



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NEW YORK 10007-1866

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Rick W. Kennedy
HodgsonRuss, LLP
The Guaranty Building
140 Pearl Street, Suite 100
Buffalo, NY 14202-4040

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG.II
2012 MAR 30 A 10:37
REGIONAL HEARING
CLERK

Re: **In the Matter of Tonawanda Coke Corporation**
Docket Number RCRA-02-2012-7104

Dear Mr. Kennedy:

Enclosed please find a fully executed Order. This Order is effective upon the date of filing with the Regional Hearing Clerk.

Thank you for your cooperation.

Sincerely,

A handwritten signature in black ink, appearing to read "C. Howard".

Carl R. Howard
Assistant Regional Counsel

cc: Russ Brauksieck, NYSDEC

Enc.

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

IN THE MATTER OF:	x
Tonawanda Coke Corporation,	:
Respondent.	:
Proceeding under Section 3008 of the Solid Waste Disposal Act, 42 U.S.C. § 6928, as amended	:
	x

CONSENT AGREEMENT
AND
FINAL ORDER

Docket No. RCRA-02-2012-7104

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
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PRELIMINARY STATEMENT

This is a civil administrative proceeding instituted pursuant to Section 3008 of the Solid Waste Disposal Act, as amended by various laws including the Resource Conservation and Recovery Act and the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. § 6901 *et seq.* (referred to collectively as the "Act" or "RCRA").

Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes the Administrator to enforce violations of the Act and the regulations promulgated pursuant to it. Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance ("Complainant") of the U.S. Environmental Protection Agency, Region 2 ("EPA"), has been duly delegated the authority to institute this action.

Pursuant to 40 Code of Federal Regulations ("C.F.R.") § 22.13(b), where parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may simultaneously be commenced and concluded by the issuance of a Consent Agreement and Final Order ("CAFO") pursuant to 40 C.F.R. 22.18(b).

The Complainant and Respondent agree that settling this matter by entering into this CAFO pursuant to 40 C.F.R. 22.13(b) and 22.18(b) is an appropriate means of resolving this matter without further litigation.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent is the Tonawanda Coke Corporation (hereinafter the "Respondent").
2. Complainant issued a "Complaint and Notice of Opportunity for Hearing" to Respondent on December 17, 2009, bearing the docket number RCRA-02-2010-7104. The Complaint alleged that Respondent had violated requirements of RCRA and regulations concerning the management of hazardous waste at its facility in Tonawanda, New York.
3. The parties settled the above-noted matter in a Consent Agreement and Final Order ("First CAFO") issued on August 3, 2010.

4. Pursuant to above-noted First CAFO, TCC was required to complete implementation of its Tank Removal Work Plan at its facility and provide written certification of work performed by a specified date.
5. The parties later entered into a second CAFO ("Second CAFO") which was issued on March 10, 2011. Under this Second CAFO, the schedule for performance of the Tank Removal Work was modified and a schedule was established for submission of monthly status reports. The first status report under the Second CAFO was due to be submitted on or before May 10, 2011. Through an oversight, TCC did not submit its first report until May 31, 2011. TCC submitted all subsequent status reports on schedule.
6. In performing the Tank Removal Work Plan, the Respondent encountered significantly more material requiring excavation than contemplated by the approved work plan or the First and Second CAFOs. The additional materials could not be recycled in accordance with the schedule/deadlines established pursuant to the Second CAFO.
7. The parties have agreed to enter into a new CAFO to establish new schedules as specified below.
8. Both of the above-noted CAFOs remain in full force and effect with the exception that the prior Project Schedule is supplanted by the provisions of paragraph 1 of the Consent Agreement below and the Project Schedule in Attachment 1.

CONSENT AGREEMENT

Based upon the foregoing, and pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, and 40 C.F.R. § 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, Complainant and Respondent enter into the following Consent Agreement.

1. Respondent shall:
 - a. Implement the Tank Removal Work Plan, as accepted by EPA, according to the project schedule in Attachment 1, for the: (a) completion of on-site recycling of excavated residual tar-like material. Any modifications of the schedule in Attachment 1 must be approved by EPA in writing.
 - b. Submit Monthly Status Reports, and a Final Report, as specified in Attachment 1.
 - c. Submit the Certification, Monthly Reports, Final Report, and any other information and notices submitted pursuant to this Consent Agreement to:

Leonard Grossman
U.S. Environmental Protection Agency
RCRA Compliance Branch
290 Broadway, 21st Floor
New York, NY 10007-1866

2. For the purposes of this proceeding, Respondent: (a) admits the jurisdictional basis for this action; and (b) neither admits nor denies the above Findings of Fact and Conclusions of Law in this Consent Agreement and Final Order.
3. This Consent Agreement and any provision herein shall not be construed as an admission in any criminal or civil action or other administrative proceeding, except in an action or proceeding to enforce or seek compliance with the provisions of this Consent Agreement and the Final Order incorporating it.
4. This CAFO does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.
5. Nothing herein shall be read to preclude EPA or the United States, however, from pursuing appropriate injunctive or other equitable relief or criminal sanctions for any violation of law or from seeking civil penalties for any violation of law. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable and consents to its issuance and its terms. Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all terms of settlement are set forth herein.
6. Respondent explicitly and knowingly waives its right to request or to seek any hearing on this Consent Agreement or on the Findings of Fact and Conclusions of Law herein, or on the accompanying Final Order.
7. Each undersigned signatory to this Consent Agreement certifies that he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all the terms and conditions set forth in this Consent Agreement.
8. The provisions of this CAFO shall be binding upon Respondent, its officers, directors, agents, servants, authorized representatives and successors or assigns.
9. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during discussion with or to be served with and to reply to any memorandum or communication addressed to the Regional Administrator or the Deputy Regional Administrator where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the attached Final Order.
10. Each party hereto agrees to bear its own costs and fees in this matter.
11. Respondent consents to service upon Respondent by a copy of this CAFO by an EPA employee other than the Regional Hearing Clerk.

Re: Tonawanda Coke Corporation
Docket Number RCRA-02-2012-7104

RESPONDENT:

Tonawanda Coke Corporation

BY: Michael K. Durkin
(Authorized Signature)

NAME: Michael K. Durkin
(PLEASE PRINT)

TITLE: Chief Financial Officer

DATE: 03/19/12

COMPLAINANT:

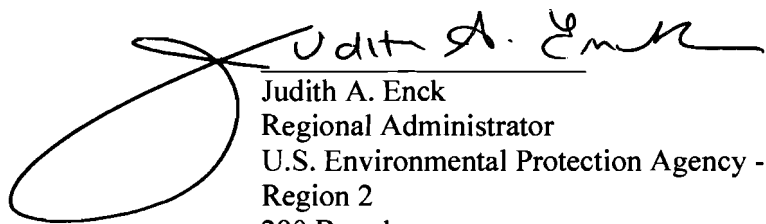
Dore LaPosta, Director
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency - Region 2
290 Broadway
New York, NY 10007

DATE: March 23, 2012

Re: Tonawanda Coke Corporation
Docket Number RCRA-02-2012-7104

FINAL ORDER

The Regional Administrator of the U.S. Environmental Protection Agency, Region 2, concurs in the foregoing Consent Agreement. The Agreement entered into by the parties is hereby ratified, incorporated by reference herein, and issued pursuant to Section 3008 of RCRA and 40 C.F.R. Section 22.18(b)(3), as an Order, effective immediately upon filing with the Regional Hearing Clerk.


Judith A. Enck
Regional Administrator
U.S. Environmental Protection Agency -
Region 2
290 Broadway
New York, New York 10007-1866

DATE: 3/26/12

**Re: Tonawanda Coke Corporation
Docket Number RCRA-02-2012-7104**

Attachment 1

Project Schedule

Unless modifications to this schedule are approved by EPA in writing, Respondent shall perform the project activities in accordance with the following schedule. Nothing in this schedule prevents Respondent from performing the work before these deadlines.

By no later than June 1, 2012

-Completion of on-site recycling of excavated residual tar-like material

Certification of Work Performed

-By no later than June 15, 2012, Respondent shall certify, if appropriate, that all of the work required by this schedule has been completed.

Monthly Status Reports

-Beginning ten (10) days after the date the Regional Administrator, EPA Region 2, signs the Final Order, or according to another schedule approved by EPA in writing, Respondent shall submit a Monthly Status Report every thirty (30) days. The Monthly Report shall detail all of the activities conducted by Respondent during the previous thirty (30) days.

Final Report

-By no later than June 15, 2012, Respondent shall submit a Final Report which shall provide a detailed description of all of the work performed by Respondent at the site and how all of the work required by this Order has been completed.

Re: Tonawanda Coke Corporation
Docket Number RCRA-02-2012-7104

Certificate of Service

This is to certify that I have this day caused (or am causing) to be sent the foregoing fully executed Consent Agreement and Final Order, bearing Docket Number RCRA-02-2012-7104 , in the following manner to the respective addressees below:

Original and One Copy
By Hand:

Office of Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 2
290 Broadway – 16th Floor
New York, New York 10007

Copy by Certified Mail,
Return Receipt Requested

Rick W. Kennedy, Esq.
Hodgson Russ LLP
The Guaranty Building
140 Pearl Street, Suite 100
Buffalo, NY 14202-4040

Dated: New York, New York

MAR 30 2012

Smildred M. Bay