

# THOMPSON & KNIGHT LLP

ATTORNEYS AND COUNSELORS

JAMES MORRISS  
DIRECT DIAL: (512) 469-6130  
EMAIL: James.Morriss@tklaw.com

1900 SAN JACINTO CENTER  
98 SAN JACINTO BOULEVARD  
AUSTIN, TEXAS 78701-4238  
(512) 469-6100  
FAX (512) 469-6180  
www.tklaw.com

AUSTIN  
DALLAS  
FORT WORTH  
HOUSTON  
NEW YORK  
SAN ANTONIO

ALGIERS  
LONDON  
MEXICO CITY  
MONTERREY  
PARIS  
RIO DE JANEIRO  
SÃO PAULO  
VITÓRIA

September 29, 2008

**Via Hand Delivery**

LaDonna Castañuela, Chief Clerk  
Texas Commission on Environmental Quality  
Office of Chief Clerk  
12100 Park 35 Circle, Bldg. F-1  
Austin, Texas 78711-3087

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY  
2008 SEP 29 PM 2: 57  
CHIEF CLERKS OFFICE

Re: Docket No. 2005-0272-AIR; TCEQ Air Permit No. 3342

Dear Ms. Castañuela:

Enclosed are the original and 12 copies of Applicant U. S. Steel Tubular Products, Inc.'s Response to Request for Contested Case Hearing in the above-referenced matter.

Please file the original and 11 copies, and return a file-marked copy to me. I am this date sending copies of the same to the below named individuals.

Thank you.

Very truly yours,



James C. Morriss III

Enclosures

cc's to:

**For the Executive Director**  
Christopher R. Brown, Staff Attorney  
Texas Commission on Environmental Quality  
Environmental Law Division  
(Mailing:) MC-173  
P.O. Box 13087  
Austin, Texas 78711-3087

Via CM, RRR#  
7007 0710 0004 6507 3016

LaDonna Castanuela, Chief Clerk  
September 29, 2008  
Page 2

Michael D. Gould, Technical Staff  
Texas Commission on Environmental Quality  
Air Permits Division  
(Mailing:) MC-163  
P.O. Box 13087  
Austin, Texas 78711-3087

Via CM, RRR#  
7007 0710 0004 6507 3023

Beecher Cameron, Technical Staff  
Texas Commission on Environmental Quality  
Air Permits Division  
(Mailing:) MC-163  
P.O. Box 13087  
Austin, Texas 78711-3087

Via CM, RRR#  
7007 0710 0004 6507 3047

Mr. Douglas Brown  
Texas Commission on Environmental Quality  
(Mailing:) MC-173  
P.O. Box 13087  
Austin, Texas 78711-3087

Via CM, RRR#  
7007 0710 0004 6507 3009

**For the Office of Public Assistance**  
Ms. Bridget Bohac, Director  
Texas Commission on Environmental Quality  
Office of Public Assistance  
(Mailing:) MC-108  
P.O. Box 13087  
Austin, Texas 78711-3087

Via CM, RRR#  
7007 0710 0004 6512 5470

**For the Chief Clerk**  
Docket Clerk  
Texas Commission on Environmental Quality  
Office of the Chief Clerk  
Ms. LaDonna Castañuela  
12100 Park 35 Circle  
Building F, Room 1101  
(Mailing:) MC-105  
Austin, TX 78753

Via Hand Delivery

**For Public Interest Council**  
Mr. Blas Coy, Jr.  
Public Interest Counsel  
Texas Commission on Environmental Quality  
(Mailing:) MC-103  
P.O. Box 13087  
Austin, Texas 78711-3087

Via CM, RRR#  
7007 2680 0000 6533 3545

LaDonna Castanuela, Chief Clerk  
September 29, 2008  
Page 3

**Requester**

Mr. Donnie O. Turner  
P.O. Box 56159  
Riverside, CA 92517

Via CM, RRR #  
7007 0710 0004 6507 2996

**For the Applicant**

Mr. Jeremy DuMond  
Area Manager, Environmental Compliance  
US Steel Tubular Products, Inc.  
6686 Highway 259 South  
P.O. Box 1000  
Lone Star, TX 75668-1000

Mr. Joe Pricener  
Attorney - Environmental - Law Department  
600 Grant Street  
Room 1500  
Pittsburgh, PA 15219-2800

Chris Smith, Firm

DOCKET NO. 2005-0272-AIR

2008 SEP 29 PM 2:57

TCEQ AIR QUALITY PERMIT NO. 3342

CHIEF CLERKS OFFICE

APPLICATION BY	§	BEFORE THE
LONE STAR STEEL CO.	§	TEXAS COMMISSION ON
LONE STAR, MORRIS COUNTY	§	ENVIRONMENTAL QUALITY

**APPLICANT U. S. STEEL TUBULAR PRODUCTS, INC.'S  
RESPONSE TO REQUEST FOR CONTESTED CASE HEARING**

TO THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

Applicant U. S. Steel Tubular Products, Inc. ("U. S. Steel") (formerly Lone Star Steel Company, L.P.), respectfully asks the Commission to deny the contested case hearing requested in this docket.

**I. BACKGROUND**

U. S. Steel operates a steel mill that manufactures steel products, including piping and tubing. The emissions units subject to the Permit include two electric arc furnaces and a specialty tubing facility. U. S. Steel seeks renewal of the Permit under TEX. HEALTH & SAFETY CODE § 382.055, for the continued operation of its plant. This renewal will not authorize any change in currently authorized operations, emission levels, or pollutants. A map showing the location of the emissions units subject to this permit is attached as **Exhibit A**.

**II. ARGUMENT**

This renewal does not authorize any changes to emission levels or compounds being emitted. Therefore, the Commission should deny the request for hearing and renew the Permit. Mr. Donnie Turner has requested a contested case hearing in this docket. Mr.

Turner is a California resident who owns property approximately five miles from the emissions units subject to the permit. The location of Mr. Turner's property relative to the permitted units is depicted on **Exhibit A**. Mr. Turner is not entitled to a contested case hearing for a number of reasons.

**A. Members of the public, like Mr. Turner, lack standing to request a contested case hearing on permit renewals where the renewal will not change emission levels or the compounds emitted.**

Texas law establishes strict limits on the right to a contested case hearing for a permit renewal when no increase in emissions or change in the nature of the emissions occurs.

The commission may not seek further public comment or hold a public hearing . . . in response to a request for a public hearing on an amendment, modification, or renewal that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted.<sup>1</sup>

This limit avoids needless delay and expense associated with a contested case hearing when there is no change in the operations, and the permit action will have no effect on the public. The renewal in this docket will not result in an emission increase or in the emission of an air contaminant not previously emitted. The above-quoted statute does provide an exception allowing the Commission to grant a hearing based upon compliance history.<sup>2</sup> Neither Lone Star Steel nor its successor U. S. Steel, is subject to that exception because its compliance history is not in the lowest classification. Consequently, a contested case hearing should not be ordered.

---

<sup>1</sup> TEX. HEALTH & SAFETY CODE § 382.056(g).

<sup>2</sup> *Id.* § 382.056(o).

Consistent with statutory limitations, TCEQ rules provide a basis for denying Mr. Turner's hearing request. Under 30 TEX. ADMIN. CODE § 55.201(i)(3)(C), there is no right to a contested case hearing on a permit renewal that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted. While this provision includes an exception for cases where the application involves a facility for which the applicant's compliance history contains unresolved violation that constitute a "recurring pattern of egregious conduct,"<sup>3</sup> that exception does not apply here. Thus, Mr. Turner's request must be denied.

**B. Even if a hearing request could be granted on this renewal (which it cannot), Mr. Turner's hearing request must be denied because he is not an "affected person."**

Only an "affected person," as defined by TEX. WATER CODE § 5.115, is entitled to request a contested case hearing.<sup>4</sup> An "affected person" is a person who has a personal justiciable interest related to a legal right, duty, privilege, power or economic interest affected by the Commission's proposed action.<sup>5</sup> An interest common to members of the general public does not qualify as a personal justiciable interest.<sup>6</sup> Here, Mr. Turner has failed establish that he is an "affected person."

TCEQ rules prescribe the relevant factors that should be considered in determining whether a person is an "affected person."<sup>7</sup> Applying those factors, Mr. Turner is not an "affected person." One factor that must be considered is whether the

---

<sup>3</sup> 30 TEX. ADMIN. CODE § 55.201(i)(3)(C).

<sup>4</sup> TEX. WATER CODE § 5.556(c) ("The commission may not grant a request for a contested case hearing unless the commission determines that the request was filed by an affected person[.]").

<sup>5</sup> TEX. WATER CODE § 5.115(a).

<sup>6</sup> *Id.*

<sup>7</sup> *See* 30 TEX. ADMIN. CODE § 55.203.

interest claimed is one protected by the law under which the application will be considered.<sup>8</sup> Here, the nature of the issues set out in the hearing request have nothing to do with air emissions from the facilities which are the subject of the permit, their past operations, or the terms of the permit renewal. Another factor to be considered is any applicable distance restriction or other limitations imposed by law on the affected interest.<sup>9</sup> Mr. Turner has not identified any such restrictions that apply. A third factor is whether a reasonable relationship exists between the interest claimed and the activity regulated.<sup>10</sup> Again, there is no relationship between the interest claimed by Mr. Turner and the permitting action in this docket. In addition, the distance between the units subject to the Permit and Mr. Turner's property, about 5 miles, makes such relationship unlikely. Other factors include the likely impact of the regulated activity on the health, safety, and use of property, and on natural resources used by the requestor.<sup>11</sup> Mr. Turner has not raised any issue about the effect of the regulated activities on health, safety, the use of property, or the use of natural resources. Instead, he alludes to waste management issues on property adjacent to his. Thus, his allegations have nothing to do with the issues before the commission on the renewal of the air permit. Further, there is no waste management activity on the adjoining property and his complaints have been fully investigated by TCEQ and EPA and found to be groundless. EPA's report attached as **Exhibit B.**<sup>12</sup> In summary, all of the relevant factors support the conclusion that Mr. Turner is not an "affected person."

---

<sup>8</sup> *Id.* § 55.203(c)(1).

<sup>9</sup> *Id.* § 55.203(c)(2).

<sup>10</sup> *Id.* § 55.203(c)(3).

<sup>11</sup> *Id.* §§ 55.203(c)(4),(5).

<sup>12</sup> Please also see the Executive Director's Response to Comments in Docket No. 2006-0349-IHW.

**C. Mr. Turner is not entitled to a contested case hearing because he has not identified any disputed question of fact that is relevant and material to the renewal.**

TCEQ rules provide that the Commission may not refer an application for a contested case hearing unless the request for hearing identifies issues that involve a disputed question of fact that is relevant and material to the application.<sup>13</sup> While Mr. Turner's request contains unsubstantiated allegations of waste dumping, he does not identify any issues that are relevant and material to the Commission's decision on the renewal of this air permit. Thus, his request for a hearing should be denied.

### **III. ADDITIONAL CONSIDERTIONS**

There have been a number of changes in the level of operations at the U. S. Steel plant since it was acquired from Lone Star Steel, all of which have resulted in emission reductions. For example, the electric arc furnaces or EAFs, which are significant sources of emissions governed by this permit, are not currently operating. The final decision regarding future operations of the EAFs has not yet been made. The company will keep the TCEQ informed of changes at the plant, and will work with TCEQ staff to address future permitting issues as they arise.

### **IV. CONCLUSION**

Because this renewal will not authorize any changes in currently authorized operations, emission levels, or pollutants, the Commission should grant the renewal without a contested case hearing.

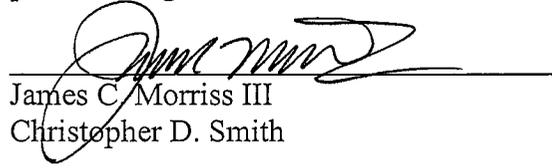
---

<sup>13</sup> See TEX. WATER CODE § 5.556(d); 30 TEX. ADMIN. CODE §§ 50.115(c), 55.211(c)(2)(A).

Respectfully submitted,

Thompson & Knight LLP

By:

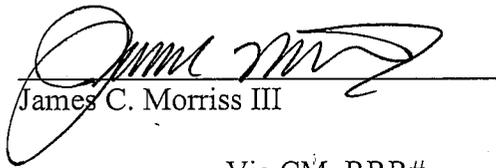
  
James C. Morris III  
Christopher D. Smith

98 San Jacinto Blvd., Ste. 1900  
Austin, Texas 78701  
Tel: 512-469-6100  
Fax: 512-469-6180

**Attorneys for Applicant  
U. S. Steel Tubular Products, Inc.**

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing document will be served, via certified mail, return receipt requested, on the following parties of record on this, the 29th day of September, 2008.

  
James C. Morris III

**For the Executive Director**  
Christopher R. Brown, Staff Attorney  
Texas Commission on Environmental Quality  
Environmental Law Division  
(Mailing:) MC-173  
P.O. Box 13087  
Austin, Texas 78711-3087

Via CM, RRR#  
7007 0710 0004 6507 3023

2008 SEP 29 PM 2: 58  
CHIEF CLERKS OFFICE

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

Michael D. Gould, Technical Staff  
Texas Commission on Environmental Quality  
Air Permits Division  
(Mailing:) MC-163  
P.O. Box 13087  
Austin, Texas 78711-3087

Via CM, RRR#  
7007 0710 0004 6507 3023

Beecher Cameron, Technical Staff  
Texas Commission on Environmental Quality  
Air Permits Division  
(Mailing:) MC-163  
P.O. Box 13087  
Austin, Texas 78711-3087

Via CM, RRR#  
7007 0710 0004 6507 3047

Mr. Douglas Brown  
Texas Commission on Environmental Quality  
(Mailing:) MC-173  
P.O. Box 13087  
Austin, Texas 78711-3087

Via CM, RRR#  
7007 0710 0004 6507 3009

**For the Office of Public Assistance**  
Ms. Bridget Bohac, Director  
Texas Commission on Environmental Quality  
Office of Public Assistance  
(Mailing:) MC-108  
P.O. Box 13087  
Austin, Texas 78711-3087

Via CM, RRR#  
7007 0710 0004 6512 5470

**For the Chief Clerk**  
Docket Clerk  
Texas Commission on Environmental Quality  
Office of the Chief Clerk  
Ms. LaDonna Castañuela  
12100 Park 35 Circle  
Building F, Room 1101  
(Mailing:) MC-105  
Austin, TX 78753

Via Hand Delivery

**For Public Interest Council**  
Mr. Blas Coy, Jr.  
Public Interest Counsel  
Texas Commission on Environmental Quality  
(Mailing:) MC-103  
P.O. Box 13087  
Austin, Texas 78711-3087

Via CM, RRR#  
7007 2680 0000 6533 3545

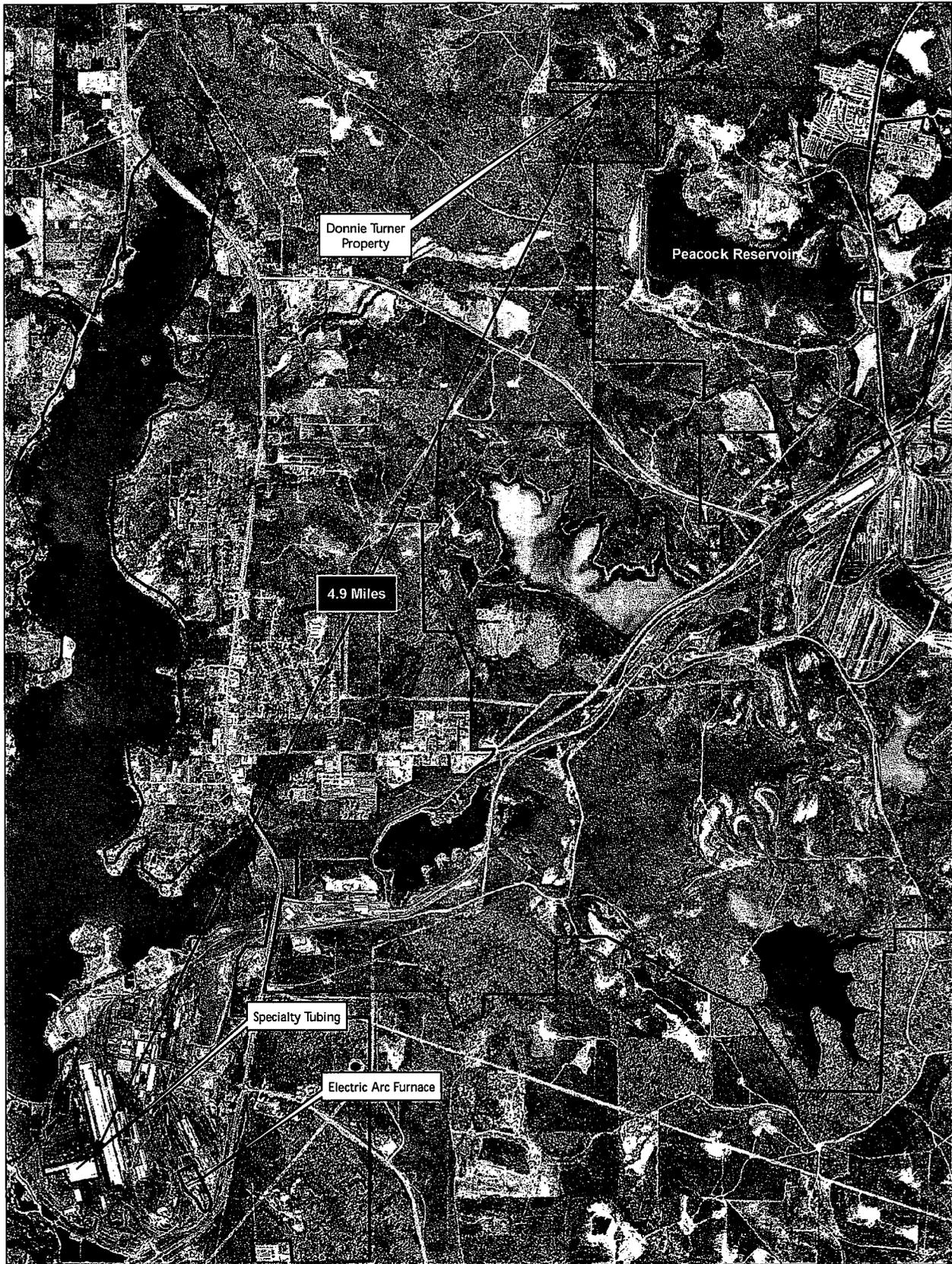
**Requester**  
Mr. Donnie O. Turner  
P.O. Box 56159  
Riverside, CA 92517

Via CM, RRR #  
7007 0710 0004 6507 2996

# Exhibit A

**Exhibit A**

**Geographic Reference Points, Air Permit 3342 Renewal  
U. S. Steel Tubular Products, Inc., Texas Operations  
Morris County, Texas**



-  U. S. Steel Property Boundary
-  Air Permit 3342 Renewal

**5**



Vector Data are for representation only and should not be used as a legal description  
Basemap Data: .5 meter resolution RGB Imagery  
Source: Kingwood Forestry  
Date of flight: March 2008

# Exhibit B



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

Criminal Investigation Division  
Office of Criminal Enforcement, Forensics, and Training  
Dallas Area Office (6CID)  
1445 Ross Avenue  
Dallas, TX 75202-2733

December 8, 2004

MEMORANDUM

SUBJECT: Investigative Lead

File:  
Lead:

FROM:

Dallas Area Office

TO:

Criminal Investigation Division

On August 5, 2004, HQ Lead [redacted] was received by the Dallas Area Office. The lead was assigned Dallas Lead Number [redacted].

The complainant submitted a letter to the EPA in June 2004 alleging that hazardous chemicals/waste had been dumped at the Lone Star Steel facility. Additionally, the complainant describes a dam built by Lone Star Steel that has caused flooding.

On August 10, 2004, the agent assigned to this matter traveled to Lone Star Steel and met with the manager of environmental services to discuss the allegations. The [redacted] provided closure permits approved by the State of Texas for the waste piles and ponds referenced by the complainant. The dam referenced by the complainant is associated with a reservoir at the facility. The reservoir was at 50% capacity at the time of the site visit and not in danger of flooding.

Based on the investigation to date, no further action by EPA Criminal Investigation Division is warranted. This lead has been closed.