UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

April 16, 2015

CERTIFIED MAIL-
RETURN RECEIPT REQUESTED

Michael Hecker, Esq.
Hodgson Russ, LLP
The Guaranty Building
140 Pearl Street, Suite 100
Buffalo, New York 14202-4040

Re: Consent Agreement and Final Order, In the Matter of Tonawanda Coke Corporation

Dear Mr. Hecker:

Enclosed please find a fully executed copy of the Consent Agreement and Final Order in this matter. Please do not hesitate to contact me if you have any questions.

Thank you again for your assistance throughout this process.

Sincerely,

Jean H. Regna
Assistant Regional Counsel

Enclosure

cc: Regional Hearing Clerk

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

In the Matter of Tonawanda Coke Corporation, Tonawanda, New York, Respondent.	Docket No. CAA-02-2015-1201 CONSENT AGREEMENT AND FINAL ORDER

PRELIMINARY STATEMENT

1. This Consent Agreement and Final Order ("CAFO") is issued pursuant to Section 113(d) of the Clean Air Act ("CAA"), 42 U.S.C. § 7413(d), and Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9609. The Complainant in this action is the Director of the Emergency and Remedial Response Division of the United States Environmental Protection Agency, Region 2 ("EPA"), who has been delegated the authority to institute this action. Respondent is Tonawanda Coke Corporation ("Respondent").

2. Pursuant to Section 22.13 of the revised Consolidated Rules of Practice, 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 be simultaneously commenced and concluded by the issuance of a CAFO pursuant to 40 C.F.R. §§ 22.18(b)(2) and (3).

3. It has been agreed by the parties that settling this matter by entering into this CAFO pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) is an appropriate means of resolving specified claims against Respondent without litigation.

4. The circumstances at the Facility leading to the issuance of this CAFO are separately being reviewed by the New York State Department of Environmental Conservation ("DEC").

STATUTORY BACKGROUND

5. Section 113(d) of the CAA provides for the assessment of penalties for violations of Section 112(r) of the CAA, and Section 109 of CERCLA provides for the assessment of penalties for violations of Section 103 of CERCLA.

6. Pursuant to Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), the owners and operators of stationary sources producing, processing, handling, or storing substances listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), or any other extremely hazardous substance have a general duty, in the same manner and to the same extent as 29 U.S.C. § 654, to identify hazards which may result from accidental releases of such substances using appropriate hazard assessment techniques, to design and maintain a safe facility taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases which do occur.

7. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), requires any person in charge of a vessel or offshore or onshore facility, as soon as he or she has knowledge of a release (other than a federally permitted release) of a hazardous substance from such vessel or facility in a quantity equal to or greater than the reportable quantity, as designated pursuant to Section 102 of CERCLA, to immediately notify the National Response Center ("NRC") of such release.

FINDINGS OF FACT

8. Respondent is the owner and/or operator of a by-product coke production facility located at 3875 River Road, Tonawanda, New York (the "Facility").

9. Respondent manufactures high performance foundry coke at the Facility. Coke is the non-volatile carbonaceous residue of coal. Foundry coke is produced by baking coal in coke ovens at elevated temperatures in an oxygen free environment. The coking process creates coke oven gas ("COG"), which is recycled through the system and used as fuel.

10. According to information provided by Respondent, the constituents of their COG primarily include, on a percentage basis, hydrogen (59%), methane (19%), nitrogen (11%), carbon monoxide (5%), ethylene (2%), carbon dioxide (2%), and small volume percentages of other constituents. Hydrogen sulfide, ammonia, sulfur dioxide, ethane, acetylene, propane, propylene, propadiene, butane, butene, and naphthalene are also present in COG.

11. At approximately 11:51 a.m. on January 31, 2014, there was an incident at the Facility involving an explosion and fire (the "Incident"). The Incident occurred in the counterweight area, which is a basement–like area located under the coke oven battery. A rupture disc on a manifold ruptured because of the build-up of COG pressure. The manifold is a COG supply main providing fuel for combustion within the coke oven walls.

12. Respondent reported the explosion and fire to the National Response Center on January 31, 2014 at 6:05 p.m.

13. Respondent prepared a root cause analysis and a supplemental root cause analysis of the Incident (the "Root Cause Analyses") and submitted them to EPA with cover letters dated February 4, 2014 and February 6, 2014.

14. On February 5, 2014 representatives of the DEC conducted an inspection of the Facility (the "DEC Inspection").

15. EPA conducted an inspection of the Facility on February 10, 2014 (the "Inspection").

16. On September 30, 2014, EPA and Respondent entered into an administrative order on consent, Index No. CAA-02-2014-1012, pursuant to Section 113 of the CAA regarding the Facility (the "Order"), which provided for the performance of certain activities by Respondent at the Facility, including the submission of a final report. Respondent submitted the final report required by the Order to EPA, dated December 1, 2014, and this final report described in detail the actions taken to comply with the Order.

EPA CONCLUSIONS OF LAW

17. Respondent is, and at all times referred to herein was, a "person" within the meaning of Section 302(e) of the CAA, 42 U.S.C. § 7602(e), and Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

18. Respondent is the owner and operator of the Facility, which is a "facility," as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9). The Facility is a "stationary source" as that term is defined at 42 U.S.C. § 7412(r)(2).

19. Respondent was in charge of the Facility at the time of the Incident described in the Findings of Fact, above.

20. As a result of the Incident, the walls of the counterweight area were severely damaged, and three employees were impacted. One employee was blown to the ground, another experienced dust inhalation and a possible first degree burn on this face, and a third was sent off site to Health Work's WNY's facility for X-rays of his shoulder and to have debris removed from his eyes. It is alleged that during the Incident, more than one pound of coke oven emissions were released from the Facility.

21. Respondent's conclusions, as set forth in the Root Cause Analyses described above included the following: that a causal factor leading to the fire and explosion was a COG pressure build-up; the failure of the west flare stack's valve to open due to a frozen air-line; and the failure of the east flare stack to release the gas due to a blockage in the COG line.

22. During the DEC Inspection, monitoring records for the plant's air dryer system were reviewed. During each shift, Facility employees inspect the desiccant crystals in the Facility's air dryer system to ensure that the desiccant crystals are blue in color, which indicates that the air is dry. Employees then record the results on a checklist. The review of these records revealed that during the time period from January 22, 2014 until the time of the Incident, by-product area operators had noted the desiccant's lack of blue color on a Facility check list, but no

actions were taken to address this condition. The presence of moisture in the lines in extremely cold temperatures can lead to frozen lines and blockages.

23. According to information provided by Respondent, because of the extreme and consistent cold temperatures, the counterweight area was sealed tightly, with no openings to the outside. Rupture disks are manufactured for the express purpose of rupturing and relieving pressure in pipelines or vessels to prevent the whole pipeline or vessel from undergoing a pressure explosion. However, rupture disks are not intended to rupture within a closed space.

Clean Air Act

24. At its Facility, Respondent stores, processes, handles, and/or produces substances listed pursuant to Section 112(r)(3) of the CAA, including hydrogen sulfide, methane, ammonia, sulfur dioxide, butane, butene, ethylene, ethane, acetylene, propane, propylene, and propadiene.

25. Pursuant to Section 112(r)(1) of the Act, Respondent has a general duty, in the same manner and to the same extent as 29 U.S.C. § 654, to (a) identify hazards which may result from accidental releases of a regulated substance or other extremely hazardous substance, using appropriate hazard assessment techniques, (b) design and maintain a safe facility taking such steps as are necessary to prevent releases, and (c) minimize the consequences of accidental releases which do occur.

26. As described above, Respondent failed to design and maintain a safe facility taking such steps as are necessary to prevent releases regarding the Facility.

27. Respondent's failure to design and maintain a safe facility by taking such steps as are necessary to prevent releases regarding the Facility constitute violations of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1). Respondent is therefore subject to the assessment of penalties under Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

CERCLA

28. Coke oven emissions are a "hazardous substance," as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14). The reportable quantity for coke oven emissions is 1 pound, as specified in 40 C.F.R. Section 302.4.

29. The January 31, 2014 alleged release of coke oven emissions from the Facility was not a federally permitted release, as defined in Section 101(10) of CERCLA, 42 U.S.C. § 9601(10).

30. Respondent failed to immediately notify the NRC of the January 31, 2014 alleged release of coke oven emissions from the Facility. Respondent violated the notification requirements of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and is therefore subject to the assessment of penalties under Section 109 of CERCLA, 42 U.S.C. § 9609.

CONSENT AGREEMENT

31. Based upon the foregoing, and pursuant to Sections 113(d) of the CAA and 109 of CERCLA, and the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits" (40 C.F.R. Part 22), Complainant and Respondent hereby agree on the following provisions.

32. For the purpose of this proceeding and in the interest of an expeditious resolution of this matter, pursuant to 40 C.F.R. § 22.18(b)(2), Respondent (a) admits the jurisdictional basis for this matter, (b) admits the Findings of Fact set forth above, (c) consents to the assessment of the civil penalty set forth below, (d) consents to the issuance of the attached Final Order, and (e) waives its right to contest the allegations and its right to appeal the attached Final Order.

33. Respondent neither admits nor denies the EPA Conclusions of Law set forth above.

34. This CAFO 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 CAFO.

35. Respondent certifies that it has completed the activities required by the Order described in Paragraph 16 above. Respondent hereby certifies that it is now in compliance with all applicable requirements of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and Section 112(r)(1) of the CAA.

36. Respondent agrees to pay a civil penalty in the total amount of fifty thousand eight hundred and twelve dollars ($50,812.00), as described below. This penalty includes a CERCLA portion in the amount of eleven thousand nine hundred dollars ($11,900.00), and a CAA portion in the amount of thirty eight thousand nine hundred and twelve dollars ($38,912.00). Payment of the penalty must be received by EPA on or before thirty (30) calendar days after the date of signature of the Final Order at the end of this document (hereinafter referred to as the "due date"). Respondent agrees to make such payments on or before the due date. Payment shall be made as follows:

Payment of the penalty shall be made by cashier's or certified checks, and the checks shall be identified with a notation of the name and docket number of this case (set forth in the caption on the first page of this document).

Payment of the CERCLA portion of the penalty ($11,900.00) shall be made by cashier's or certified check payable to the "EPA Hazardous Substance Superfund" and shall be sent to:

US Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center

PO Box 979076
St. Louis, MO 63197-9000

Payment of the CAA portion of the penalty ($38,912.00) shall be made by cashier's or certified check payable to the "Treasurer, United States of America" and shall be sent to:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

A copy of the checks and any transmittal letters shall be sent to each of the following:

Jean Regna
Assistant Regional Counsel
U.S. Environmental Protection Agency
290 Broadway, 17th Floor
New York, New York 10007

and

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

37. The penalties specified in Paragraph 36, above, shall represent civil penalties assessed by EPA and shall not be deductible for purposes of State or federal taxes.

38. If Respondent fails to make full and complete payment of the civil penalty that it is required to pay by this CAFO, this case may be referred by EPA to the United States Department of Justice and/or the United States Department of the Treasury for collection.

a. Interest. If Respondent fails to make payment, or makes partial payment, any unpaid portion of the assessed penalty shall bear interest at the rate established pursuant to 31 U.S.C. § 3717 and 26 U.S.C. § 6621 from the payment due date.

b. Handling Charges. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of fifteen dollars ($15.00) shall be paid if any portion of the assessed penalty is more than thirty (30) days past the payment due date.

c. Attorney Fees, Collection Costs, Nonpayment of Penalty. If Respondent fails to pay the amount of an assessed CAA penalty on time, pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), in addition to such assessed

penalty and interest and handling assessments, Respondent shall also pay the United States' enforcement expenses, including but not limited to attorney fees and costs incurred by the United States for collection proceedings, and a quarterly non-payment penalty for each calendar quarter during which such a failure to pay persists. Such non-payment penalty shall be ten percent (10%) of the aggregate amount of Respondent's outstanding penalties and non-payment penalties accrued from the beginning of such quarter. If Respondent fails to pay the amount of an assessed CERCLA penalty on time, in addition to such assessed penalty and interest and handling assessments, Respondent shall also pay the United States' enforcement expenses, including but not limited to attorney fees and costs incurred by the United States for collection proceedings, and Respondent also agrees to pay a 6% per annum penalty which will also be applied on any principal amount not paid within ninety (90) days of the due date.

39. This CAFO is being voluntarily and knowingly entered into by the parties in full settlement of Respondent's alleged violations of the CAA and CERCLA set forth above in the Findings of Fact and EPA Conclusions of Law.

40. This CAFO shall not relieve Respondent of its 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. This CAFO shall not affect the right of the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. Compliance with this CAFO shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with such laws and regulations.

41. This CAFO and any provision herein is not intended to be an admission of liability in any adjudicatory or administrative proceeding except in an action, suit, or proceeding to enforce this CAFO or any of its terms and conditions.

42. Respondent explicitly waives any right to request a hearing and/or contest any allegations in this Consent Agreement and explicitly waives any right to appeal the attached Final Order.

43. Each party hereto shall bear its own costs and attorneys' fees in the action resolved by this CAFO.

44. This CAFO shall be binding on Respondent and its successors and assignees.

45. Each of the undersigned representatives to this CAFO certifies that he or she is duly authorized by the party whom he or she represents to enter into the terms and conditions of the CAFO and to bind that party to it.

46. Respondent consents to service upon Respondent of a copy of this CAFO by any EPA employee, in lieu of service made by the EPA Region 2 Regional Hearing Clerk.

In the Matter of Tonawanda Coke Corporation
Docket Number CAA-02-2015-1201

For Respondent
Tonawanda Coke Corporation

Signature

Date: 04/07/15

Michael K. Durkin
Name (Printed or Typed)

President
Title (Printed or Typed)

In the Matter of Tonawanda Coke Corporation
Docket Number CAA-02-2015-1201

FINAL ORDER

The Regional Administrator of the U.S. Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Consent Agreement, entered into by the Complainant and Respondent to this matter, is hereby approved, incorporated herein, and issued as a Final Order. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 2, New York, New York.

Judith Enck

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

Date: 4/16/15

In the Matter of Tonawanda Coke Corporation
Docket Number CAA-02-2015-1201

For Complainant
U.S. Environmental Protection Agency, Region 2

Date: April 15, 2015

Walter Mugdan, Director
Emergency and Remedial Response Division
U.S. Environmental Protection Agency, Region 2

In the Matter of Tonawanda Coke Corporation
Docket Number CAA-02-2015-1201

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, 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 l0007

Copy by
Certified Mail,
Return Receipt Requested:

Michael Hecker, Esq.
Hodgson Russ, LLP
The Guaranty Building
140 Pearl Street, Suite 100
Buffalo, New York 14202-4040

Dated: 4/16/15
New York, New York

Sandra Grant