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

DEC 17 2009

CERTIFIED MAIL- RETURN RECEIPT REQUESTED
Article number: 7000 1670 0011 8376 2302

J. D. Crane
Chief Executive Officer
Tonawanda Coke Corporation
3875 River Road
Tonawanda, NY 14150

Re: **In the Matter of Tonawanda Coke Corporation**
Docket Number RCRA-02-2010-7104

Dear Mr. Crane:

Enclosed is the Complaint, Compliance Order and Opportunity for Hearing in the above-referenced proceeding. The Complaint alleges violations of the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 *et seq.*, and includes a Compliance Order for your facility in Tonawanda, New York.

You have the right to a formal hearing to contest any of the allegations in the Complaint and/or to contest the proposed Compliance Order in the Complaint. If you wish to contest the allegations and/or the Compliance Order proposed in the Complaint, you must file an Answer within ***thirty (30)*** days of your receipt of the enclosed Complaint with the Regional Hearing Clerk of the Environmental Protection Agency ("EPA"), Region 2, at the following address:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, New York 10007-1866

If you do not file an Answer within thirty (30) days of receipt of this Complaint and have not obtained a formal extension for filing an Answer from the Regional Judicial Officer of Region 2, the Compliance Order will take effect.

Whether or not you request a formal hearing, you may request an informal conference with EPA to discuss any issue relating to the alleged violations. EPA encourages all parties against whom it files a Complaint to have an informal conference with EPA. However, a request for an informal conference ***does not*** substitute for a written Answer, affect what you may choose to say in an Answer, or extend the thirty (30) days by which you must file an Answer requesting a hearing.

You will find enclosed a copy of the "Consolidated Rules of Practice," which govern this proceeding. (A brief discussion of some of these rules appears in the later part of the Complaint).

We have read your company's response to EPA's information request. EPA, however, believes that both the decanter tank tar sludge and the tar storage tank residue were disposed on the ground at your facility. Please note that the term "land disposal" is defined broadly under this law.

If you have any questions or wish to schedule an informal conference, please contact the attorney whose name is listed in the Complaint.

Sincerely,

Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

cc: Karen Maples, Regional Hearing Clerk

Enclosures

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.	**COMPLAINT, COMPLIANCE ORDER AND NOTICE OF OPPORTUNITY FOR HEARING** Docket No. **RCRA-02-2010-7104.**

1. COMPLAINT

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 ("HSWA"), 42 U.S.C. § 6901 *et seq.* (referred to collectively as the "Act" or "RCRA").

This COMPLAINT, COMPLIANCE ORDER AND NOTICE OF OPPORTUNITY FOR HEARING ("Complaint") serves notice of EPA's preliminary determination that the Tonawanda Coke Corporation has violated certain requirements of the authorized New York State hazardous waste program and the federal hazardous waste program.

Section 3006(b) of the Act, 42 U.S.C. § 6926(b), provides that EPA's Administrator may, if certain criteria are met, authorize a state to operate a hazardous waste program (within the meaning of Section 3006 of the Act, 42 U.S.C. § 6926) in lieu of the regulations comprising the federal hazardous waste program (the Federal Program). The State of New York received final authorization to administer its base hazardous waste program on May 29, 1986. Since 1986, New York State has been authorized for many other hazardous waste requirements promulgated by EPA pursuant to RCRA, See 67 Fed. Reg. 49864 (August 1, 2002), 70 Fed. Reg. 1825 (January 11, 2005) and 74 Fed. Reg. 31380 (July 1, 2009). New York is authorized for most hazardous waste regulations issued by EPA as of January 22, 2002 and the Uniform Hazardous Waste Manifest Amendments issued by EPA on March 4, 2005 and June 16, 2005.

Section 3008(a)(1) of RCRA, 42 U.S.C. 6928(a)(1), provides, in part, that "whenever on the basis of any information the Administrator [of EPA] determines that any person has violated or is in violation of any requirement of this subchapter [Subtitle C of RCRA], the Administrator may issue an order "... requiring compliance immediately within a specified time period." Section 3008(a)(2) of RCRA, 42 U.S.C. 6928(a)(2) provides, in part, that "[i]n the case of a violation of any requirement of [Subtitle C of RCRA] where such violation occurs in a State which is authorized to carry out a hazardous waste program under [Section 3006 of RCRA, 42 U.S.C. 6926], the Administrator [of EPA] shall give notice to the State in which such violation has occurred prior to issuing an order."

Section 3008(a)(2) of the Act, 42 U.S.C. 6928(a)(2), authorizes EPA to enforce the regulations constituting the authorized State program and EPA retains primary responsibility for the enforcement of certain requirements promulgated pursuant to HSWA for which the State has not yet been authorized.

Prior to the issuance of this Complaint, notice in accordance with the requirements of Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), has been given to the State of New York.

The Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, EPA, Region 2, who has been duly delegated the authority to institute this action, hereby alleges:

Background Allegations

1. Respondent is the Tonawanda Coke Corporation (hereinafter the "Respondent").

2. Respondent is a "person," as defined at Section 1004(15) of the Act, 42 U.S.C. § 6903(15), and Title 6 of the New York Codes, Rules, and Regulations ("6 NYCRR") § 370.2(b).

3. Respondent owns and operates a foundry coke manufacturing facility, comprising approximately 188 acres, located at 3875 River Road, Tonawanda, New York 14150 (hereinafter, the "Facility"). Respondent's Facility has been in operation since at least 1980.

Solid and Hazardous Waste Generation

4. In the course of its operations, Respondent has generated "solid waste" at the Facility, as that term is defined at 6 NYCRR § 371.1(c).

5. In the course of its operations, Respondent has generated "hazardous waste" at the Facility, as that term is defined at 6 NYCRR § 371.1(d).

Hazardous Waste Notification

6. Pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, all persons conducting activities that generate or otherwise cause hazardous waste to be handled in other ways are required to notify EPA of their hazardous waste activities.

7. Respondent notified EPA that it was a Large Quantity Generator for the generation of decanter tank tar sludge from coking operations (waste code K087) on February 19, 1986. As a result of this notification, EPA assigned Respondent the hazardous waste identification number NYD088413877.

EPA Investigatory Activities

8. On or about June 17, 2009, a duly authorized representative of EPA conducted a RCRA compliance evaluation inspection of the Facility (the "June 2009 Inspection") pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927.

9. On or about September 10, 2009, duly authorized representatives of EPA conducted a RCRA compliance evaluation inspection of the Facility (the "September 2009 Inspection") pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927.

10. Complainant's June 2009 and September 2009 inspections revealed that Respondent had recycled its decanter tank tar sludge by using it as feedstock to produce foundry coke.

11. During the June 2009 Inspection, Respondent informed EPA that rather than being mixed with coal on a concrete lined and walled pad prior to transport by heavy equipment front loader to the coke ovens for use as feedstock, the Facility's decanter tank tar sludge was brought directly to coal piles situated on the ground and mixed there with coal prior to being brought to the coke ovens.

12. During the September 2009 Inspection, Respondent informed EPA that in addition to being sporadically mixed with coal on a concrete lined and walled pad prior to transport by heavy equipment front loader to the coke ovens for use as feedstock, the Facility's decanter tank tar sludge was routinely brought directly to coal piles situated on the ground and mixed there with coal prior to being brought to the coke ovens.

13. During the June 2009 and September 2009 Inspections, tar storage tank residue was present in and around the remains of two abandoned tar storage tanks that had burned during a failed decommissioning attempt in 2007 (the "2007 Fire") that resulted in the structural failure of the tanks (the "burnt tanks").

14. As of the September 2009 Inspection, Respondent had not removed the remains of the burnt tanks or the tar storage tank residue in and around the tanks. Further, Respondent had not

investigated the soils underlying or surrounding the tanks to evaluate the nature and extent of any contamination from the tar storage tank residue.

15. During the September 2009 Inspection, EPA obtained samples of the tar storage tank residue in the remains of one of the burnt tanks and on the ground around the burnt tanks, which it subsequently analyzed. The results indicate the presence of hazardous waste in and around the burnt tanks.

16. Respondent had abandoned tar storage tank residue in and around the burnt tanks subsequent to the 2007 fire.

17. Respondent's abandoned tar storage tank residue is a solid waste, as defined at 6 NYCRR § 371.1(c).

18. Pursuant to 6 NYCRR § 371.4(c), tar storage tank residues are listed hazardous wastes (waste codes K142 and K147).

RCRA Section 3007 Information Request

19. On or about October 30, 2009, EPA issued to Respondent a RCRA Section 3007 Information Request Letter (the "October 2009 IRL").

20. The October 2009 IRL requested, among other things, information and documentation regarding the management of decanter tank tar sludge and tar storage tank residue at the Facility, including the mixture of decanter tank tar sludge with coal, the volume and disposition of tar storage tank residue, and the structural integrity and date of discontinuation of use of the tar storage tanks.

21. Respondent submitted its response to the 2009 IRL on December 1, 2009.

22. In its response to the October 2009 IRL, Respondent stated that:

> "... the material that is automatically removed from the tar decanter, tar decanter sludge, is periodically taken by front end loader from the tar decanter to a raw material (coal) pile. Here the sludge is rolled into the pile for use as feed stock to the coal preparation building and on to the coke oven battery."

23. In its response to the October 2009 IRL, Respondent further stated that "[a]t no time does the tar sludge contact the ground. Also there is no ground disposal of any tar sludge." However, the manner in which Respondent handled its decanter tank tar sludge and the location where the sludge was "rolled into the pile" and mixed with the coal resulted in land disposal.

24. The decanter tank tar sludge placed on the coal piles is a solid waste, as defined at 6 NYCRR § 371.1(c).

25. Pursuant to 6 NYCRR § 371.4(c), the decanter tank tar sludge from coking operations that is placed on the coal piles is a listed hazardous waste (waste code K087).

COUNT 1 – Unpermitted Disposal of Hazardous Waste

26. Complainant realleges each allegation contained above in paragraphs 1 through 25, with the same force and effect as if fully set forth below.

27. Pursuant to Section 3005 of the Act, 42 U.S.C. § 6925, and 6 NYCRR § 373-1.2, the treatment, storage, and disposal of hazardous waste is prohibited except in accordance with a permit.

28. Respondent has disposed tar storage tank residue in the burnt tanks and on land around the burnt tanks.

29. Respondent has mixed its decanter tank tar sludge from coking operations with coal in piles on the land.

30. The activities described in the two preceding paragraphs have created a situation where the waste and related hazardous constituents may enter, and have entered, the environment.

31. Respondent's abandonment of tar storage tank residues constitutes disposal, as that term is defined at 42 U.S.C. § 6903(3) and at 6 NYCRR § 370.2(b).

32. Respondent's mixture of decanter tank tar sludge from coking operations in coal piles situated on the ground constitutes disposal, as that term is defined at 42 U.S.C. § 6903(3) and at 6 NYCRR § 370.2.

33. Respondent has not obtained a permit for the treatment, storage, and disposal of hazardous waste at the Facility.

34. Respondent's disposal of tar storage tank residue and decanter tank tar sludge without obtaining a permit for the treatment, storage, and disposal of hazardous waste constitutes violations of Section 3005 of the Act, 42 U.S.C. § 6925 and 6 NYCRR § 373-1.2.

COUNT 2 – Failure to Minimize Hazardous Waste Releases

35. Complainant realleges each allegation contained above in paragraphs 1 through 25, with the same force and effect as if fully set forth below.

36. Pursuant to 6 NYCRR § 373-3.3(b), an owner and operator must maintain and operate its facility to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.

37. The area in which the burnt tanks were located had not been maintained and operated in a manner which minimized the possibility of any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, water, and soil. Specifically, Respondent had abandoned tar storage tank residue in and around the burnt tanks subsequent to the 2007 fire, allowing possible releases of hazardous waste and hazardous constituents to the air, water and soil.

38. The Facility's decanter tank tar sludge had not been managed in a manner which minimized the possibility of any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, water, and soil. Specifically, Respondent mixed its decanter tank tar sludge from coking operations with coal in piles on the ground, allowing possible releases of hazardous waste and hazardous constituents to the air, water and soil.

39. Respondent's failure to maintain and operate Facility to minimize the possibility of any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, water, and soil, constitutes violations of 6 NYCRR § 373-3.3(b).

COMPLIANCE ORDER

Based upon the foregoing, and pursuant to the authority of Section 3008 of the Act, Complainant issues Respondent the following Compliance Order. To the extent it has not already done so, Respondent shall take the following actions:

Cessation of Disposal of Decanter Tank Tar Sludge on the Ground

a. Commencing on the effective date of this Compliance Order, Respondent shall only mix decanter tank tar sludge with coal on the Facility's concrete lined and walled pad or in another lawful manner which will keep decanter tank tar sludge off the ground and which will minimize the release of the sludge to the environment.

Within fifteen (15) calendar days of the effective date of this Compliance Order, Respondent shall submit to EPA written notice of its compliance (accompanied by a copy of all appropriate supporting documentation) or noncompliance with the requirements set forth in this subparagraph. If Respondent is in noncompliance, the notice shall state the reasons for noncompliance and shall provide a schedule for achieving expeditious compliance with the requirement.

b. Within thirty (30) calendar days of the effective date of this Compliance Order, Respondent shall submit to EPA a detailed plan, including an implementation schedule, for the removal of the tar storage tank residue in and around the burnt tanks, and any underlying or surrounding soil contaminated with tar storage tank residue and for proper recycling, treatment, or disposal of the removed materials (the "Tar Storage Tank Residue Removal Plan"). The Plan shall also include: i) proposed analytes and cleanup levels for this removal effort, and, ii) provisions for sampling and analyzing the areas underlying and surrounding the tanks following the removal of the tar storage tank residue to confirm that all tar storage tank residue and any soil contaminated with tar storage tank residue have been removed and the approved cleanup levels have been met.

   EPA will review the Tar Storage Tank Residue Removal Plan and provide its written acceptance or comments to Respondent. Unless otherwise specified by EPA, if the Plan is not accepted by EPA, Respondent shall thereafter revise the Plan to respond to EPA's comments and shall within thirty (30) calendar days of receipt of EPA's comments submit a revised Plan to EPA for review and acceptance. EPA will then notify Respondent of its acceptance of or comments on the revised Plan. If EPA provides Respondent with further comments, Respondent shall within thirty (30) calendar days of receipt of EPA's comments again revise the Plan and resubmit the Plan to EPA for review and acceptance. EPA will accept or modify this Plan. The revised Plan, as accepted or modified by EPA in writing, shall become final. Once accepted or modified by EPA, Respondent shall implement the Plan according to the schedule set forth in the Plan.

c. Submit the above required information and notices to:

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

This Compliance Order shall take effect thirty (30) days after service of this Order, unless by that date Respondent has requested a hearing pursuant to 40 C.F.R.§ 22.15. *See* 42 U.S.C. §6928(b) and 40 C.F.R. §§ 22.37(b) and 22.7(c).

EPA reserves its right (and the right of the United States acting on behalf of the EPA) to seek a civil penalty and additional injunctive relief at a later date for any violations of the Act including those alleged in this Complaint.

Compliance with the provisions of this Compliance Order does not waive, extinguish or otherwise release Respondent from liability for any violations occurring or existing at facilities owned and/or operated by Respondent. Further, nothing herein waives, prejudices or otherwise affects the EPA's right (or the right of the United States acting on behalf of the EPA) to enforce any applicable provisions of law.

IV. NOTICE OF LIABILITY FOR ADDITIONAL CIVIL PENALTIES

Pursuant to the terms of Section 3008(c) of RCRA and the Debt Collection Improvement Act of 1996, a violator failing to take corrective action within the time specified in a compliance order regarding hazardous waste violations is liable for a civil penalty of up to $37,500 for each day of continued noncompliance (73 Fed. Reg. 75340, December 11, 2008).

V. PROCEDURES GOVERNING THIS ADMINISTRATIVE LITIGATION

The rules of procedure governing this civil administrative litigation have been set forth in the "CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENTS OF CIVIL PENALTIES, ISSUANCE OF COMPLIANCE OR CORRECTIVE ACTION COMPLIANCE ORDERS, AND THE REVOCATION, TERMINATION OR SUSPENSION OF PERMITS." These rules are codified at 40 C.F.R. Part 22. A copy of these rules accompanies this Complaint.

A. Answering The Complaint

Where Respondent intends to contest any material fact upon which the Complaint is based, to contend that the proposed penalty and/or the Compliance Order is inappropriate or to contend that Respondent are entitled to judgment as a matter of law, Respondent must file with the Regional Hearing Clerk of EPA, Region 2, both an original and one copy of a written answer(s) to the Complaint, and such Answer(s) must be filed within 30 days after service of the Complaint. 40 C.F.R. §§ 22.15(a) and 22.7(c). The address of the Regional Hearing Clerk of EPA, Region 2, is:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, New York 10007-1866

Respondent shall also then serve one copy of the Answer(s) to the Complaint upon Complainant and any other party to the action. 40 C.F.R. § 22.15(a).

Respondent's Answer(s) to the Complaint must clearly and directly admit, deny, or explain each of the factual allegations that are contained in the Complaint and with regard to which Respondent has any knowledge. 40 C.F.R. § 22.15(b). Where Respondent lacks

knowledge of a particular factual allegation and so states in the Answer(s), the allegation is deemed denied. 40 C.F.R. § 22.15(b).

The Answer(s) shall also set forth: (1) the circumstances or arguments that are alleged to constitute the grounds of defense, (2) the facts that Respondent dispute (and thus intend to place at issue in the proceeding) and (3) whether Respondent request a hearing. 40 C.F.R. § 22.15(b).

Respondent's failure affirmatively to raise in the Answer(s) facts that constitute or that might constitute the grounds of its defense may preclude Respondent at a subsequent stage in this proceeding, from raising such facts and/or from having such facts admitted into evidence at a hearing.

B. Opportunity To Request A Hearing

If requested by Respondent(s), a hearing upon the issues raised by the Complaint and Answer(s) may be held. 40 C.F.R. § 22.15(c). If, however, Respondent requests a hearing, the Presiding Officer (as defined in 40 C.F.R. § 22.3) may hold a hearing if the Answer(s) raises issues appropriate for adjudication. 40 C.F.R. § 22.15(c). With regard to the Compliance Order in the Complaint, unless either Respondent requests a hearing pursuant to 40 C.F.R. § 22.15 within 30 days after the Compliance Order is served, the Compliance Order shall automatically become final. 40 C.F.R. § 22.37

Any hearing in this proceeding will be held at a location determined in accordance with 40 C.F.R. § 22.21(d). A hearing of this matter will be conducted in accordance with the provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551-59, and the procedures set forth in Subpart D of 40 C.F.R. Part 22.

C. Failure To Answer

If Respondent fails in their Answer(s) to admit, deny, or explain any material factual allegation contained in the Complaint, such failure constitutes an admission of the allegation. 40 C.F.R. § 22.15(d). If Respondent fails to file a timely (i.e. in accordance with the 30-day period set forth in 40 C.F.R. § 22.15(a)) Answer(s) to the Complaint, Respondent may be found in default upon motion. 40 C.F.R. § 22.17(a). Default by Respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations. 40 C.F.R. § 22.17(a). Following a default by Respondent for a failure to timely file an Answer(s) to the Complaint, any order issued therefor shall be issued pursuant to 40 C.F.R. § 22.17(c).

Any penalty assessed in the default order shall become due and payable by Respondent without further proceedings 30 days after the default order becomes final pursuant to 40 C.F.R. § 22.27(c). 40 C.F.R. § 22.17(d). If necessary, EPA may then seek to enforce such final order of default against Respondent, and to collect the assessed penalty amount, in federal court. Any

default order requiring compliance action shall be effective and enforceable against Respondent without further proceedings on the date the default order becomes final under 40 C.F.R. § 22.27(c). 40 C.F.R. § 22.17(d).

D. Exhaustion Of Administrative Remedies

Where Respondent fails to appeal an adverse initial decision to the Environmental Appeals Board pursuant to 40 C.F.R. § 22.30, and that initial decision thereby becomes a final order pursuant to the terms of 40 C.F.R. § 22.27(c), Respondent waives the right to judicial review. 40 C.F.R. § 22.27(d).

To appeal an initial decision to the Agency's Environmental Appeals Board ("EAB"), Respondent must do so "[w]ithin 30 days after the initial decision is served upon the parties." 40 C.F.R. § 22.30(a). Pursuant to 40 C.F.R. § 22.7(c), where service is affected by mail, "five days shall be added to the time allowed by these rules for the filing of a responsive pleading or document." Note that the 45-day period provided for in 40 C.F.R. § 22.27(c) (discussing when an initial decision becomes a final order) does not pertain to or extend the time period prescribed in 40 C.F.R. § 22.30(a) for a party to file an appeal to the EAB of an adverse initial decision.

INFORMAL SETTLEMENT CONFERENCE

Whether or not Respondent requests a formal hearing, EPA encourages settlement of this proceeding consistent with the provisions of the Act and its applicable regulations. 40 C.F.R. § 22.18(b). At an informal conference with a representative(s) of Complainant, Respondent may comment on the charges made in the Complaint, and Respondent may also provide whatever additional information that they believe is relevant to the disposition of this matter, including: (1) actions Respondent has taken to correct any or all of the violations herein alleged, and/or (2) any other special facts or circumstances Respondent wishes to raise.

Complainant has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement agreement reached with Respondent, to reflect any relevant information previously not known to Complainant, or to dismiss any or all of the charges, if Respondent can demonstrate that the relevant allegations are without merit and that no cause of action as herein alleged exists. Respondent is referred to 40 C.F.R. § 22.18.

Any request for an informal conference or any questions that Respondent may have regarding this complaint should be directed to:

Carl Howard, Esq.
Assistant Regional Counsel
U.S. Environmental Protection Agency
290 Broadway, 16th floor
New York, NY 10007-1866
Telephone (212) 637-3216

The parties may engage in settlement discussions irrespective of whether Respondent has requested a hearing. 40 C.F.R. § 22.18(b)(1). Respondent's request for a formal hearing does not prevent it from also requesting an informal settlement conference; the informal conference procedure may be pursued simultaneously with the formal adjudicatory hearing procedure. A request for an informal settlement conference constitutes neither an admission nor a denial of any of the matters alleged in the Complaint. Complainant does not deem a request for an informal settlement conference as a request for a hearing as specified in 40 C.F.R. § 22.15(c).

A request for an informal settlement conference does not affect Respondent's obligation to file a timely Answer(s) to the Complaint pursuant to 40 C.F.R. § 22.15. No penalty reduction, however, will be made simply because an informal settlement conference is held.

Any settlement that may be reached as a result of an informal settlement conference shall be embodied in a written consent agreement. 40 C.F.R. § 22.18(b)(2). In accepting the consent agreement, Respondent waives the right to contest the allegations in the Complaint and waives the right to appeal the final order that is to accompany the consent agreement. 40 C.F.R. § 22.18(b)(2). To conclude the proceeding, a final order ratifying the parties' agreement to settle will be executed. 40 C.F.R. § 22.18(b)(3).

Respondent entering into a settlement through the signing of such Consent Agreement and its complying with the terms and conditions set forth in the such Consent Agreement terminate this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Respondent entering into a settlement does not extinguish, waive, satisfy or otherwise affect their obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE

If, instead of filing an Answer(s), Respondent wishes not to contest the Compliance Order in the Complaint and wants to pay the total amount of the proposed penalty within 30 days after receipt of the Complaint, Respondent should promptly contact the Assistant Regional Counsel identified on the previous page.

Dated: December 17, 2009
New York, New York

COMPLAINANT:

Dore LaRosta, Director
Division of Enforcement and Compliance Assistance
Environmental Protection Agency, Region 2
290 Broadway, 21st floor
New York, NY 10007-1866

To: J. D. Crane
Chief Executive Officer
Tonawanda Coke Corporation
3875 River Road
Tonawanda, NY 14150

cc: Thomas Killeen, Chief
Hazardous Waste Compliance Section
Bureau of Hazardous Waste Management
New York State Department of Environmental Conservation
625 Broadway
Albany, New York 12233-7251

***In re:* the Tonawanda Coke Corporation**
Docket Number RCRA-02-2010-7104

CERTIFICATE OF SERVICE

This is to certify that on December 18, 2009, I served a true and correct copy of the foregoing "COMPLAINT, COMPLIANCE ORDER AND NOTICE OF OPPORTUNITY FOR HEARING," bearing Docket Number RCRA-02-2010-7104 hereinafter referred to as the "Complaint"), together with Attachments I and II and with a copy of the "CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENTS OF CIVIL PENALTIES, ISSUANCE OF COMPLIANCE OR CORRECTIVE ACTION COMPLIANCE ORDERS, AND THE REVOCATION, TERMINATION OR SUSPENSION OF PERMITS," 40 C.F.R. Part 22, by certified mail, return receipt requested, to J. D. Crane, Chief Executive Officer, Tonawanda Coke Corporation, 3875 River Road, Tonawanda, NY 14150. On said day, I hand carried the original and a copy of the Complaint, with the accompanying attachments, to the Office of the Regional Hearing Clerk of the United States Environmental Protection Agency, Region 2, 290 Broadway, 16th floor, New York, New York 10007-1866.

Name: Mildred N. Baez

Name: MILDRED N. BAEZ
(print)