redesignation of Allegheny County as being in attainment of the SO_2 NAAQS.

Though it has not been reclassified as in attainment of the PM2.5 NAAQS, EPA found that Allegheny County's nonattainment area met the 2021 annual PM2.5 NAAQS by its December 31, 2021, attainment date. Exhibit 19 at 32119. On or about September 22, 2022, ACHD, through DEP, submitted a revision to the Allegheny County portion of the Pennsylvania SIP to redesignate the Liberty-Clairton and Allegheny County nonattainment areas as attainment for the 1997, 2006, and 2012 NAAQS. Exhibit 20.

Regarding NOx and VOCs, ACHD conducted an initial Reasonably Available Control Technology ("RACT") evaluation of the Edgar Thomson Facility in 1996 and determined—in a consent decree entered into with U.S. Steel— that "properly operat[ing] and maintain[ing the sources] according to good engineering and air pollution control practices, with the exception of actions to mitigate emergency conditions" constituted NOx and VOC RACT for the following sources at the Facility: No. 1 and No. 3 Blast Furnace Stoves; Blast Furnace No. 1 and No. 3 Casthouse; Dual Strand Continuous Caster; Basic Oxygen Process ("BOP") Shop; and BOP

[7] ACHD's responses do not address the existence of this factual assertion as stated in U.S. Steel's Motion but are instead attacks on its applicability to U.S. Steel's request for summary relief or arguments about the need to implement the Challenged Emission Limits. *See* ACHD's Reply to U.S. Steel's Mot. at 25-27.

Mixer and Desulfurization Baghouse, among other sources. *See* Exhibit 22, at 3. As part of this RACT determination, ACHD did not impose NOx emission limits on the No. 1 and No. 3 Blast Furnace Stoves, Blast Furnace No. 1 and No. 3 Casthouse, Dual Strand Continuous Caster, BOP Shop, or BOP Mixer and Desulfurization Baghouse at the Edgar Thomson Facility, and ACHD did not impose VOC emission limits on the Riley Boilers, the No. 1 and No. 3 Blast Furnace Stoves, Blast Furnace No. 1 and No. 3 Casthouse, Dual Strand Continuous Caster, BOP Shop, or BOP Mixer and Desulfurization Baghouse, among other sources at the Edgar Thomson Facility. *Id.* On August 21, 2002, EPA approved the RACT determination for the Edgar Thomson Facility. Exhibit 23 at 43790. Several years later, on March 6, 2015, EPA issued its final regulations implementing the 2008 8-hour ozone NAAQS. *See* Exhibit 24. In response to the 2008 8-hour ozone NAAQS, ACHD conducted a second RACT ("RACT II") evaluation for the Edgar Thomson Facility in 2020 and determined that "install[ing], maintain[ing], and operat[ing] the source in accordance with the manufacturer's specifications and with good operating practices" constituted NOx RACT II for the following sources at the Edgar Thomson Facility: Blast Furnace No. 1 and No. 3 Casthouse; Dual Strand Continuous Caster; Basic Oxygen Process BOP Shop; and BOP Mixer and Desulfurization Baghouse, among other sources. *See* Exhibit 22 at 4. In addition, ACHD determined that RACT II for the No. 1 and No. 3 Blast Furnace Stoves was an emissions limit of 0.03 lb/MMBtu and 65.04 tons/yr of NOx, which was a reduction from the previous emission limit established in the prior RACT determination. *Id*. at 9. ACHD further determined that RACT II required a reduction in the emission limit of NOx from the No. 1, No. 2, and No. 3 Riley Boilers to 0.05 lbs/MMBtu and 114.98 tons/yr. As part of the RACT II evaluation, ACHD further determined that RACT II for the Blast Furnace No. 1 and No. 3 Casthouses and Stoves, and BOP Furnace was "proper maintenance and operation according to

good engineering and air pollution control practices at all times" and RACT II for the Riley Boilers No. 1, No. 2, and No. 3 was "good combustion practices"; these limits did not constitute a change from the previous RACT analysis. Exhibit 2 at 22; Exhibit 22 at 3. EPA approved ACHD's RACT II determinations for NOx and VOC on October 21, 2021. Exhibit 26 at 58222. In response to new regulations implemented on October 26, 2022, as Art. XXI § 2105.08, U.S. Steel conducted a third RACT evaluation ("RACT III") of emission sources at the Edgar Thomson facility and found that RACT III for the Blast Furnace Casthouses, Boilers, and BOP Shop was to "[o]perate and maintain each source according to good engineering and air pollution control practices by performing regular maintenance," with the additional requirement of "[l]imit[ing] NOx emissions to the limits specified in IP #0051-I008a Table V-A-1" for the Boilers. Exhibit 27 at 4-1, 4-2, 4-3.

Regarding PM2.5, in response to EPA's promulgation of the 2012 PM2.5 NAAQS, ACHD conducted a RACT analysis of sources in Allegheny County. *See generally*, Exhibit 28. ACHD found that, at the time the analysis was conducted on September, 12, 2019, the Edgar Thomson Facility met RACT requirements and that "no feasible controls (or combination thereof) in Allegheny County would advance the attainment date by one year or more . . . . The RACT analysis for the major point sources shows that implemented controls represent reasonably available (or better) control technology." *Id*. at 45-46. In reaching this finding, however, ACHD did note that "RACT evaluations are required for different analyses in Allegheny County, including evaluations for other NAAQS designations and permitting projects; the RACT analysis provided in this SIP should not be used to satisfy any requirements for other current or future RACT evaluations." *Id*. at 44. On May 14, 2021, EPA approved ACHD's

RACT analysis as part of its SIP submission to meet the requirements of the 2012 PM2.5 NAAQS. Exhibit 29 at 26399.

Regarding SO_2, ACHD issued an Installation Permit #0051-I006[8] for the Edgar Thomson Facility as part of Pennsylvania's attainment plan for 2010 1-hour SO_2 NAAQS, which established emission reduction requirements for the No. 1 or 3 Casthouse Baghouse, Blast Furnace Stoves 1 and 3, the BOP process (roof), the LMF facility/dual strand continuous caster, and the Riley boilers. Exhibit 15 at 22607. The new SO_2 emission limits were included in the then-existing Title V Permit for the facility in an amendment thereto on June 21, 2019. Exhibit 31 at 2. EPA approved the new SO_2 limits as meeting the requirements of the 2010 1-hour NAAQS on April 23, 2020, and, in doing so, stated that "ACHD determined that no additional controls beyond the emission limits at the four main SO_2-emitting facilities in the Allegheny Area are needed to provide for attainment of the SO_2 NAAQS in the Area. Because of this, additional controls on other SO_2 sources in the Area are not required RACT for the Allegheny Area." Exhibit 15 at 22601.

On October 13, 2020, U.S. Steel submitted an application to ACHD to renew the Title V Permit at the Edgar Thomson Facility. *See generally* Exhibit 32. On August 1, 2023, ACHD issued the Title V Permit. *See generally* Exhibit 1. In its Motion for Summary Relief, U.S. Steel alleged that the following emission limits were included in the Title V Permit for the first time:

Emission Unit(s)	**Pollutant**	**Emission Limit(s)**
Blast Furnace No. 1 Casthouse	Condensable PM	5.93 pounds per hour ("lb/hr") and 25.97 tons per year ("tpy")
	NOx	78.02 lb/hr and 341.73 tpy
	CO	243.36 lb/hr and 1,065.91 tpy
	VOC	6.75 lb/hr and 29.97 tpy
	SO_2	8.80 tpy

[8] Though not discussed by either party, it appears that ACHD and US Steel entered into an agreement that established the reduced SO_2 limits that were implemented in Installation Permit #0051-I006.

Blast Furnace No. 3 Casthouse	Condensable PM	5.93 lb/hr and 25.97 tpy
	NOx	78.02 lb/hr and 341.73 tpy
	VOC	6.75 lb/hr and 29.57 tpy
	CO	243.36 lb/hr and 1,065.91 tpy
Continuous Casting (roof)	SO_2	22.10 tpy
Casthouse Baghouse	SO_2	197.54 tpy
	Condensable PM	3.25 lb/hr and 14.24 tpy
No. 1 and No. 3 Blast Furnace Stoves	VOC	3.24 lb/hr and 14.21 tpy
	CO	650.65 lb/hr and 2,849.86 tpy
No. 1 Blast Furnace Stoves	SO_2	431.43 tpy
No. 3 Blast Furnace Stoves	SO_2	394.20 tpy
BOP Shop	PM2.5	44.12 lb/hr and 193.24 tpy
	NOx	41.45 lb/hr and 181.55 tpy
	CO	2,575.44 lb/hr and 11,280.42 tpy
	VOC	3.80 lb/hr and 16.63 tpy
	SO_2	2.71 lb/hr and 11.88 tpy
BOP Secondary Baghouse	VOC	2.33 lb/hr and 10.22 tpy
BOP Process (roof)	SO_2	29.08 tpy
BOP Mixer and Desulfurization Baghouse	VOC	0.46 lb/hr and 2.01 tpy
Ladle Metallurgy Facility ("LMF")	Condensable PM	0.25 lb/hr and 1.10 tpy
Caster Tundish Preheaters	Condensable PM	0.86 tpy
	SO_2	23 tpy
Riley Boiler 1; Riley Boiler 2; and Riley Boiler 3	CO	1.09 lb/hr and 4.76 tpy
	VOC	0.42 lb/hr and 1.85 tpy
	SO_2	2,439.27 tpy
Cooling Towers	PM (filterable)	10.31 lb/hr and 45.15 tpy
	PM10 (filterable)	8.22 lb/hr and 36.01 tpy
	PM2.5(filterable)	0.03 lb/hr and 0.11 tpy
Pot Coat	VOC/hazardous air pollutant ("HAP")	7.28 lb/hr and 31.89 tpy

We agree with ACHD that, based on our comparison of the Title V Permit with the 2019 permit, it appears that some of the Challenged Emission Limits were already implemented in the 2019 permit. *E.g., compare* Exhibit 31 at 39 *with* Exhibit 1 at 46 (showing that the annual emission limit of SO_2 for the Casthouse Baghouse was 197.54 tons/year in both permits).[9] Given that a

[9] From the exhibits submitted, we were unable to identify a comprehensive lists of permit conditions from either the 2019 permit or the Title V Permit containing the Challenged Emission Limits. It may be the case that the annual emission limits—like the SO_2 annual limit for the Casthouse Baghouse—that U.S. Steel included as part of the

case-by-case determination of whether each of the Challenged Emission Limits constitutes a new emission limit that was included for the first time in the Title V Permit is not necessary for the ultimate disposition of this Motion, we will not engage in such an analysis. However, it may be necessary to make such a determination prior to future proceedings on this matter.

In the Comment and Response Document ("CRD"), ACHD explained its rational for including the Challenged Emission Limits:

> For limits not from an Installation Permit, Article XXI requires all sources to meet Reasonably Achievable Control Technology (as defined in Article XXI, §2101.20) under §2103.12.a.2.B. Section 2103.12 is included under the Allegheny County Health Department's approved Title V operating permit program as well as the Federally Enforceable State Operating Permit (FESOP) program, which was approved by EPA as a revision to the Pennsylvania State Implementation Plan (SIP). See 68 FR 37973. These emissions limits are established in accordance with §2103.12.a.2.B, are applicable requirements as defined by §2101.20, and are concurrently incorporated into the TVOP.
>
> 40 CFR Part §70.1(b) says "… While title V does not impose substantive new requirements, …" Part 70 §70.1(a) also states "…These regulations define the minimum elements required by the Act for State operating permit programs ..." and §70.1(c) states "Nothing in this part shall prevent a State, or interstate permitting authority, from establishing additional or more stringent requirements not inconsistent with this Act. The EPA will approve State program submittals to the extent that they are not inconsistent with the Act and these regulations…" There is no definition or explanation of substantive new requirements. The EPA has approved the Department's Operating Permit programs for major and minor sources.

Exhibit 34 at 2. In explaining how it calculated the Challenged Emission Limits, ACHD stated:

> In establishing the limits in the permit, the Department relied on the best available information from U.S. Steel, the EPA (AP-42) and/or stack test data to establish emission limitations at the maximum level of operation of the source, and in the case of the sources refenced [*sic*] by the commenter, the Department used the same information that was supplied by the facility during the application process, which was based on the highest value between the 2018 & 2020 stack to set the limit.

Id. at 3.

Challenged Emission Limits were only enforceable as hourly limits in the 2019 permit. However, it is not clear to us how ACHD including an annual emission limit that is the same rate as a previously enforceable hourly emission limit constitutes a wholly new emission limit as alleged by U.S. Steel.

EPA reviewed the Title V Permit and sent comments to ACHD on June 30, 2022. Among those comments, EPA stated:

a. Please ensure the underlying authority and origin for all emissions limits newly incorporated into the permit (including but not limited Table V-A-1) are identified in the permit and explained in the review memo. See ACHD Article XXI §2103.12(g)(1) and 40 CFR §70.6(a)(1)(i)

b. Note: title V permits function to assure compliance with underlying applicable requirements, and do not impose substantive new requirements beyond those necessary to assure compliance. See 40 CFR §70.1(b). Emissions limits should be established via an underlying, federally enforceable authority before incorporation into a title V operating permit or they must be identified as state-only/local-only requirements under an identifiable state/local authority.

Exhibit 35 at 1. EPA further issued an Order Granting Petition for Objection to a Title V Operating Permit on February 7, 2024, which directed ACHD to make various changes to the Title V Permit. *See generally* Exhibit 47 In the Order, EPA reiterated that "[t]he origin and legal authority underlying each of the emission limits is not entirely clear from the face of the Permit." *Id*. at fn. 19. However, EPA also affirmed that Art. XXI § 2103.12.a.2.B constituted an "applicable requirement" for purposes of the SIP, *see id*. at 31, and that the definition of RACT found in Art. XXI and used in conjunction with § 2103.12.a.2.B is different than what is used under the Clean Air Act. *See id*. at fn. 39.

Discussion of U.S. Steel's Argument for Summary Relief

The primary basis for U.S. Steel's request for summary relief is that ACHD cannot impose new emissions limits through the title V permitting process; it argues that "[t]he Challenged Emission Limits were not first established in a preconstruction permit and are not based on any federal, state, or local categorical requirement, as is required by Article XXI and the CAA program that the Department is delegated the authority to administer." U.S. Steel's Mot. at 21.

U.S. Steel also argues that RACT is a term of art taken from the CAA and is to be specifically used for attainment of the NAAQS in areas that are in nonattainment. *See id*. at 29. Therefore, U.S. Steel believes that ACHD has overstepped its legal authority in relying on RACT as a justification for the imposition of the Challenged Emission Limits through the Title V Permit when Allegheny County is already classified as in attainment of the NAAQS for CO and PM10 and where ACHD has requested that Allegheny County be redesignated as in attainment of the NAAQS for PM2.5 and SO_2. *See id*. at 33.

U.S. Steel further claims that ACHD erred in relying on "maximum potential emissions associated with the maximum capacity and operation of the source(s) and indicate worst case emissions due to normal operation of the source and do not restrict the permittee's operations" when it set the Challenged Emission Limits based on its RACT analysis. *See id*. (quoting Exhibit 34 at 2). U.S. Steel seeks to bolster this argument by pointing to RACT evaluations that were conducted by ACHD prior to the issuance of the Title V Permit and the Challenged Emission Limits. *See id*. at 36-37.

As explained below, we reject each of these arguments as acceptable grounds to grant U.S. Steel's Motion for Summary Relief.

I. Emission limits can be established for the first time using the title V permitting process.

At the center of U.S. Steel's opposition to the Challenged Emission Limits is its contention that ACHD has acted beyond its authority under the CAA by implementing the Challenged Emission Limits for the first time through the Title V Permit. *See generally id*. at 21-27. U.S Steel believes that the primary function of the title V permitting process as codified under the CAA at 42 U.S.C §§ 7661-7661e "is largely procedural—it identifies and records existing substantive requirements applicable to regulated sources and assures compliance with

these existing requirements in one comprehensive document." *Id*. at 21. They direct us to numerous sources—including federal regulations, EPA guidance documents, and federal and Pennsylvania court decisions—purportedly standing for this general proposition. *See id*. at 23 (citing Exhibit 4 at 1 ("[O]perating permits required by title V are meant to accomplish the largely procedural task of identifying and recording existing substantive requirements applicable to regulated sources and to assure compliance with these existing requirements."); 40 C.F.R. § 70.1 ("title V does not impose substantive new requirements… ."); *Utility Air Regulatory Group v. EPA*, 573 U.S. 302, 309 (2014) ("Title V generally does not impose any substantive pollution-control requirements. Instead, it is designed to facilitate compliance and enforcement by consolidating into a single document all of a facility's obligations under the [CAA]"); *Clean Air Council v. Cnty. of Allegheny*, No. 515 C.D. 2018, 2018 WL 6036820 (Pa. Cmwlth. Nov. 19, 2018) ("The purpose of a Title V operating permit is to incorporate into one document all the requirements that are included in a facility's existing installation (construction) permits, and any applicable regulatory requirements."); *Sierra Club v. Johnson*, 541 F.3d 1257, 1260 (11th Cir. 2008) ("Title V does not generally impose new substantive air quality control requirements" and instead provides for individual operating permits that "contain certain monitoring, record keeping, reporting and other conditions" in one place)); *see also* U.S. Steel's Reply Br. at 13 (citing Exhibit 46 at 1153 ("In summary, the title V operating permit program is a vehicle for compiling air quality control requirements from other CAA programs and for providing requirements necessary to assure compliance with such requirements, but not for creating or changing applicable requirements.")).

However, when presenting this argument U.S. Steel failed to address two critical issues that prove fatal to their request for summary relief: (1) EPA has stated explicitly in a recent

guidance document that emission limits can be imposed for the first time in a title V permit if the legal authority relied upon to impose those limits is an "applicable requirement"; and (2) the provision of Art. XXI ACHD relied upon to establish the Challenged Emission Limits in the Title V Permit (i.e., § 2103.12.a.2.B) is an "applicable requirement" as defined by the CAA and federal regulations. U.S. Steel is also incorrect that the definition of RACT found in Art. XXI does not apply to title V permits issued by ACHD and that this definition of RACT does not concern both the attainment and maintenance of the NAAQS in Allegheny County.

A. EPA has stated and the CAA allows for emissions limits to be introduced for the first time in a title V permit if they are needed to comply with "applicable requirements."

An amendment to the CAA in 1990 required that states submit to EPA for approval programs that would issue permits to major sources of air pollution as defined in the act. *See generally* 42 U.S.C. § 7661a.[10] This amendment was included as subchapter V of the CAA, and the permits are now referred to as "title V permits." Among the requirements found in the CAA for permitting authorities when issuing a title V permit and subsequent approval by EPA of those permits is that

> [e]ach permit issued under this subchapter shall include enforceable emission limitations and standards, a schedule of compliance, a requirement that the permittee submit to the permitting authority, no less often than every 6 months, the results of any required monitoring, and such other conditions as are necessary to assure compliance with applicable requirements of this chapter, *including the requirements of the applicable implementation plan*.

42. U.S.C. § 7661c(a) (emphasis added). Though not defined in the CAA, the federal regulations for the title V program defines "applicable requirements" to mean, *inter alia*: "Any standard or other requirement provided for in the applicable implementation plan approved or promulgated

[10] A more detailed description of the history of the title V permit program can be found in the record in Exhibit 3 at 55112-13.

by EPA through rulemaking under title I of the Act that implements the relevant requirements of the Act, including any revisions to that plan promulgated in part 52 of this chapter." 40 C.F.R. § 70.2.

Despite this statutory and regulatory text, there has still been confusion from permitting authorities, the public, and regulated entities as to the meaning of "applicable requirements," so much so that EPA issued a proposed rule titled "Clarifying the Scope of 'Applicable Requirements' Under State Operating Permit Programs and the Federal Operating Permit Program" on January 9, 2024. *See generally* Exhibit 46. As noted in that proposed rule and reflected throughout U.S. Steel's Motion, one of Congress' main purposes in enacting the title V permitting program under the CAA was to consolidate the existing requirements a major source of air pollution was subject to in a single, comprehensive permit. *See id*. at 1153. As quoted by U.S. Steel, EPA summarized the purpose of title V, stating: "[T]he title V operating permit program is a vehicle for compiling air quality control requirements from other CAA programs and for providing requirements necessary to assure compliance with such requirements, but not for creating or changing applicable requirements. Put simply, title V is a catch-all, not a cure-all." *Id*. at 1154. However, U.S. Steel does not go beyond this generalized description from EPA to examine the meaning of "applicable requirements" that is expounded upon in great deal thereafter. It is apparent that U.S. Steel understands the definition of "applicable requirements" to prohibitively exclude any new emission limitations from being implemented for the first time through a title V permit, even if the authority for such new limitations can be found in a SIP governing the permitting program responsible for issuing the title V permit. EPA plainly has rejected this interpretation, noting that

> [a]lthough title V generally does not impose substantive new requirements, title V permits sometimes serve as the vehicle to further define applicable requirements from

> other CAA programs. This most often occurs when the underlying applicable requirement provides general direction and requires further source-specific analysis to define the precise requirements that apply to a given source or emission unit. Some underlying applicable requirements expressly identify title V permits as the vehicle for this analysis; others may be more open-ended about the vehicle used to define the applicable requirement; and still others may specify a different vehicle for establishing these requirements (e.g., NSR permits, discussed further in section IV. of this preamble).

Id. at 1158. EPA goes on to note that the CAA obligates states to develop SIPs that contain provisions necessary to achieve and maintain the NAAQS and that these are "applicable requirements" with which sources must comply. *Id*. at 1159. Critically, EPA explains that

> [f]or purposes of title V permitting, this means that a state does not have any general obligation to establish emission limitations or other standards within a title V permit in order to protect the NAAQS. Whether such requirements are necessary is largely dependent on the relevant terms of the SIP.

Id. EPA then lists several Orders in which, in response to third-party petitioners, it directed permitting agencies to consider requirements within their SIPs that may have necessitated the inclusion of new emission limits in title V permits. *See id*. at fn. 41. These Orders and the underlying SIP provisions that they pertain to directly contradict U.S. Steel's position that title V permits cannot include new emission limits. For instance, in *In the Matter of Duke Energy, LLC, Asheville Steam Electric Plant*, Order on Petition No. IV–2016–0 (June 30, 2017), EPA directed a North Carolina permitting agency to consider whether two provisions of the state's SIP required it to implement new emission limits in a title V permit to prevent violation of the NAAQS. Those provisions specifically state:

> 15A N.C.A.C. 2D.0401(c):
>
> No facility or source of air pollution shall cause any ambient air quality standard in this Section to be exceeded or contribute to a violation of any ambient air quality standard in this Section.

15A N.C.A.C. 2D.0501(c):

> In addition to any control or manner of operation necessary to meet emission standards in this Section, any source of air pollution shall be operated with such control or in such manner that the source shall not cause the ambient air quality standards of Section .0400 of this Subchapter to be exceeded at any point beyond the premises on which the source is located. When controls more stringent than named in the applicable emission standards in this Section are required to prevent violation of the ambient air quality standards or are required to create an offset, the permit shall contain a condition requiring these controls.

EPA determined that these are "not broad, sweeping, state-derived general prohibitions on air pollution" and because they "concern an underlying federal CAA requirement, [i.e.] to prevent violations of the NAAQS," they constitute "applicable requirements" that must be considered in the title V permitting process. *Duke Energy, LLC, Asheville Steam* at 14 (emphasis omitted). In issuing its direction to the North Carolina permitting agency, EPA ordered that it

> should provide an adequate record to explain whether NC 0401 and NC 0501 require emission limits in the 2016 Asheville permit to ensure the 2010 I-hour SO_2 NAAQS is not violated. Specifically, the WNCRAQA should explain what NC 0401 requires and when and how NC 0501 would require an emission limit in Asheville's title V permit to ensure that the 2010 1-hour SO_2 NAAQS is not violated. Specifically, the WNCRAQA should explain when a "more stringent control is required" by NC 0501 and how it makes this determination.

Id. at 17.

In a similar case, *In the Matter of In the Matter of Alabama Power Co., Barry Generating Plant*, Order on Petition No. IV–2021–5 (June 14, 2022), EPA responded to a petitioner requesting that it object to a title V permit because the permit did not include new emission limits as required by the state's SIP to protect the NAAQS. *Id*. at 10-14. The relevant portions of Alabama's SIP, Ala. Admin. Code r. 335-3-5-.01(2) and (2)(a), state:

> … every owner or operator of a fuel burning installation having a total rated capacity greater than 1500 million BTU per hour shall:
>
> (a) Demonstrate, to the satisfaction of the Director, that the sulfur oxides emitted, either alone or in contribution to other sources, will not interfere with

> attainment and maintenance of any primary or secondary ambient air quality standard prescribed at Rule 335-3-1-.03.

In response to the petitioner's request, the Alabama permitting agency argued—just as U.S. Steel does in the present matter—that "[t]he Title V Operating Permit is not the appropriate forum for addressing an area's compliance with the NAAQS. These determinations are made through the SIP program established by the Clean Air Act" and that it "has no authority to make emission limits more stringent through a permit action." *Barry Generating Plant* at 12. Again, EPA rejected this argument and found that Ala. Admin. Code r. 335-3-5-.01(2) and (2)(a) is "on its face an applicable requirement" that sets an obligation that title V permits include limits that will ensure that a facility's emissions of SO_2 will not interfere with any attainment or maintenance of any NAAQS and that this requirement exists "*in addition* to the SO_2 emission limits approved elsewhere into the SIP." *Id*. at 13 (emphasis original). EPA went on to order that the Alabama permitting agency

> should provide an adequate response to explain when the demonstration under Ala. Admin. Code r. 335-3-5-.01(2)(a) is required and how that demonstration is made. Specifically, ADEM should explain when and how this provision is implemented in the context of the 2010 SO_2 NAAQS and how that is reflected during the permitting process.

Id. at 14.

Though in neither *Duke Asheville* nor the *Barry Generating Plant* did EPA specifically state that the respective permitting agencies must interpret the relevant provisions of their SIPs to require imposition of new emission limits through the title V process, those agencies could find that their SIP provisions necessitate new emission limits included for the first time in a title V permit.

B. Art. XXI § 2103.12.a.2.B is an applicable requirement that incorporates the Art. XXI § 2101.20 definition of RACT.

EPA fully approved ACHD's partial operating permit program under title V of the CAA on November 1, 2001. Exhibit 4 at 55112. In doing so, EPA noted that "[t]he regulations for the Allegheny County part 70 permit program are found in the County's [Art. XXI] Air Pollution Control Regulations. Definitions for the air pollution control program are found in Part A of the regulations (2101.01 et seq.)." *Id*. at 55113. As such, the regulatory requirements for ACHD's permitting program—including the specific definitions used in Art. XXI—are incorporated into Pennsylvania's SIP.

Among other permitting requirement, Art. XXI § 2103.12.a specifies that

> [ACHD] shall not issue or reissue any Operating Permit, or any amended, revised, or modified Operating Permit, under this Subpart, unless it has: . . .
>
> 2. Received a complete application, including all applicable fees, meeting all applicable requirements of this Article, and which demonstrates that: . . .
>
> B. The source complies with all applicable emission limitations established by this Article, or where no such limitations have been established by this Article, RACT has been applied to existing sources with respect to those pollutants regulated by this Article.[11]

As noted by EPA in its approval of ACHD's title V program, the definitions listed within Art. XXI Part A are controlling throughout Art. XXI. Specifically relevant here, Art. XXI § 2101.20 defines RACT as

> any air pollution control equipment, process modifications, operating and maintenance standards, or other apparatus or techniques which may reduce emissions and which the Department determines is available for use by the source affected in consideration of the necessity for obtaining the emission reductions, the social and economic impact of such reductions, and the availability of alternative means of providing for the attainment and maintenance of the NAAQS's.

[11] We note that U.S. Steel did not request summary relief on the basis that the Edgar Thomson Facility already complies with all "applicable emission limits established by" Art. XXI and that, therefore, RACT should not have been applied to establish the Challenged Emission Limits. We are unable able to rule on this as a potential ground to grant summary relief as it was not specifically articulated in U.S. Steel's Motion.

Taken together, this definition of RACT and Art. XXI § 2103.12.a.2.B are directly aimed at protecting the NAAQS in Allegheny County when ACHD issues a title V permit. As noted by EPA, particular measures within a SIP geared towards attainment and maintenance of the NAAQS are "applicable requirements" under 42 U.S.C.A. § 7661c(a) and 40 CFR 70.2, and these measures can be implemented via the title V permitting process. Therefore, as was the case in the *Duke Asheville* and *Barry Generating Plant*, Art. XXI § 2103.12.a.2.B constitutes an "applicable requirement."

In its Motion, U.S. Steel appears to believe that, because the Challenged Emission Limits did not appear in any previous permit issued by ACHD or were not implemented through a standard explicitly found in the CAA, they do not constitute "applicable requirements." *See* U.S. Steel's Mot. at 25-26. Unfortunately, this is a misunderstanding of the rationale ACHD utilized for formulating the Title V Permit. The Challenged Emission Limits are not themselves the "applicable requirements" but are instead the results of the RACT analysis performed by ACHD pursuant to Art. XXI § 2103.12.a.2.B, which, as stated above, is an "applicable requirement" as part of the SIP related to the attainment and maintenance of the NAAQS.

U.S. Steel then goes on to claim that ACHD was wrong to utilize the Art. XXI definition of RACT for its implementation of the Challenged Emission Limits and that it should have instead relied on the definition commonly used by EPA, which limits RACT determinations to emission sources in nonattainment areas. *See id*. at 27-26.[12] U.S. Steel correctly notes in its Motion that the CAA requires an implementation of RACT each time a new NAAQS is

[12] U.S. Steel states that ACHD "has distorted the concept of RACT so as to improperly attempt to give itself *carte blanche* authority to impose any emission limits that the Department wants, at any time and for any reason." U.S. Steel's Mot. at 28. This is simply a vast overstatement of the authority that ACHD has professed to maintain in this instance and wholly overlooks the fact-based hearing that can be held before this Tribunal to determine if the Challenged Emission Limits are themselves RACT as defined under Art. XXI.

promulgated and for states in nonattainment of the NAAQS. *See id*. at 29. U.S. Steel is also correct that "RACT is not defined in the CAA but as been interpreted by EPA to mean 'the lowest emission limit that a particular source is capable of meeting by the application of technology that is reasonably available considering technological and economic feasibility.'" *Id*. (quoting *Sierra Club v. EPA*, 972 F.3d 290, 294 (3d. Cir. 2020)).

U.S. Steel is, however, wrong on both points when it baldly asserts that "ACHD interprets its RACT provision in Article XXI in a manner that is [1] inconsistent with the federal RACT program, and [2] which was not approved by EPA in its delegation of the Title V program to the Department." *Id*. at 28. First, simply comparing the two definitions of RACT, the Art. XXI definition is not inconsistent with but is instead more expansive than EPA's definition. EPA RACT is limited to areas that are in nonattainment of the NAAQS; however, Art. XXI expands the scope of RACT to apply to sources not just for the purposes of attaining but also *maintaining* the NAAQS. As found in 40 CFR § 70.4:

> (1) The EPA may approve a partial program that applies to all part 70 sources within a limited geographic area (e.g., a local agency program covering all sources within the agency's jurisdiction). *To be approvable, any partial program must, at a minimum, ensure compliance with all of the following applicable requirements*, as they apply to the sources covered by the partial program:
>
> (i) All requirements of title V of the Act and of part 70;
> (ii) All applicable requirements of title IV of the Act and regulations promulgated thereunder which apply to affected sources; and
> (iii) All applicable requirements of title I of the Act, including those established under sections 111 and 112 of the Act.

(Emphasis added). This is expounded upon further by the Fourth Circuit, which noted that "[t]he CAA simply establishes a program of cooperative federalism that allows the States, *within limits established by federal minimum standards*, to enact and administer their own regulatory programs, structured to meet their own particular needs." *Com. of Va. v. Browner*, 80 F.3d 869,

883 (4th Cir. 1996) (internal quotations omitted) (emphasis added). U.S. Steel does nothing in its discussion to demonstrate how the Art. XXI definition of RACT violates this minimum standard set by the CAA. While U.S. Steel is right that the Art. XXI definition and applicability of RACT is different from EPA's definition and scope under the CAA, it does not show why this difference alone prohibits ACHD from utilizing the definition of RACT from the law (i.e., Art. XXI) that it's tasked with applying.

Second, and of far more dispositive concern, EPA has accepted the Art. XXI definition of RACT as part of the SIP. As noted above, EPA identified the definitions from Art. XXI Part A as controlling for title V permitting by ACHD when it approved the program in 2001. Exhibit 3 at 55113. More recently, in its Order Granting a Petition for Objection to a Title V Operating Permit, EPA plainly stated that Art. XXI §2103.12.a.2.B is part of the SIP and that the definition of RACT from the SIP is the definition from Art. XXI §2101.20. Exhibit 47 at 29-30, fn. 39.[13]

U.S. Steel further points us to the Opinion and Order on Motion for Summary Judgment in *Berks Cnty. v. DEP and Exide Technologies*, 2012 EHB 23, 2012 WL 1108235 (March 16, 2012), which was issued by the Pennsylvania Environmental Hearing Board ("the EHB"), in an effort to further support its argument that ACHD acted outside of the prescribed scope of the CAA process when it issued the Title V Permit. *See* U.S. Steel's Mot. at 26. In that case, the Pennsylvania Department of Environmental Protection ("DEP") issued a title V permit for a facility located in Berks County, and Berks County objected to the permit on the grounds that the

[13] U.S. Steel attempts to convince us that, in that Order, EPA "asked some of the very same questions [U.S. Steel has] asked, and made observations that the underlying authority for these [C]hallenged [E]mission [L]imits isn't entirely clear." March 25, 2024, Oral Arg. Tr. at 56: 23 – 57: 1. However, EPA was aware that ACHD based the Challenged Emission Limits on Art. XXI § 2103.12.a.2.B, *see id*. at 30, and directed ACHD in that Order to include the origin and legal authority for all emission limits within the Title V Permit, *see id*. at fn. 19; it was not, as U.S. Steel suggests, stating that the Challenged Emission Limits could not be included in the Title V Permit or that there was no legal authority whatsoever to support them.

emission limit contained within it for lead would prevent attainment of the NAAQS. *See Berks Cnty. v. DEP* at 3-4. The statutory bases for Berks County's objection were what EHB categorized as "general provisions" of Pennsylvania's SIP: 35 P.S. § 4006.1(d), which provides that DEP may refuse to issue a permit to a source "likely to cause air pollution," and 35 P.S. §§ 4006.1(b)4 and 4007.2, which together allow DEP to "impose a compliance schedule when repermitting any source operating out of compliance." *Id*. at 4. As cited by U.S. Steel in its Motion, the EHB denied Berks County's objection and held that

> [w]hen it comes to imposing permit conditions designed to ensure that an area achieves compliance with the NAAQS, the Department must normally proceed in accordance with the federal/state SIP process for attaining the NAAQS that is set forth in the federal [CAA] . . . [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 4-5. However, U.S. Steel's allusion to *Berks County* falls short because Art. XXI § 2103.12.a.2.B is not a "general provision" of the SIP, as is the case with 35 P.S. §§ 4006.1(d), 4006.1(b)4 and 4007.2, but instead an "applicable requirement" of the federally mandated process. Returning to the *Duke Asheville* and the *Barry Generating Plant* Orders from EPA, both of those cases noted that "broad, sweeping general prohibition[s] on air pollution" found in SIPs do not constitute "applicable requirements" for title V permitting purposes. *Duke Asheville* at 15; *Barry Generating Plant* at 13. As we've discussed throughout, Art. XXI § 2103.12.a.2.B sets out a specified obligation for ACHD when issuing permits and is much more akin to the SIP provisions at issue in *Duke Asheville* and *Barry Generating Plant* than the generalized provision from *Berks County*.

C. The Art. XXI § 2101.20 definition of RACT does not require a source to be in a nonattainment area for RACT to apply.

U.S. Steel then goes on to argue that, because Allegheny County is classified as in attainment of the NAAQS for CO and PM10, ACHD cannot implement the Challenged Emission Limits for those pollutants through the Title V Permit. *See* U.S. Steel's Mot. at 35-36. This argument is tied to U.S. Steel's ongoing incorrect apprehension that the relevant definition of RACT for this matter is the EPA definition, which limits its applicability to nonattainment areas. As we've already explained, the definition of RACT for title V permits issued by ACHD is the one found in Art. XXI § 2101.20, which includes "means of providing for the attainment *and maintenance* of the NAAQS's." (Emphasis added). U.S. Steel is further misguided in continuing to direct us to language from the CAA, which is only meant to establish minimum obligations for permitting programs. Specifically, U.S. Steel cites 42 U.S.C. § 7502(c)(1), which directs that SIPs for nonattainment areas

> shall provide for the implementation of all reasonably available control measures as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, *at a minimum, of reasonably available control technology*) and shall provide for attainment of the national primary ambient air quality standards.

(Emphasis added). In conjunction with our discussion of the requirements from 40 CFR § 70.4, *supra* at 24, this section only creates a floor for state permitting agencies to apply EPA's definition of RACT to areas that are in nonattainment of the NAAQS; nothing about it blocks a permitting agency from applying more stringent obligations if those stem from applicable requirements within the respective state's SIP.

II. U.S. Steel's claim that the Challenged Emission Limits are inconsistent with appropriately performed RACT evaluations involves a dispute over issues of material fact that cannot be adjudicated without a hearing.

U.S. Steel next addresses the process utilized by ACHD to determine the Challenged Emission Limit. *See* U.S. Steel's Mot. at 36-47. In doing so, U.S. Steel engages in a narrative discussion of the evolution of emission limits for NOx, VOC, and PM2.5 at the Facility. It concludes by requesting summary disposition on the basis that

> establishing an emission limit based on the 'worst-case potential emissions' is not RACT. Rather, a proper RACT determination would have required the Department to evaluate reasonably available control technology considering the technological and economic feasibility in order to identify the lowest emission limit that each source is capable of achieving by application of that technology.

Id. at 46. While of significant import to the ultimate disposition of U.S. Steel's appeal of the Challenged Emission Limits, a determination of whether ACHD engaged in a proper RACT analysis is a question of fact that requires an evidentiary hearing. While, of course, there will be substantial overlap in issues of fact and law when evaluating ACHD's RACT determination, such an evaluation is inappropriate at this time in the proceedings.

Conclusion

In summary, though primarily geared towards consolidating existing requirements for major sources of air pollution, the title V permitting program under the CAA does allow for the inclusion of new emission limits for major sources if those emission limits are based on an "applicable requirement" in a SIP. In this instance, ACHD based its inclusion of the Challenged Emission Limits within the Title V Permit on Art. XXI § 2103.12.a.2.B, which is included in the SIP and is therefore an "applicable requirement." Further, the definition of RACT from Art. XXI § 2101.20, which applies for purposes of both attaining and maintaining the NAAQS, is the operative definition of RACT for Art. XXI § 2103.12.a.2.B. Lastly, we are unable to determine

whether ACHD engaged in a proper RACT analysis when it imposed the Challenged Emission Limits without an evidentiary hearing.

/s/ John F. McGowan

John F. McGowan, Esquire
Hearing Officer
Allegheny County Health Department