

Rick W. Kennedy
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February 16, 2010

VIA HAND DELIVERY

Ms. Karen Maples, Regional Hearing Clerk
United States Environmental Protection Agency – Region 2
290 Broadway
16th Floor
New York, NY 10007-1866

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. 2
2010 FEB 17 11:11:23
REGIONAL HEARING
CLERK

Dear Ms. Ferrara:

Re: In the Matter of Tonawanda Coke Corporation Docket No. RCRA-02-2010-7104

In accordance with 40 CFR §§ 22.15(a) and 22.7(c) and Section V.A. of the Complaint, Compliance Order and Notice of Opportunity for Hearing issued by the United States Environmental Protection Agency (USEPA) and dated December 17, 2009, and the Order granting an extension of time to file an Answer to the Complaint issued by the Regional Judicial Officer on January 22, 2010, I have enclosed for filing the original and one (1) copy of the Respondent Tonawanda Coke Corporation's Answer, Defenses, and Request for Hearing.

I have also enclosed a copy of a letter to Carl Howard, Esq. (Assistant Regional Counsel, US Environmental Protection Agency) which demonstrates service of one (1) copy of the Answer, Defenses and Request for Hearing upon the Complainant in accordance with 40 CFR § 22.15(a) and Section V.A. of the Complaint.

Respectfully submitted,

A handwritten signature in black ink, appearing to be "RWS", written over the typed name "Rick W. Kennedy".

Rick W. Kennedy

RK/ajt
Enclosures

Rick W. Kennedy
Direct Dial: 716.848.1407
rkennedy@hodgsonruss.com



February 16, 2010

FEDERAL EXPRESS

Carl Howard, Esq.
Assistant Regional Counsel
United States Environmental Protection Agency – Region 2
290 Broadway
16th Floor
New York, NY 10007-1866

Dear Mr. Howard:

Re: In the Matter of Tonawanda Coke Corporation Docket No. RCRA-02-2010-7104

In accordance with 40 CFR §§ 22.15(a) and Section V.A. of the Complaint, Compliance Order and Notice of Opportunity for Hearing issued by the United States Environmental Protection Agency (USEPA) and dated December 17, 2009, and the Order granting an extension of time to file an Answer to the Complaint issued by the Regional Judicial Officer on January 22, 2010, I have enclosed one (1) copy of Respondent Tonawanda Coke Corporation's Answer, Defenses, and Request for Hearing. I have also enclosed a copy of a letter demonstrating that the original and one (1) copy of the Answer, Defenses and Request for Hearing was timely filed with the Regional Hearing Clerk.

This will also reaffirm Tonawanda Coke Corporation's request for an informal conference with USEPA to discuss the Complaint and Compliance Order. The company is committed to working diligently with the Agency to attempt to resolve the issues raised in this proceeding without the necessity of a formal hearing. Please contact me directly to discuss scheduling the conference. Thank you.

Very truly yours,

A handwritten signature in black ink, consisting of the letters "RK" followed by a long, sweeping flourish that extends downwards and to the right.

Rick W. Kennedy

RK/ajt
Enclosure

Carl Howard, Esq.
February 16, 2010
Page 2



cc: Ms. Karen Maples, Regional Hearing Clerk
United States Environmental Protection Agency – Region 2
290 Broadway
16th Floor
New York, NY 10007-1866

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY – REGION 2

IN THE MATTER OF:

TONAWANDA COKE CORPORATION, RESPONDENT,
PROCEEDING UNDER SECTION 3008 OF THE SOLID
WASTE DISPOSAL ACT, AS AMENDED.

**ANSWER, DEFENSES
AND REQUEST FOR
HEARING**
DOCKET NO.:
RCRA-02-2010-7104

REGIONAL HEARING
CLERK

2010 FEB 17 AM 11:23

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. 2

Respondent, Tonawanda Coke Corporation, by its attorneys Hodgson Russ LLP,
for its Answer to the Complaint, states:

A. RESPONSES TO FACTUAL ALLEGATIONS

BACKGROUND ALLEGATIONS

1. Respondent admits the allegations set forth in paragraph 1.
2. The allegations set forth in paragraph 2 constitute legal conclusions
which Respondent is not required to admit or deny.
3. Respondent admits the allegations set forth in paragraph 3.
4. Respondent admits the allegations set forth in paragraph 4.
5. Respondent admits the allegations set forth in paragraph 5.
6. The allegations set forth in paragraph 6 constitute legal conclusions
which Respondent is not required to admit or deny.
7. Respondent admits the allegations set forth in paragraph 7.

8. Respondent admits that an EPA representative was present at the facility on or about June 17, 2009; the remaining allegations set forth in Paragraph 8 constitute legal conclusions which Respondent is not required to admit or deny.

9. Respondent does not have the knowledge or information necessary to either admit or deny the allegations set forth in paragraph 9.

10. Respondent does not have the knowledge or information necessary to either admit or deny the allegations in paragraph 10.

11. Respondent does not have the knowledge or information necessary to either admit or deny the allegations set forth paragraph 11.

12. Respondent does not have the knowledge or information necessary to either admit or deny the allegations set forth paragraph 12.

13. The allegations set forth in paragraph 13 constitute legal conclusions which Respondent is not required to admit or deny. Respondent denies the allegations set forth in Paragraph 13 to the extent that they are not legal conclusions.

14. Respondent denies the allegations set forth paragraph 14.

15. Respondent does not have the knowledge or information necessary to either admit or deny the allegations set forth in paragraph 15.

16. The allegations set forth paragraph 16 constitute legal conclusions which Respondent is not required to admit or deny.

17. The allegations set forth in paragraph 17 constitute legal conclusions which Respondent is not required to admit or deny.

18. The allegations set forth in paragraph 18 constitute legal conclusions which Respondent is not required to admit or deny.

19. Respondent admits the allegations set forth in paragraph 19.

20. In response to the allegations set forth in paragraph 20, Respondent asserts that the October 2009 IRL speaks for itself.

21. Respondent admits the allegations set forth in paragraph 21.

22. In response to the allegations set forth in paragraph 22, Respondent asserts that its December 1, 2009 response to the October 2009 IRL speaks for itself.

23. In response to the allegations set forth in the first sentence of paragraph 23, Respondent asserts that its December 1, 2009 response to the October 2009 IRL speaks for itself. Further, the allegations set forth in the second sentence of paragraph 23 constitute legal conclusions which Respondent is not required to admit or deny.

24. The allegations set forth in paragraph 24 are legal conclusions which Respondent is not required to admit or deny.

25. The allegations set forth in paragraph 25 are legal conclusions which Respondent is not required to admit or deny.

COUNT ONE - UNPERMITTED DISPOSAL OF HAZARDOUS WASTES

26. Respondent restates its response to each of the allegations set forth in paragraphs 1 through 25 of the Complaint with the same force and effect as if they had been fully set forth here.

27. The allegations set forth in paragraph 27 constitute legal conclusions which Respondent is not required to admit or deny.

28. Respondent denies the allegations set forth in paragraph 28.

29. Respondent denies the allegations set forth in paragraph 29.

30. Respondent denies the allegations set forth in paragraph 30.

31. The allegations set forth in paragraph 31 constitute legal conclusions which Respondent is not required to admit or deny.

32. The allegations set forth in paragraph 32 constitute legal conclusions which Respondent is not required to admit or deny.

33. Respondent admits the allegations set forth in paragraph 33.

34. The allegations set forth in paragraph 34 constitute legal conclusions which Respondent is not required to admit or deny.

COUNT TWO - FAILURE TO MINIMIZE HAZARDOUS WASTE

35. Respondent repeats its response to each of the allegations contained in paragraphs 1 through 25 with the same force and effect as if they were fully set forth here.

36. The allegations set forth in paragraph 36 constitute legal conclusions which Respondent is not required to admit or deny.

37. The allegations set forth in paragraph 37 constitute legal conclusions which Respondent is not required to admit or deny. Respondent denies the allegations set forth in Paragraph 37 to the extent that they are not legal conclusions.

38. The allegations set forth in paragraph 38 constitute legal conclusions which Respondent is not required to admit or deny. Respondent denies the allegations set forth in Paragraph 38 to the extent that they are not legal conclusions.

39. The allegations set forth in paragraph 39 constitute legal conclusions which Respondent is not required to admit or deny. Respondent denies the allegations set forth in Paragraph 39 to the extent that they are not legal conclusions.

B. DEFENSES

FIRST DEFENSE

40. Respondent acted in good faith and in compliance with applicable law with respect to the materials which are the subject of the Complaint.

SECOND DEFENSE

41. Respondent's conduct was undertaken in reasonable reliance on the conduct of the state and federal regulators responsible for enforcing the statutory and regulatory programs which are the subject of the Complaint and Article 27, Title 13 of the New York Environmental Conservation Law.

THIRD DEFENSE

42. The claims are barred by applicable statutes of limitation and/or equitable doctrines.

FOURTH DEFENSE

43. The Complainant has waived the claims set forth in the Complaint.

RESERVATION OF RIGHT TO ASSERT ADDITIONAL DEFENSES

44. Respondent reserves the right to assert additional defenses that may arise from information learned in the course of the proceeding.

C. DISPUTED FACTS

45. The Complaint consists primarily of a series of allegations which are virtually all in the form of conclusions of law. Respondent disputes each and every “fact” allegation in which materials, circumstances, conditions, and/or conduct is characterized through the use of conclusory legal terms. By way of example, but without limitation, the Complainant forms its allegations using the terms “decanter tank tar sludge”, “tar storage tank residue”, “abandoned”, “decommissioning”, “solid waste”, “hazardous waste”, “listed hazardous waste”, “disposed”, “disposal”, “waste codes K142 and K147”, “land disposal”, “hazardous constituents”, the “environment”, “release” and “possible releases”. In each case, Complainant uses those terms without alleging the specific factual basis for the characterization, and in each case, the terms are defined terms under putatively applicable provisions of law and/or have significant legal implications. This assertion of

disputed facts by the Respondent is in addition to its otherwise express denial of specific numbered allegations of the Complaint.

D. BASES FOR OPPOSING PROPOSED RELIEF

46. Complainant cannot prove each and every element of violations alleged in the Complaint and, therefore, is not entitled to the relief requested in the Complaint or to any other relief it may later seek on the basis of the matters alleged in the Complaint.

47. Each of the Respondent's defenses constitute an independent basis to deny Complainant the relief requested in this Complaint or any other relief it may later seek on the basis of the matters covered by the Complaint.

48. The application of the rules cited in the Complaint to the facts of this case will not serve the purposes for which those statutory and regulatory requirements were enacted and/or promulgated. Consequently, they should not be enforced in this case.

E. REQUEST FOR HEARING

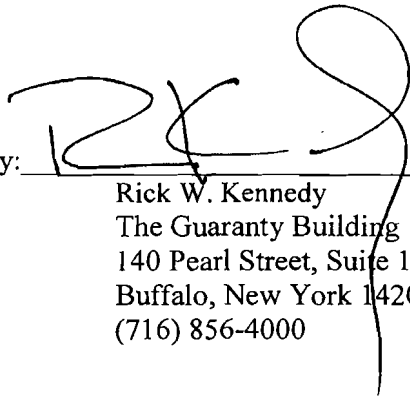
49. Respondent hereby formally requests a hearing upon all of the issues raised by the Complaint and Answer.

Dated: February 16, 2010

Respectfully submitted,

TONAWANDA COKE CORPORATION
By Its Attorneys
HODGSON RUSS LLP

By:



Rick W. Kennedy
The Guaranty Building
140 Pearl Street, Suite 100
Buffalo, New York 14202-4040
(716) 856-4000

To: Regional Hearing Clerk
US Environmental Protection Agency - Region 2
290 Broadway - 16th Floor
New York, NY 10007-1866

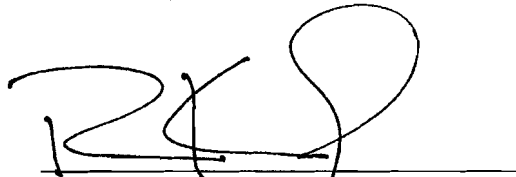
Copy to: Carl Howard, Esq.
Assistant Regional Counsel
US Environmental Protection Agency
290 Broadway - 16th Floor
New York, NY 10007-1866

CERTIFICATE OF SERVICE

I hereby certify that the original and one (1) copy of the annexed Answer, Defenses and Request for Hearing in response to the Complaint issued by the United States Environmental Protection Agency – Region 2, Docket No. RCRA-02-2010-7104, was filed with the Regional Hearing Clerk for EPA, Region 2 and one (1) copy of the document was served upon the Complainant, United States Environmental Protection Agency – Region 2 as indicated below:

HAND-DELIVERY ON FEBRUARY 16, 2010: Ms. Karen Maples, Regional Hearing Clerk
United States Environmental Protection Agency
Region 2
290 Broadway
16th Floor
New York, NY 10007-1866

VIA FEDERAL EXPRESS DELIVERY: Carl Howard, Esq., Assistant Regional Counsel
United States Environmental Protection Agency –
Region 2
290 Broadway
16th Floor
New York, NY 10007-1866



Rick W. Kennedy
Hodgson Russ LLP
Attorneys for the Respondent
Tonawanda Coke Corporation

Dated: February 16, 2010