



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

SEP 28 2018

REPLY TO THE ATTENTION OF:

VIA E-MAIL

Robert Alan Lamb, VP/General Manager
Gerdau Ameristeel US Inc.
1678 Red Rock Road
St. Paul, Minnesota, 55119
Email: jolson@seyfarth.com

Dear Mr. Lamb:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves Gerdau Ameristeel US Inc., docket no. CAA-05-2018-0030. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on 9/28/2018. Pursuant to paragraph 47 of the CAFO, Gerdau Ameristeel US Inc. must pay the civil penalty within 30 days of the filing date. Your check must display the case name and case docket number.

Please direct any questions regarding this case to Josh Zaharoff, Office of Regional Counsel, (312) 886-4460.

Sincerely,

A handwritten signature in black ink, appearing to read "Sarah Marshall".

Sarah Marshall, Chief
Air Enforcement and Compliance Assurance Section (MI/WI)

Enclosure

cc: Ann Coyle, Regional Judicial Officer/C-14J
Regional Hearing Clerk/E-19J
Josh Zaharoff/C-14J
Sarah Kilgriff, Minnesota Pollution Control Agency/via email



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)	Docket No.	CAA-05-2018-0030
)		
Gerdau Ameristeel US Inc.)	Proceeding to Assess a Civil Penalty	
St. Paul, Minnesota,)	Under Section 113(d) of the Clean Air Act,	
)	42 U.S.C. § 7413(d)	
Respondent.)		
_____)		

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the CAA), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at 40 C.F.R. Part 22.

2. Complainant is the Director of the Air and Radiation Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is Gerdau Ameristeel US Inc. (Gerdau), a corporation doing business in Minnesota.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

Statutory and Regulatory Background

9. On May 24, 1995, EPA approved Chapters 7007 and 7011 as part of the federally enforceable Minnesota state implementation plan (SIP). 60 Fed. Reg. 27411 (May 24, 1995). On May 18, 1999, EPA approved revisions to Chapters 7007 and 7011 as part of the federally enforceable Minnesota SIP. 64 Fed. Reg. 26880 (May 18, 1999).

10. Minnesota Rule 7011.0715, Subpart 1(B) states that “no owner or operator of any industrial process equipment which was not in operation before July 9, 1969, shall cause to be discharged into the atmosphere from the industrial process equipment any gases which exhibit greater than 20 percent (%) opacity.”

11. Minnesota Rule 7007.0800, Subpart 2 states, in part, that “the permit shall include emissions limitations, operational requirements, and other provisions needed to ensure compliance with all applicable requirements at the time of permit issuance.”

12. Minnesota Rule 7007.0800, Subpart 14 states, in part, that “the permit may specify operating and maintenance requirements for each piece of control equipment.”

13. Section 502(a) of the Act, 42 U.S.C. § 7661a(a), provides that it is unlawful to violate any requirement of a permit promulgated under Title V of the CAA. EPA first promulgated regulations governing state operating permit programs at 40 C.F.R. Part 70 on July 21, 1992. 57 Fed. Reg. 32295.

14. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$37,500 per day of violation up to a total of \$320,000 for CAA violations that occurred after December 6, 2013 through November 2, 2015, and up to \$45,268 per day of violation up to a total of \$362,141 for violations that occurred after November 2, 2015 under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

15. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

16. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

Factual Allegations and Alleged Violations

17. Gerdau owns and operates a steel mini-mill at 1678 Red Rock Road, St. Paul, Minnesota.

18. On August 28, 2008, the Minnesota Pollution Control Agency (MPCA), issued Title V Permit No. 12300055-004 (the "Title V Permit") to Gerdau for the operations at its St. Paul facility.

19. Emissions from Gerdau's auto shredding operations are subject to the opacity limitations in the post-1969 industrial process equipment rule in the Minnesota SIP at Minnesota Rule 7011.0715, Subpart 1(B).

20. Emissions from Gerdau's auto shredding operations are required by the Title V Permit to have an opacity of less than or equal to 20%. See Minn. R. 7011.0715, Subpart 1(B).

21. The Title V Permit provisions for the auto shredding emission unit (EU003) require Gerdau to keep the main hammermill spray line pressure greater than or equal to four pounds per square inch (psi), unless a new range has been set pursuant to Minn. R. 7017.2025, Subpart 3, based on the values recorded during the most recent MPCA approved performance test where compliance was demonstrated.

22. The Title V Permit provisions for EU003 require Gerdau to keep the main hammermill spray line flow rate greater than or equal to six gallons per minute (gpm), unless a new range has been set pursuant to Minn. R. 7017.2025, Subpart 3, based on the values recorded during the most recent MPCA approved performance test where compliance was demonstrated.

23. The Title V Permit provisions for EU003 require Gerdau to keep the venturi water pressure greater than or equal to 17 psi, unless a new range has been set pursuant to Minn. R. 7017.2025, Subpart 3, based on the values recorded during the most recent MPCA approved performance test where compliance was demonstrated.

24. The Title V Permit provisions for EU003 require Gerdau to keep the venturi flow rate greater than or equal to 409 gpm, unless a new range has been set pursuant to Minn. R. 7017.2025, Subpart 3, based on the values recorded during the most recent MPCA approved performance test where compliance was demonstrated.

25. The Title V Permit provisions for EU003 require Gerdau to keep the demister water pressure greater than or equal to 19 psi, unless a new range has been set pursuant to Minn. R. 7017.2025, Subpart 3, based on the values recorded during the most recent MPCA approved performance test where compliance was demonstrated.

26. The Title V Permit provisions for EU003 require Gerdau to keep the demister flow rate greater than or equal to 289 gpm, unless a new range has been set pursuant to Minn. R. 7017.2025, Subpart 3, based on the values recorded during the most recent MPCA approved performance test where compliance was demonstrated.

27. The Title V Permit provisions for EU003 require that Gerdau keep records of the number of hours the shredder was operating each day.

28. On August 30, 2016, EPA conducted off-site opacity readings of visible emissions from the Auto Shredding stack (SV003), from 9:57 am to 10:57 am, local time, according to the 40 C.F.R. Part 60, Appendix A, Reference Method 9 - Visual determination of the opacity of emissions from stationary sources (Method 9). From the analysis of the Method 9 readings, EPA discovered seven 6-minute average exceedances of the 20% opacity limit at SV003, with the highest 6-minute average opacity reading of 36.5%.

29. On September 1, 2016, EPA conducted off-site Method 9 opacity readings of visible emissions from the SV003, from 10:05 am to 10:58 am, local time. From the analysis of the Method 9 readings, EPA discovered six 6-minute average exceedances of the 20% opacity limit at SV003, with the highest 6-minute-average opacity reading of 43.5%.

30. Gerdau submitted a deviation report dated April 29, 2016, and covering the reporting period of January 1, 2016 through March 31, 2016, to the MPCA.

31. Gerdau submitted a deviation report dated July 22, 2016, and covering the reporting period of April 1, 2016 through June 30, 2016, to the MPCA.

32. On October 13, 2016, EPA issued an information request to Gerdau pursuant to Section 114(a) of the CAA, 42 U.S.C. § 7414(a) (the 114 Request).

33. On October 21, 2016, EPA issued to Gerdau a Notice of Violation and Finding of Violation (NOV/FOV) alleging that it violated the Minnesota SIP and its Title V Permit of the CAA and its implementing regulations by: exceeding 20% opacity at SV003; violating operating parameters for the venturi spray line water pressure, venturi spray line flow rate, and demister spray line flow rate; and missing required records for parameter monitoring.

34. On November 4, 2016, Gerdau conducted Method 9 readings from SV003, from 8:37 am to 9:38 am, local time. The analysis of the Method 9 readings showed that during this time there were two 6-minute average exceedances of the 20% opacity limit at the stack, with the highest 6-minute average opacity reading of 22%.

35. On December 1, 2016, representatives of Gerdau and EPA discussed the October 21, 2016 NOV/FOV and the November 4, 2016 SV003 Method 9 readings results.

36. On December 15, 2016, Gerdau provided to EPA a proposal of steps the facility planned on taking in 2017 to minimize emissions from Gerdau's auto shredding operations and resolve the opacity violations.

37. On December 12 and 21, 2016, Gerdau submitted information to EPA, responding, in part, to the 114 Request (December 2016 Response).

38. In the December 2016 Response, Gerdau provided EPA with EU003 historical daily operating records for the period January 1, 2014 through September 30, 2016 for the following parameters:

- a. Hours of operation measured in hours per day;
- b. Main hammermill spray line pressure measured in pounds per square inch;
- c. Main hammermill spray line flow measured in gallons per minute;
- d. Venturi water pressure measured in pounds per square inch;
- e. Venturi flow rate measured in gallons per minute;
- f. Demister water pressure measured in pounds per square inch; and
- g. Demister flow rate measured in gallons per minute.

39. Gerdau submitted a deviation report dated January 30, 2017, and covering the reporting period of July 1, 2016 through December 31, 2016, to the MPCA.

40. Gerdau submitted a deviation report dated April 28, 2017, and covering the reporting period of January 1, 2017 through March 31, 2017, to the MPCA.

41. On June 16, 2017, representatives of Gerdau and EPA discussed the December 2016 Response and the upcoming 2017 SV003 stack test.

42. On July 28, 2017, Gerdau provided to EPA a revised Excel spreadsheet of historical daily operating records for the period January 1, 2014 through September 30, 2016, previously provided in the December 2016 Response.

43. On August 9, 2017, Gerdau submitted to EPA for approval the test plan for the upcoming 2017 SV003 opacity and PM10 stack test.

44. On August 31, 2017, EPA issued to Gerdau a NOV/FOV alleging that it violated the Minnesota SIP and Title V Permit of the CAA and its implementing regulations by: exceeding 20% opacity at SV003; violating operating parameters for the venturi spray line water pressure, venturi spray line flow rate, and demister spray line flow rate; missing required records for parameter monitoring; and failing to operate the control equipment in a manner as to achieve and maintain compliance with the PM10 emission limit.

45. On October 12-13, 2017, Gerdau conducted the SV003 opacity and PM stack test, and the analysis of Method 9 readings showed average opacity readings of 8.3%.

Civil Penalty

46. Based on analysis of the factors specified in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), the facts of this case, Gerdau's cooperation, and Gerdau's agreement to

perform a supplemental environmental project, EPA has determined that an appropriate civil penalty to settle this action is \$21,388.50.

47. Within 30 days after the effective date of this CAFO, Respondent must pay a \$21,388.50 civil penalty by either sending a cashier's or certified check by regular U.S. Postal Service mail, payable to "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

The check must note Respondent's name and the docket number of this CAFO.

48. Respondent must send a notice of payment that states Respondent's name and the docket number of this CAFO to EPA at the following addresses when it pays the penalty:

Attn: Compliance Tracker (AE-18J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

or R5ARDenforcement@epa.gov

Josh Zaharoff (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

49. This civil penalty is not deductible for federal tax purposes.

50. If Respondent does not pay timely the civil penalty or any stipulated penalties for SEPs due under paragraph 64, below, EPA may request the Attorney General of the United

States to bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties and the United States enforcement expenses for the collection action under Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

51. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay the United States enforcement expenses, including but not limited to attorneys fees and costs incurred by the United States for collection proceedings. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue. This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. 42 U.S.C. § 7413(d)(5).

Supplemental Environment Project

52. Respondent must complete a supplemental environmental project (SEP) designed to protect public health by reducing non-methane hydrocarbons (NMHC), nitrous oxides (NO_x) and particulate matter (PM) emissions from a crane used for scrap metal handling at the St. Paul facility.

53. At its St. Paul facility, Respondent must complete the SEP as follows. Within six months after the effective date of this CAFO, Gerdau shall permanently decommission its Terex Fuchs 360 crane, equipped with a 190 KW, Tier 3 rated engine, and begin use and operation of a replacement Fuchs MHL 390 F2 crane, equipped with a Tier 4 rated engine.

54. Respondent must spend at least \$846,790 to purchase the equipment.

55. Respondent must use the Fuchs MHL 390 F2 in its crane fleet as a replacement for the Terex Fuchs 360 crane for at least two years following its first use.

56. Respondent certifies as follows:

I certify that Gerdau is not required to perform or develop the SEP by any law, regulation, order, or agreement or as injunctive relief as of the date that I am signing this CAFO. I further certify that Gerdau has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

I certify that Gerdau is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. I further certify that, to the best of my knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date that I am signing this CAFO (unless the project was barred from funding as statutorily ineligible). For purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not expired.

57. EPA may inspect the facility at any time to monitor Respondent's compliance with this CAFO's SEP requirements.

58. Respondent must submit a notification to EPA within 30 days of the first use of the Fuchs MHL 390 F2 in its crane fleet indicating the date of first use.

59. Respondent must submit a SEP completion report to EPA within 30 days of completion of the SEP. This report must contain the following information:

- a. Detailed description of the SEP as completed;
- b. Description of any operating problems and the actions taken to correct the problems;
- c. Itemized cost of goods and services used to complete the SEP documented by copies of invoices, purchase orders or cancelled checks that specifically identify and itemize the individual cost of the goods and services;
- d. Certification that Respondent has completed the SEP in compliance with this CAFO; and
- e. Description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).

60. Respondent must submit all notices and reports required by this CAFO to the Compliance Tracker of the Air Enforcement and Compliance Assurance Branch at the address provided in paragraph 48, above.

61. In each report that Respondent submits as provided by this CAFO, it must certify that the report is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, it is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

62. Following receipt of the SEP completion report described in paragraph 59, above, EPA must notify Respondent in writing that:

- a. It has satisfactorily completed the SEP and the SEP report;
- b. There are deficiencies in the SEP as completed or in the SEP report and EPA will give Respondent 30 days to correct the deficiencies; or
- c. It has not satisfactorily completed the SEP or the SEP report and EPA will seek stipulated penalties under paragraph 64.

63. If EPA exercises option b above, Respondent may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, EPA will give Respondent a written decision on its objection. Respondent will comply with any requirement that EPA imposes in its decision. If Respondent does not complete the SEP as required by EPA's decision, Respondent will pay stipulated penalties to the United States under paragraph 64, below.

64. If Respondent violates any requirement of this CAFO relating to the SEP, Respondent must pay stipulated penalties to the United States as follows:

- a. Except as provided in subparagraph b, below, if Respondent did not complete the SEP satisfactorily according to the requirements of this CAFO, including the schedule in paragraph 53, Respondent must pay a penalty of \$64,166.
- b. If Respondent did not complete the SEP satisfactorily, but EPA determines that Respondent made good faith and timely efforts to complete the SEP and certified, with supporting documents, that it spent at least 90 percent of the amount set forth in paragraph 54, Respondent will not be liable for any stipulated penalty under subparagraph a, above.
- c. If Respondent completed the SEP satisfactorily, but spent less than 90 percent of the amount set forth in paragraph 54, Respondent must pay a penalty of \$16,042.
- d. If Respondent did not submit timely the SEP completion report, Respondent must pay penalties in the following amounts for each day after the report was due until it submits the report:

<u>Penalty per violation per day</u>	<u>Period of violation</u>
\$500	1 st through 14 th day
\$750	15 th through 30 th day
\$1,000	31 st day and beyond

65. EPA's determinations of whether Respondent completed the SEP satisfactorily and whether Respondent made good faith and timely efforts to complete the SEP will bind Respondent.

66. Respondent must pay any stipulated penalties within 15 days of receiving EPA's written demand for the penalties. Respondent will use the method of payment specified in paragraph 47 and 48, above, and will pay interest and nonpayment penalties on any overdue amounts.

67. Any public statement that Respondent makes referring to the SEP must include the following language: "Gerdau undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against Gerdau for violations of the Clean Air Act and its Air Permit issued by MPCA."

68. For federal income tax purposes, Respondent will neither capitalize into inventory or basis, nor deduct any costs or expenditures incurred in performing the SEP.

General Provisions

69. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: Zaharoff.josh@epa.gov (for Complainant), and jolson@seyfarth.com (for Respondent).

70. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

71. The CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

72. This CAFO does not affect Respondent's responsibility to comply with the CAA and other applicable federal, state and local laws. Except as provided in paragraph 70, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

73. Respondent certifies that it is complying fully with the Minnesota SIP.

74. This CAFO constitutes an "enforcement response" as that term is used in EPA's Clean Air Act Stationary Civil Penalty Policy to determine Respondent's "full compliance history" under Section 113(e) of the CAA, 42 U.S.C. § 7413(e).

75. The terms of this CAFO bind Respondent, its successors and assigns.

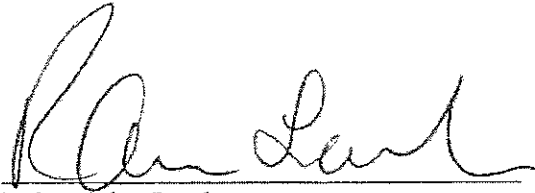
76. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

77. Each party agrees to bear its own costs and attorneys fees in this action.

78. This CAFO constitutes the entire agreement between the parties.

Gerdau Ameristeel US Inc., Respondent

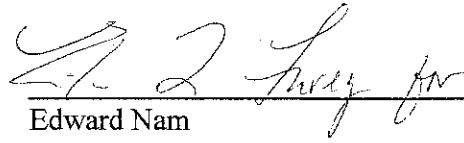
SEPT 25, 2018
Date

A handwritten signature in black ink, appearing to read "Robert Alan Lamb", written over a horizontal line.

Robert Alan Lamb
VP/General Manager
Gerdau Ameristeel US Inc.

United States Environmental Protection Agency, Complainant

7/27/18
Date



Edward Nam
Director
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5

Consent Agreement and Final Order
In the Matter of: Gerdau Ameristeel US Inc.
Docket No. CAA-05-2018-0030

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

9/28/18
Date

Ann L. Coyle, acting for us
Ann L. Coyle
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 5

Consent Agreement and Final Order
In the matter of: Gerdau Ameristeel US Inc.
Docket Number: CAA-05-2018-0030

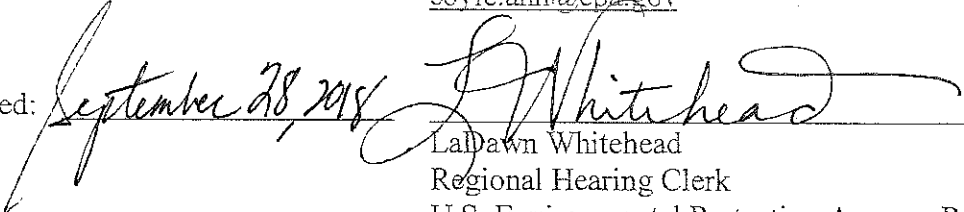
CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number CAA 05 2018 0030, which was filed on 9/28/2018, in the following manner to the following addressees:

Copy by E-mail to Attorney for Complainant: Josh Zaharoff
Zaharoff.josh@epa.gov

Copy by E-mail to Attorney for Respondent: Jeryl Olson
233 S. Wacker Drive, Suite 8000
Chicago, Illinois 60606-6448
jolson@sevfarth.com

Copy by E-mail to Regional Judicial Officer: Ann Coyle
coyle.ann@epa.gov

Dated: September 28, 2018 
LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5