



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2

290 BROADWAY

NEW YORK, NEW YORK 10007-1866

AUG - 3 2010

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 please find a fully executed Order.

This Order is effective upon the date of filing with the Regional Hearing Clerk.

Sincerely,

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

Carl R. Howard
Assistant Regional Counsel

cc: Hon. Susan L. Biro, Chief Administrative Law Judge
Thomas Killeen, NYSDEC
Karen Maples, RHC
Mr. Rick Kennedy, Counsel for Respondent

Enc.

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2010 AUG - 3 PM 3: 20
REGIONAL HEARING
CLERK

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

_____ x	:	
IN THE MATTER OF:	:	
	:	
Tonawanda Coke Corporation,	:	
	:	
	:	<u>CONSENT AGREEMENT</u>
	:	AND
Respondent.	:	<u>FINAL ORDER</u>
	:	
Proceeding under Section 3008	:	Docket No. RCRA-02-2010-7104
of the Solid Waste Disposal	:	
Act, 42 U.S.C. § 6928, as amended	:	
_____ x	:	

U.S. ENVIRONMENTAL
PROTECTION AGENCY REGION 2
2010 MAR - 3 PM 3:20
REGIONAL HEARING
CLERK

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. Complainant issued a “Complaint and Notice of Opportunity for Hearing” to Respondent on December 17, 2009, bearing the docket number listed above. The Complaint alleged that Respondent had violated requirements of RCRA and regulations concerning the management of hazardous waste.

The parties have reached an amicable resolution of this matter and have agreed to this Consent Agreement and Final Order as a resolution of this proceeding without further litigation.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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 Code, 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

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).
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.
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).
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).
26. 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.
27. Respondent has disposed tar storage tank residue in the burnt tanks and on land around the

28. Respondent has mixed its decanter tank tar sludge from coking operations with coal in piles on the land.
29. 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.
30. Respondent's abandonment of tar storage tank residues constituted disposal, as that term is defined at 42 U.S.C. § 6903(3) and at 6 NYCRR § 370.2(b).
31. Respondent's mixture of decanter tank tar sludge from coking operations in coal piles situated on the ground constituted disposal, as that term is defined at 42 U.S.C. § 6903(3) and at 6 NYCRR § 370.2(b).
32. Respondent has not obtained a permit for the treatment, storage, and disposal of hazardous waste at the Facility.
33. 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.
34. 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.
35. 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.
36. The parties have agreed to resolve this matter as per the terms specified below.

CONSENT AGREEMENT

37. 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 hereby enters into the following Consent Agreement with Respondent. Respondent shall:

Cessation of Disposal on the Ground

- a. Commencing on the effective date of this Consent Agreement, Respondent shall only mix decanter tank tar sludge and/or tar storage tank residues with coal on the Facility's concrete lined and walled pad, or in another lawful manner approved in advance by

EPA, which will keep the sludge and/or residues off the ground and which will minimize releases to the environment.

Within fifteen (15) calendar days of the effective date of this Consent Agreement, Respondent shall submit to EPA written notice (accompanied by a copy of all appropriate supporting documentation) confirming that it is complying with the requirements set forth in this subparagraph.

Tank Removal Work Plan Implementation

- b. Respondent shall implement the Tank Removal Work Plan, as accepted by EPA according to the schedule in Attachment 1, for the: (1) removal of (a) the two burnt tanks and two adjacent intact tanks, (b) any decanter tank tar sludge and tar storage tank residues in and around the burnt tanks, and (c) any underlying or surrounding contaminated soil and debris; and, (2) subsequent proper recycling, treatment, or disposal of the removed materials.

Information and Notice Submittal

- c. Respondent shall submit any information and notices required under this Consent Agreement to:

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

38. For the purposes of this proceeding, Respondent: (a) admits the jurisdictional allegations of the Complaint; (b) neither admits nor denies the specific factual allegations contained in the Complaint; and (c) neither admits nor denies the above Findings of Fact and Conclusions of Law in this Consent Agreement.
39. This Consent Agreement and any provision herein including the Tank Removal Work Plan, 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 its accompanying Final Order.
40. This CA/FO 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.
41. 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 the issuance and its terms. Respondent consents to the issuance of the accompanying Final Order. Respondent

Complaint or on any of the allegations therein asserted, on this Consent Agreement or on the Findings of Fact and Conclusions of Law herein, or on the accompanying Final Order.

43. 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.
44. The provisions of this CA/FO shall be binding upon Respondent, its officers, directors, agents, servants, authorized representatives and successors or assigns.
45. 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.
46. Each party hereto agrees to bear its own costs and fees in this matter.
47. Respondent consents to service upon Respondent by a copy of this CA/FO by an EPA employee other than the Regional Hearing Clerk.

RESPONDENT:

Tonawanda Coke Corporation


BY: 
(Authorized Signature)

NAME: PAUL A. SAFFRIN
(PLEASE PRINT)

TITLE: CORPORATE OFFICER

DATE: 7.28.10

COMPLAINANT:

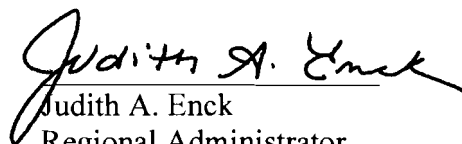

Dore LaPosta, Director
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency - Region 2
290 Broadway
New York, NY 10007

DATE: JULY 30, 2010

Re: Tonawanda Coke Corporation
Docket Number RCRA-02-2010-7104

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: 8/3/2010

Attachment 1

Project Schedule

The project activities will conform to the following schedule. For purposes of this schedule, Day 1 refers to the date thirty (30) days following signature of the Final Order in the Matter of Tonawanda Coke Corporation, Docket No. RCRA-02-2010-7104, by the Regional Administrator, EPA Region 2, (nothing in this schedule prevents Respondent from performing the work before these deadlines).

By no later than Days 1 to 4

- Equipment mobilization;
- Construct decontamination facility;
- Construct material staging area;
- Within five (5) days of completion of the work required for this time-period (Days 1 to 4), Respondent shall submit to EPA an Interim Report confirming completion of such work.

By no later than Days 5 to 17

- Cleaning and removal of storage tanks (four);
- Stockpiling of the materials that have been removed from tanks on the concrete lined and walled pad ("the Pad") for recycling;
- Within five (5) days of completion of the work required for this time-period (Days 5 to 17), Respondent shall submit to EPA an Interim Report confirming completion of such work.

By no later than Days 18 to 29

- Excavation of surface residual materials;
- Stockpiling excavated residual tar-like materials on the Pad for recycling;
- Within five (5) days of completion of the work required for this time-period (Days 18 to 29), Respondent shall submit to EPA an Interim Report confirming completion of such work.

Elimination of Stockpiled Material and/or Off-site Disposal of Contaminated Soil and Debris

- By no later than Day ninety (90);

Certification of Work Performed

- By no later than Day one hundred (100) Respondent shall certify that all of the work required by this schedule has been completed.

Re: Tonawanda Coke Corporation
Docket Number RCRA-02-2010-7104

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-02-2010-7104, 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
New York, New York 10007

Copy by Pouch Mail:

Honorable Susan L. Biro
Chief Administrative Law Judge
Office of Administrative Law Judges
U.S. Environmental Protection Agency
Mail Code 1900L
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

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

AUG - 3 2010

Mildred N. Bae