

RECEIVED

June 4, 2019

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DIRECTOR'S
OFFICE

Via Hand Delivery

Attn: Karen Hacker
Office of the Director
542 Fourth Avenue
Pittsburgh, PA 15219

**Re: United States Steel Corporation
Notice of Appeal of Enforcement Order No. 190501**

Dear Director Hacker:

Pursuant to Article XI of the Rules and Regulations of the Allegheny County Health Department, United States Steel Corporation submits for filing the enclosed Notice of Appeal regarding the above-referenced order dated May 10, 2019. Included with the enclosures is a check in the amount of \$337,670.00, equal to the total civil penalty assessed by the above-referenced order, to be held in escrow. If you have any questions or wish to discuss this matter further, please contact me at mwinek@babstcalland.com or (412) 394-6538.

Sincerely,



Michael H. Winek, Esq.
Counsel for United States Steel Corporation

Enclosures

cc: Max Slater, Esq. (via e-mail: max.slater@alleghenycounty.us)
Jason Willis, Esq. (via e-mail: jason.willis@alleghenycounty.us)

**BEFORE THE HEARING OFFICER FOR THE
ALLEGHENY COUNTY HEALTH DEPARTMENT
542 4TH AVENUE
PITTSBURGH, PENNSYLVANIA 15219**

UNITED STATES STEEL)	
CORPORATION, a Delaware corporation,)	
)	
Appellant,)	
)	
v.)	Appeal of Enforcement Order
)	#190501
ALLEGHENY COUNTY HEALTH)	
DEPARTMENT, Air Quality Program,)	
)	
Appellee.)	

NOTICE OF APPEAL

NOW COMES, Appellant, UNITED STATES STEEL CORPORATION (hereinafter “U.S. Steel”), pursuant to Sections 1103 and 1104 of Article XI of the Allegheny County Health Department’s Rules and Regulations, before the Director of the Allegheny County Health Department, filing this appeal from Enforcement Order #190501 (hereinafter “Order”), as issued by the Allegheny County Health Department, Air Quality Program (hereinafter “Department”) to U. S. Steel Clairton Works, dated May 10, 2019 (attached hereto as Exhibit A). Consistent with Sections 1103 and 1104 of Article XI of the Department’s Rules and Regulations, this submission constitutes timely filing of a Notice of Appeal of a Department action, and properly specifies the manner in which U.S. Steel is aggrieved by the Department’s action, the nature of U.S. Steel’s direct interest in the action and the grounds for appeal.

A. Manner in which U. S. Steel is Aggrieved and Grounds for Appeal

1. U. S. Steel owns and operates Clairton Works, a by-products coke plant which includes 10 coke batteries located at 400 State Street, Clairton, PA 15025, with telephone number (412) 233-1000 (hereinafter "Facility").

2. The Department issued the Order dated May 10, 2019, and it was received by U. S. Steel on or about May 10, 2019.

3. U. S. Steel objects to the Order. For the following reasons, the Department has abused its discretion and acted unreasonably, arbitrarily, capriciously, contrary to fact and law and in a manner not supported by evidence:

- a. Based upon information and belief, the Order assesses a penalty for visible emission observations and calculations occurring during 1st quarter 2019 that are not violations of applicable permit conditions, rules and regulations;
- b. Inspectors have failed to conduct proper, fair and unbiased evaluations of the Facility, as reflected in the Order;
- c. Based upon information and belief, the Order relies on inappropriate and/or inaccurate data to support the alleged violations;
- d. The Department's use of inappropriate and/or inaccurate data misrepresents the Facility's compliance status and results in an unjustifiable penalty assessment;
- e. Because the Department has not adequately supported and will not be able to support its assertions listed in the Order, and the basis of the assertions is the inappropriate and unlawful reliance on skewed inspection data, the assertions and allegations made in the Order are without merit;

- f. The Department has inappropriately assigned individuals to work on both this enforcement matter and a recently proposed Department rulemaking that would impose significantly more stringent requirements on coke plants. As a practical matter, the only coke facility which would even be subject to the rulemaking is the Facility owned and operated by U. S. Steel. This constitutes an inappropriate and impermissible commingling of adjudicative and prosecutorial functions by the agency;
- g. The Order includes excessive and unreasonable sanctions for noncompliance;
- h. The Order requires U. S. Steel to pay a total civil penalty of \$337,670 within 30 days of receiving the Order. See Exhibit A, p. 2. Constituent penalty figures that make up the total civil penalty appear elsewhere in the Order. See Exhibit A, pp. 1-2. The civil penalties assessed by the Order are excessive, inappropriate, unwarranted and not commensurate with the claims in the Order;
- i. The penalty assessed by the Order is unnecessarily punitive, as U. S. Steel is already implementing a plan to reduce emissions at the Facility in response to Enforcement Order #180601 issued by the Department on June 28, 2018, which alleged similar violations of the same coke oven visible emission standards;
- j. The Order's imposition of additional monetary penalties for alleged violations of visible emissions standards during 1st quarter 2019 is duplicative of and otherwise conflicts with Enforcement Order #180601, and is unlawful, unreasonable and an abuse of discretion;

- k. The Department inappropriately assessed penalties more than once for the same underlying alleged violation, thereby impermissibly inflating the total penalty assessment;
- l. The Department has failed to adequately explain the basis for the penalty assessment in the Order;
- m. In issuing the Order, the Department exceeded its enforcement authority as provided in Article XXI of the Department's Rules and Regulations;
- n. The Order mischaracterizes U. S. Steel's compliance with applicable air emission laws and regulations; and
- o. The Order is vague and insufficiently specific.

B. U. S. Steel's Direct Interest in the Action

4. U. S. Steel is a named entity to which the Order was issued, and whose activities are restricted by the Order. As a result, U. S. Steel is negatively impacted by the Order and has a direct interest in the Order and this Appeal.

C. Conclusion

5. Through this Notice of Appeal, U. S. Steel has identified its objections to the Order but reserves the right to amend or supplement the factual and legal basis of its Appeal as authorized by the Department's Rules and Regulations.

6. For the foregoing reasons, U. S. Steel respectfully requests that the Director vacate the Order, or alternatively, vacate and remand the Order to the Department for consideration consistent with the Director's opinion.

Respectfully submitted,

/s/ Michael H. Winek

Michael H. Winek, Esq. (PAID#69464)
Mark K. Dausch, Esq. (PAID#205621)
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United States Steel Corporation
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Telephone: (412) 433-2919
Email: dwhacker@uss.com

Counsel for Appellant

Dated: June 4, 2019

EXHIBIT A

Enforcement Order #190501
May 10, 2019

COUNTY OF



ALLEGHENY

RICH FITZGERALD
COUNTY EXECUTIVE

May 10, 2019

Michael Rhodes
United States Steel Corporation
Clairton Works
400 State Street
Clairton, PA 15025

RE: Enforcement Order #190501 – United States Steel Corporation, Clairton Works, 400 State Street, Clairton, PA 15025, various provisions of Article XXI and Installation Permit #0052-I011b, during the first quarter, January 1, 2019, through March 30, 2019.

Dear Mr. Rhodes,

Please find enclosed a copy of the Enforcement Order pertaining to the coke oven batteries at USS Clairton Works. Also attached is an "Important Notice" for you to review.

Thank you for your anticipated prompt attention to this matter and future increased efforts to comply with all applicable regulations. Any questions concerning this Order should be directed to the ACHD's representative, William U. Clark at 412-578-8136 or e-mail at bill.clark@alleghenycounty.us.

Sincerely,

Dean DeLuca
Air Quality Enforcement Section Chief

CC: Wm. U. Clark, Air Quality Engineer (via email)
File



KAREN HACKER, MD, MPH, DIRECTOR
ALLEGHENY COUNTY HEALTH DEPARTMENT
AIR QUALITY PROGRAM

301 39TH STREET • CLACK HEALTH CENTER • BUILDING 7
PITTSBURGH, PA 15201-1811
PHONE (412) 578-8103 • FAX (412) 578-8144
24-HR (412) 687-ACHD (2243) • WWW.ACHD.NET



To: Michael Rhodes
United States Steel Corporation
Clairton Works
400 State Street
Clairton, PA 15025

Re: May 10, 2019 Enforcement Order

IMPORTANT NOTICE

An Enforcement Order dated May 10, 2019, was mailed to you by the Allegheny County Health Department (ACHD) notifying of the possibility that a Civil Penalty will be levied by virtue of your failure to take certain action.

If you fail to take action pursuant to said enforcement order, a judgment may be entered against you in the Court of Common Pleas of Allegheny County. The sheriff may take your money or other property to pay the judgment any time after the judgment is entered.

YOU ARE WARNED THAT IF YOU FAIL TO CORRECT VIOLATIONS AND/OR PAY FINES OR PENALTIES LEVIED AGAINST YOU IN THE ENFORCEMENT ORDER THAT THE ALLEGHENY COUNTY HEALTH DEPARTMENT MAY PROCEED WITHOUT YOU AND A JUDGMENT MAY BE ENTERED AGAINST YOU WITHOUT FURTHER NOTICE. YOU MAY LOSE MONEY OR PROPERTY OR OTHER RIGHTS IMPORTANT TO YOU.

Allegheny County Health Department
Air Quality Program
301 39th Street, Building #7
Pittsburgh, PA 15201-1811

**ALLEGHENY COUNTY HEALTH DEPARTMENT
AIR QUALITY PROGRAM**

In the Matter of:

United States Steel Corporation
Clairton Works
400 State Street
Clairton, PA 15025

Violation No. 190501

Violations of Article XXI ("Air
Pollution Control") at property:

United States Steel
Corporation – Clairton Plant

ENFORCEMENT ORDER

NOW, this 10th day of May, 2019, the Allegheny County Health Department (hereinafter "ACHD" or the "Department") issues this Enforcement Order after having found and determined the following:

FINDINGS

This Enforcement Order addresses the violations, observed by the Department's Coke Oven Process Technicians and Method 303 contractor, of various provisions of Article XXI, Rules and Regulations of the Allegheny County Health Department, Air Pollution Control ("Article XXI") and Installation Permit #0052-I011b, at your company's Clairton Works, during the first quarter of 2019, January 1, 2019, through March 31, 2019.

The ACHD has determined that United States Steel is in violation of Article XXI, § 2102.03.c and various provisions of § 2105.21, of the ACHD's Rules and Regulations by failing to meet the applicable requirements stated in Article XXI, § 2105.21 and ACHD Installation Permit #0052-I011b.

By this Order, the Department is not taking any action specifically regarding any alleged failures to meet any requirements regarding pushing or combustion stacks (as determined by a continuous opacity monitoring system), or soaking on Batteries 1, 2, and 3. Such actions are taken separately through provisions of the March 24, 2016 Consent Judgment. By this Order, the Department also is not taking any action specifically regarding any alleged failures or exceedances caused by or associated with the fire which occurred on or about December 24, 2018.

Summaries of the violations are enclosed with this Order as "Exhibit A".

The violations observed by the Department's Coke Oven Process Technicians and Method 303 contractor at your US Steel Clairton Works involve the following:

- Excessive visible emissions from the charging of coke ovens at Batteries 14, 15, and B in violation of §2105.21.a of Article XXI, and at Battery C insofar as it

operated violation of V.A.1.b of Installation Permit #0052-I011b. As a consequence of these violations, the Department has assessed a civil penalty in the amount of \$58,038.00;

- Excessive visible emissions from the door areas at Battery C insofar as it operated in violation of V.A.1.c of Installation Permit #0052-I011b. As a consequence of these violations, the Department has assessed a civil penalty in the amount of \$6,766.00;
- Excessive visible emissions from the door areas at Batteries 1, 2, 3, 13, 15, 19, and B in violation of §2105.21.b.4 (40% opacity std.) of Article XXI, and at Battery C insofar as it operated in violation of V.A.1.d (30% opacity std.) of Installation Permit #0052-I011b. As a consequence of these violations, the Department has assessed a civil penalty in the amount of \$69,240.00;
- Excessive visible emissions from the charging ports at Batteries 15 and B in violation of §2105.21.c of Article XXI. As a consequence of these violations, the Department has assessed a civil penalty in the amount of \$12,818.00;
- Excessive visible emissions from the offtake piping at Batteries 2, 3, 13, 14, 15, and 19 in violation of §2105.21.d of Article XXI; and at Battery C insofar as it operated in violation of V.A.1.f of Installation Permit #0052-I011b. As a consequence of these violations, the Department has assessed a civil penalty in the amount of \$34,102.00; and
- Excessive visible emissions from soaking at Batteries 13, 14, 15, 19, 20, and B in violation of §2105.21.i of Article XXI, and at Battery C insofar as it operated in violation of V.A.1.g of Installation Permit #0052-I011b. As a consequence of these violations, the Department has assessed a civil penalty in the amount of \$156,706.00.

§ 2102.03 Permits Generally

c. Conditions

It shall be a violation of this Article giving rise to the remedies provided by Part I of this Article for any person to fail to comply with any terms or conditions set forth in any permit issued pursuant to this Part.

NOW THEREFORE, pursuant to the authority granted to the ACHD by Article XXI § 2109.03.a.1 and the Local Health Administration Law, 19 P.S. § 12010, it is hereby **ORDERED** that within thirty (30) days of receipt of this Order, United States Steel shall pay an assessed civil penalty of \$337,670.00 for violations of Article XXI § 2102.03. Payment shall be

made by corporate check, or the like, made payable to the “Allegheny County Clean Air Fund”, and sent to Air Quality Program Manager, Allegheny County Health Department, 301 39th Street, Bldg. #7, Pittsburgh, PA 15201

Please be advised that failure to comply with this Order within the times specified herein is a violation of Article XXI giving rise to the remedies provided by Article XXI § 2109.02 including civil penalties of up to \$25,000 per violation per day.

In the event that a civil penalty has been imposed, the ACHD has determined the above penalty in accordance with Article XXI § 2109.06.b. reflecting relevant factors including, but not limited to: the nature, severity and frequency of the alleged violations; the maximum amount of civil and criminal penalties authorized by law; the willfulness of such violations; the impact of such violations on the public and the environment; the actions taken by U.S. Steel to minimize such violations and to prevent future violations; and U.S. Steel compliance history.

Pursuant to Article XI (“Hearings and Appeals”) of the Allegheny County Health Department Rules and Regulations, you are notified that if you are aggrieved by this Order you have thirty (30) days in which to file an appeal from the receipt of this Order. Such a Notice of Appeal shall be filed in the Office of the Director at 542 Fourth Avenue, Pittsburgh, PA 15219. This Order is enforceable upon issuance and any appeal of this Order shall not act as a stay unless the Director of the ACHD so orders. In the absence of a timely appeal, the terms of this Order shall become final.

Please be aware that if you wish to appeal this Order and the ACHD has imposed a civil penalty, you are required within 30 days of receipt of this Order to either forward the penalty amount to the ACHD for placement in an escrow account or post an appeal bond to the ACHD in the amount of the penalty. Please review the specific requirements for prepaying the penalty or posting the appeal bond found in Article XXI, §§ 2109.06.a.2-3. A copy of Article XXI and Article XI may be found at <http://www.achd.net/reg.html>.

Thank you for your anticipated prompt attention to this matter and future increased efforts to comply with all applicable regulations. Any questions concerning this Order should be directed to the ACHD’s representatives, William Clark, at 412-578-8136 or e-mail bill.clark@alleghenycounty.us.

DONE and ENTERED this 10th day of May, 2019, in Allegheny County, Pennsylvania.



Jayme Graham
Air Quality Program Manager

5/10/2019
Date

CHARGING

Date	Battery	Seconds	ACHD or Keramida	H, M, or L	Severity Value	Severity
24-Jan	C	104	ACHD	M	1.87	MAJOR
30-Jan	B	115	Keramida	not indicated L	2.07	MAJOR
4-Feb	14	123.5	Keramida	not indicated L	2.23	MAJOR
4-Feb	B	278	ACHD	M	5.01	MAJOR
7-Feb	C	156	ACHD	L	2.81	MAJOR
8-Feb	B	98	ACHD	M	1.77	MAJOR
11-Feb	15	69	ACHD	L	1.24	MODERATE
13-Feb	B	73.5	Keramida	not indicated L	1.32	MODERATE
25-Feb	C	60	ACHD	L	1.08	LOW
5-Mar	B	172	ACHD	H	3.10	MAJOR
8-Mar	B	151	ACHD	M	2.72	MAJOR
19-Mar	C	126	ACHD	M	2.27	MAJOR
25-Mar	C	75	ACHD	L	1.35	MODERATE
29-Mar	C	67	ACHD	L	1.21	MODERATE

Count: 14

* No penalty because at least 1 charge from the same oven was observed on both inspections.

DOORS

Date	Battery	Percent	ACHD or Keramida	H, M, or L	Severity Value	Severity
28-Jan	C	5.10%	Keramida	L	1.70	MAJOR
19-Mar	C	3.01%	ACHD	L	1.00	LOW

Count: 2

DOORS >40% (30% for Battery C)

Date	Battery	Oven #	Time Observed	Opacity (%)	H, M, or L	Severity Value	Severity
3-Jan	2	B15	804	50	L	1.11	LOW
3-Jan	2	B11	805	55	L	1.22	MODERATE
14-Jan	19	B4	1038	50	L	1.11	LOW
18-Jan	C	C80	1020	80	H	2.29	MAJOR
22-Jan	1	B24	1336	50	M	1.11	LOW
24-Jan	C	C10	1102	50	M	1.43	MODERATE
24-Jan	C	C69	1104	50	M	1.43	MODERATE
25-Jan	19	C15	1059	75	M	1.67	MAJOR
25-Jan	19	A18	1043	75	L	1.67	MAJOR
4-Feb	B	A12	1306	45	L	1.00	LOW
13-Feb	15	A27	1041	45	L	1.00	LOW
13-Feb	C	C75	1114	50	M	1.43	MODERATE
14-Feb	3	B11	740	60	H	1.33	MODERATE
14-Feb	3	B7	740	90	H	2.00	MAJOR
19-Feb	3	B1	1054	50	M	1.11	LOW
21-Feb	C	C11	922	50	M	1.43	MODERATE
21-Feb	C	C20	935	35	L	1.00	LOW
25-Feb	C	C29	1041	70	M	2.00	MAJOR
5-Mar	1	B8	1050	70	M	1.56	MAJOR
11-Mar	1	C2	1040	80	H	1.78	MAJOR
12-Mar	2	B29	919	70	L	1.56	MAJOR
12-Mar	2	B31	919	70	L	1.56	MAJOR
15-Mar	1	B2	749	70	M	1.56	MAJOR
18-Mar	13	A15	741	80	H	1.78	MAJOR
19-Mar	C	C3	1007	50	L	1.43	MODERATE
19-Mar	C	C4	1007	50	L	1.43	MODERATE
19-Mar	C	C5	1008	50	L	1.43	MODERATE
29-Mar	C	C84	1138	40	L	1.14	LOW
29-Mar	C	C13	1140	100	H	2.86	MAJOR

Count: 29

OFFTAKES

Date	Battery	Percent Leaking	ACHD or Keramida	H, M, or L	Severity Value	Severity
5-Jan	C	3.75%	Keramida	H	1.25	MODERATE
15-Jan	15	5.36%	Keramida	L	1.34	MODERATE
17-Jan	3	5.08%	Keramida	L	1.02	LOW
17-Jan	14	5.36%	Keramida	L	1.34	MODERATE
21-Jan	2	5.66%	Keramida	L	1.13	LOW
23-Jan	13	6.90%	Keramida	L	1.72	MAJOR
4-Feb	14	5.26%	Keramida	L	1.31	MODERATE
27-Feb	19	5.06%	Keramida	L	1.01	LOW
13-Mar	14	7.02%	ACHD	L	1.75	MAJOR

27-Mar	2	5.56%	Keramida	L	1.11	LOW
27-Mar	15	4.31%	ACHD	L	1.08	LOW
27-Mar	14	12.50%	ACHD	M	3.12	MAJOR

Count: 12

LIDS

Date	Battery	Percent	ACHD or Keramida	H, M, or L	Severity Value	Severity
8-Jan	B	2.08%	Keramida	L	2.08	MAJOR
23-Jan	15	1.23%	Keramida	L	1.23	MODERATE
4-Feb	B	1.79%	ACHD	L	1.79	MAJOR

Count: 3

SOAKING

Date	Battery	Oven #	Time Observed	Pusher/Coke (side)	Max. Non-flame Opacity (%)	H, M, or L	Severity
2-Jan	14	A23	842	C	30	L	LOW
2-Jan	14	A25	842	P	75	M	MAJOR
2-Jan	14	A27	861	C	30	L	LOW
4-Jan	13	A31	915	P	40	L	MODERATE
4-Jan	13	A31	915	C	100	H	MAJOR
4-Jan	13	A29	859	P	100	H	MAJOR
4-Jan	13	A29	858	C	35	L	LOW
7-Jan	15	B16	841	P	40	L	MODERATE
7-Jan	15	B16	841	C	50	L	MODERATE
7-Jan	15	B22	915	P	60	M	MODERATE
7-Jan	15	B22	915	C	100	H	MAJOR
10-Jan	13	A10	836	P	30	L	LOW
10-Jan	13	A10	836	C	80	M	MAJOR
10-Jan	13	A12	854	C	75	H	MAJOR
10-Jan	13	A14	921	P	80	M	MAJOR
10-Jan	13	A14	921	C	35	L	LOW
11-Jan	B	A28	850	C	50	M	MODERATE
17-Jan	14	A10	827	C	50	M	MODERATE
17-Jan	14	A16	860	P	60	M	MODERATE
23-Jan	13	A29	856	C	75	H	MAJOR
25-Jan	19	C11	904	P	40	L	MODERATE
28-Jan	20	A29	1052	C	30	L	LOW
29-Jan	14	B2	845	P	75	M	MAJOR
4-Feb	B	A4	913	P	25	L	LOW
4-Feb	B	A6	1022	P	50	M	MODERATE
4-Feb	B	A6	1022	C	50	M	MODERATE
6-Feb	13	A8	849	P	40	L	MODERATE
12-Feb	20	B29	934	C	60	L	MODERATE
13-Feb	15	B2	904	P	100	H	MAJOR
20-Feb	20	A10	825	C	25	L	LOW
21-Feb	20	C7	740	C	100	H	MAJOR
26-Feb	13	A10	1008	C	50	L	MODERATE
26-Feb	13	A14	1139	C	40	L	MODERATE
1-Mar	13	A14	958	P	80	L	MAJOR
13-Mar	14	B5	1015	P	50	L	MODERATE
13-Mar	14	B5	1015	C	40	L	MODERATE
18-Mar	13	B6	817	C	70	L	MAJOR
21-Mar	20	A29	746	P	60	L	MODERATE
21-Mar	20	B2	751	P	80	L	MAJOR
21-Mar	20	B2	751	C	50	L	MODERATE
21-Mar	20	B4	752	P	50	L	MODERATE
26-Mar	13	A1	860	P	30	L	LOW
26-Mar	13	A1	860	C	30	L	LOW
26-Mar	13	A3	860	P	40	L	MODERATE
26-Mar	13	A3	860	C	65	M	MAJOR
28-Mar	C	C39	924	P	25	L	LOW
28-Mar	C	C41	941	P	20	L	LOW
29-Mar	C	C9	747	P	50	M	MODERATE
29-Mar	C	C11	836	P	40	L	MODERATE
29-Mar	C	C13	907	P	40	L	MODERATE

Count: 50

Note: By this letter the Department is not taking any action specifically regarding any alleged failures to meet any requirements regarding soaking on Batteries 1, 2, & 3. Such actions are taken separately through provisions of the March 24, 2016 Consent Judgement.

**BEFORE THE HEARING OFFICER FOR THE
ALLEGHENY COUNTY HEALTH DEPARTMENT
542 4TH AVENUE
PITTSBURGH, PENNSYLVANIA 15219**

UNITED STATES STEEL)	
CORPORATION, a Delaware corporation,)	
)	
Appellant,)	
)	
v.)	Appeal of Enforcement Order
)	#190501
ALLEGHENY COUNTY HEALTH)	
DEPARTMENT, Air Quality Program,)	
)	
Appellee.)	

CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of June, 2019, a true and correct copy of the foregoing Notice of Appeal was served via hand delivery and addressed as follows:

Karen Hacker
Office of the Director
Allegheny County Health Department
542 Fourth Avenue
Pittsburgh, PA 15219

The following individuals were served by electronic mail:

Max Slater, Esq.
Administrative Hearing Officer
Allegheny County Health Department
542 Fourth Avenue
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max.slater@alleghenycounty.us

Jason K. Willis, Esq.
Assistant Solicitor
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Respectfully submitted,

/s/ Michael H. Winek
Michael H. Winek, Esq.
Counsel for United States Steel Corporation