

US EPA ARCHIVE DOCUMENT



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

DEC 17 2010

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Article Number: 7005 3110 0000 5937 2012

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

Re: **Administrative Order and Request for Information
Tonawanda Coke Corp., Tonawanda, New York
Docket Number: CWA-02-2010-3012
SPDES Permit No.: NY0002399
Town of Tonawanda Industrial Sewer Connection Permit No.: 331**

Dear Mr. Crane:

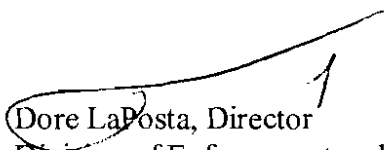
The United States Environmental Protection Agency (“EPA”), Region 2, has found that the subject facility is in violation of the Clean Water Act (33 U.S.C. § 1251 *et seq*) (“the Act” or “CWA”). Accordingly, EPA has issued the enclosed Administrative Compliance Order (“Order”) to the Tonawanda Coke Corporation (“Respondent”), pursuant to Sections 308(a) and 309(a) of the Act, describing the violations, requesting additional information, and ordering Respondent to cease its violations and to come into compliance with the Act. Enclosed are two (2) originals of the Order, as well as a copy of the inspection report describing EPA’s May 20-21, 2009 Compliance Evaluation Inspection (“CEI”), and the inspection report describing the November 4-5, 2009 Compliance Sampling Inspection (“CSI”) conducted by the New York State Department of Environmental Conservation (“DEC”).

Please acknowledge receipt of this Order on one of the originals and return it by mail in the enclosed envelope. Failure to comply with the enclosed Order may subject the facility to civil/criminal penalties pursuant to Section 309 of the Act. Failure to comply with this Order shall also subject the facility to ineligibility for participation in work associated with Federal contracts, grants or loans.

US EPA ARCHIVE DOCUMENT

If you have any questions regarding this Order, please contact Mr. Henry Mazzucca, P.E., Chief, Compliance Section at (212) 637-4229.

Sincerely,


Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

Enclosures

cc: Joseph DiMura, P.E., Director, Bureau of Water Compliance Programs, NYSDEC,
w/enclosure

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

IN THE MATTER OF:

Tonawanda Coke Corp.
3875 River Road
Tonawanda, NY 14150

SPDES Permit No. NY0002399
Town of Tonawanda IU Permit No. 331

Proceeding pursuant to Sections 301, 308(a)
and 309(a) of the Clean Water Act, 33
U.S.C. §§ 1311, 1318(a) and 1319(a)

RESPONDENT

**ADMINISTRATIVE COMPLIANCE
ORDER**

CWA-02-2010-3012

AUTHORITY

1. The following Order is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1251 *et seq.*, which authority has been duly delegated to the Regional Administrator of Region 2, EPA, and since further redelegated to the Director of the Division of Enforcement and Compliance Assistance, Region 2, EPA.

DEFINITIONS AND STATUTORY PROVISIONS

2. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits any person from discharging any pollutant from any point source into navigable waters, "[e]xcept as in compliance with [that] section and section . . . [402]" of the CWA.
3. The term "person" includes an individual, corporation, partnership, association or municipality, pursuant to Section 502(5) of the CWA, 33 U.S.C. § 1362(5).
4. The term "discharge of a pollutant" means any addition of any pollutant to navigable waters from any point source, pursuant to Section 502(12) of the CWA, 33 U.S.C. § 1362(12).
5. The term "pollutant" includes, among other things, solid waste, dredged spoil, rock, sand, cellar dirt, sewage, sewage sludge and industrial, municipal and agricultural waste discharged into water, pursuant to Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

6. The term “point source” means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel [or] conduit . . .”, pursuant to Section 502(14) of the CWA, 33 U.S.C. § 1362(14).
7. The term “navigable waters” means “the waters of the United States, including the territorial seas,” pursuant to Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and “waters of the United States” are defined in 40 C.F.R. § 122.2 to include intrastate rivers and streams, and tributaries thereto.
8. Section 402(a)(1) of the CWA, 33 U.S.C. § 1342(a)(1), provides that “... the Administrator [of EPA] may, after opportunity for public hearing, issue a permit for the discharge of any pollutant ...” subject to appropriate conditions. Accordingly, any person who proposes to discharge pollutants to waters of the United States must first obtain a National Pollutant Discharge Elimination System (“NPDES”) permit.
9. Pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b), the Administrator of EPA has authorized the State of New York to administer the program for permitting discharges of pollutants to navigable waters, and the New York State Department of Environmental Conservation (“DEC”) is the state agency with the authority to administer the State’s permitting program. Accordingly, any person who proposes to discharge pollutants to waters of the United States must first obtain a State Pollutant Discharge Elimination System (“SPDES”) permit from the DEC, and must comply with all of its terms. In addition, pursuant to Section 307 of the CWA, 33 U.S.C. § 1317, and 40 C.F.R. Part 403, certain pollutants discharged to treatment works are subject to additional pretreatment effluent limitations.
10. The term “SPDES Permit” means the DEC’s SPDES Individual Discharge Permit, No. NY0002399, and the term “IU Permit” means the Town of Tonawanda’s Industrial User Sewer Connection Permit, No. 331.

FINDINGS

11. Tonawanda Coke Corporation (“Respondent”) is a person within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).
12. Respondent owns and operates the Tonawanda Coke facility (“Facility” or “Site”) at 3875 River Road, Tonawanda, New York, 14150.
13. The Facility discharges contact cooling water, boiler blowdown, non-process stormwater and non-contact cooling water directly to the Niagara River via Outfall 004, and discharges process and sanitary wastewaters indirectly to the Niagara River via the Town of Tonawanda Wastewater Treatment Facility (hereinafter “POTW”). The POTW discharges directly to the Niagara River under SPDES Permit No. NY0026395.
14. The Facility’s direct and indirect discharges contain pollutants within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

15. The Niagara River is a water of the United States pursuant to Section 502(7) of the CWA, 33 U.S.C. § 1362(7).
16. On November 23, 2005, Respondent obtained renewed coverage under the SPDES Permit for the Facility's direct discharges to the Niagara River. That permit will expire on July 31, 2010.
17. On September 1, 2006, Respondent obtained renewed coverage under the IU Permit for the Facility's discharges to the POTW. That permit expired on August 31, 2009. Respondent then obtained coverage under a subsequent IU Permit on September 1, 2009 and that permit will expire on August 31, 2012.
18. The Facility's permits require Respondent to use Best Management Practices ("BMP") (SPDES Permit Special Conditions 1-6), and to operate the Facility in compliance with the Operations and Maintenance ("O&M") provisions in 6 NYCRR Part 750-2.8(a)(2) and other applicable requirements in 6 NYCRR Part 750. In addition, the Facility's permits require Respondent to treat, monitor and discharge process and sanitary wastewaters only to the POTW, and to keep process and sanitary wastewaters separate from non-contact cooling water, boiler blowdown, runoff and non-process stormwater.
19. On May 20, 2009, EPA and DEC conducted a Compliance Evaluation Inspection ("CEI") of the Facility, and identified the following violations of the Respondent's SPDES Permit and IU Permit (see enclosed CEI Report):
 - a. deposits of sediments, plant growth in the settling/skimming ponds (also called lagoons) as well as algal growth on the lagoon weirs;
 - b. a leak in the pipe flowing from the weak liquor equalization tank to the POTW sampling point. Process wastewater was leaking onto the ground which could discharge from outfalls that are not permitted to discharge process wastewater;
 - c. leaking pipe(s) within the secondary containment for the process wastewater equalization tank;
 - d. weak liquor storage tank was highly corroded with large holes in the top half of the tank. There were stains indicating that the tank had overflowed through the holes;
 - e. secondary containment for the weak liquor storage tank was open at the time of the inspection;
 - f. as demonstrated by the above violations, Respondent failed to make necessary repairs as soon as possible, and failed to keep operating areas of the Facility in a neat and orderly condition, in violation of the Facility's BMP Plan;
 - g. leaks from the power plant turbine condenser cooling water line flowing into the Facility's storm sewer tributary to the Outfall 001 lagoons (settling/skimming

ponds). This waste stream is only permitted to discharge via Outfall 003 into Outfall 004.

- h. wastewater from the waste heat arch sump and from a sump outside of the coal storage building was being discharged into the storm sewer tributary to Outfall 001. Outfall 001 is only permitted to discharge non contact cooling water, boiler blowdown, and stormwater runoff and is not permitted to discharge process wastewaters such as wastewater from the waste heat arch sump.
- i. tar decanter sludge can fall on the roadway, be exposed to stormwater, and associated pollutants could flow to Outfall 001. The I beam used for the tar decanter hopper/collection is in need of replacement/repair;
- j. the curbing around/near the BH circulation/collection tank is partially broken and in need of repair;
- k. there were leaks of tar or drips outside of curbed area at primary and secondary cooler.
- l. pursuant to 6 NYCRR 750-2.5(a)(5) Routine Monitoring, Recording, and Reporting, the SPDES permit requires Respondent to routinely calibrate and maintain its outfall flow meters to ensure the accuracy of its measurements. However, the flow meter for Outfall 003 has not been calibrated since March 20, 2008, even though Respondent's representatives stated that Respondent typically calibrates the Facility's flow meters on an annual basis.
- m. the IU Permit contains categorical standards (pursuant to 40 C.F.R. Part 420, Subpart A), which require the Facility to comply with load limitations for Ammonia-Nitrogen, Cyanide (CN) and Naphthalene, and requires that the categorical parameters be monitored post equalization tank, but prior to mixing with the plant's sanitary wastewater. However, the flow rate for the Facility's process wastewater discharges is measured prior to the ammonia still (steam stripper), which is prior to the equalization tank.
- n. there appear to be process wastewater pipe leaks into the secondary containment for the equalization tanks. Wastewater within the equalization tank secondary containment structure consists of both stormwater and process wastewater from leaking pipes associated with the ammonia still. Plant personnel stated that this wastewater is discharged to the Town of Tonawanda sewer. However this categorical wastewater does not flow through the process wastewater categorical sampling point as required by the IU Permit. Additionally, the stormwater portion of these wastewaters does not flow through the process wastewater flow monitoring point.
- o. Part IV.5.f of the IU Permit requires that the accuracy of the flow monitoring device be certified correct every year by the manufacturer. However, the magnetic flow meter, which is currently in the wrong location and is used for measuring the process

flow entering the ammonia still and used for reporting compliance with categorical standards (pursuant to 40 C.F.R. 420 Subpart A), has not been calibrated and there were no calibration records available.

20. On or about June 17, 2009 and September 10, 2009, a duly authorized representative of EPA conducted a Resource Conservation and Recovery Act ("RCRA") compliance evaluation inspection and identified that decanter tank tar sludge (tar decanter sludge) was being placed on the coal piles. Outfall 002 is permitted to discharge coal pile runoff only and is not permitted to discharge runoff or wastewaters associated with tar decanter sludge. Therefore Respondent is not authorized to place tar decanter sludge on coal piles that discharge runoff to SPDES Permitted outfalls or waters of the U.S.
21. On November 4 and 5, 2009, a representative(s) of DEC conducted a Compliance Sampling Inspection ("CSI") (see enclosed CSI Report), which identified that the Total Suspended Solids (TSS) concentration in the discharge from the coal pile runoff (Outfall 002) on November 5, 2009 exceeded the 50 mg/l effluent limit with a concentration of 169 mg/l.
22. 40 C.F.R. § 122.41(a) requires NPDES/SPDES permittees to comply with all conditions of their permit(s), and provides that any permit noncompliance constitutes a violation of the CWA and is grounds for enforcement action.
23. Section 309(a) of the CWA, 33 U.S.C. § 1319(a), authorizes the Administrator of EPA to commence an administrative action for violations of Section 308 of the CWA, 33 U.S.C. § 1318, and for each violation of Section 301 of the CWA, 33 U.S.C. § 1311, or any permit condition or limitation implementing, inter alia, Section 301, and contained in a permit issued under Section 402 of the CWA, 33 U.S.C. § 1342. Section 402(i) of the CWA, 33 U.S.C. § 1342(i), states that nothing in Section 402 of the CWA shall limit the authority of EPA to take enforcement action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.
24. Therefore, on the basis of the findings cited in the paragraphs above, Tonawanda Coke Corp. is in violation of § 301, § 308, and § 402 of the CWA.

ORDERED PROVISIONS

In consideration of the above FINDINGS, and pursuant to Sections 308(a) and 309(a) of the CWA, 33 U.S.C. § 1318(a) and § 1319(a),

IT IS HEREBY ORDERED

1. Immediately upon receipt of the original copies of this Order, a responsible official of Respondent shall complete and sign the acknowledgment of receipt of one of the originals of the Order and return said original to the Chief, Compliance Section, Water Compliance Branch, Division of Enforcement and Compliance Assistance, in the enclosed envelope to the address listed below.

2. Respondent shall immediately eliminate process wastewater discharges to SPDES outfalls (001, 002, 003, 004) or any other direct discharge points, including, but not limited to, discharges from the waste heat arch sump and tar decanter sludge runoff. Respondent shall submit written certification of its compliance with this requirement within fifteen (15) calendar days of receipt of this Order.
3. Within forty five (45) calendar days of receipt of this Order, Respondent shall do the following and submit written certification that each of the required items has been completed, the date completed, and a description of what was done:
 - a. remove the accumulated sediment and growth on the weirs in the lagoons (settling/skimming ponds) tributary to Outfall 001 and properly dispose of or recycle the removed materials;
 - b. inspect the Facility for all leaking wastewater (including process and non process wastewater) pipes and repair all leaks including those leaks identified in the Findings, above;
 - c. repair or replace the corroded weak liquor storage tanks with tanks that are in good condition and are protected against corrosion. If the tanks are repaired, instead of replaced, submit written certification by a licensed professional engineer that the weak liquor storage tanks are structurally sound and not prone to structural failure or overflow;
 - d. repair and close the secondary containment for the weak liquor storage tank and keep this secondary containment closed at all times, except for entry and egress;
 - e. submit a written assessment of the source(s) of the waste in the sump outside of the coal storage building that was being discharged into the storm sewer tributary to Outfall 001. Sample the sump contents and, if the waste is not permitted to discharge from Outfall 001 (i.e. non contact cooling water, boiler blowdown, and stormwater runoff), then eliminate the discharge. If eliminated, provide the date for elimination of this waste stream from Outfall 001 and where the waste stream is now discharged;
 - f. repair the tar decanter sludge area to eliminate spillage of this material onto the roadway to ensure that there is no discharge of this material. Submit written certification that all tar decanter sludge is maintained within secondary containment and that there is no direct discharge of this material;
 - g. repair the curbing around/near the BH circulation/collection tank;
 - h. eliminate all leaks of tar or drips outside of curbed area at primary and secondary cooler;
 - i. conduct calibration of the flow meter used for categorical monitoring in accordance with Part IV.5.f of the IU Permit, which requires that the accuracy of the device be

certified every year by the manufacturer, or take such other steps as are necessary to ensure that accurate measurements of the flow entering the ammonia still is taken;

- j. conduct calibration of the Outfall 003 flow meter and continue calibration as frequently as necessary, but no less than annually;
- k. submit a written summary which includes the actions that the Respondent has taken or will take, along with schedules, to address the additional Areas of Concern, identified in Section B of the CEI report.

4. Within seventy five (75) calendar days of receipt of this Order:

- a. conduct all flow monitoring for the process wastewater (categorical wastewater) at the location specified in the applicable permit and ensure that all process wastewaters are monitored and the pollutant loads of Ammonia-Nitrogen, Cyanide, and Naphthalene are calculated correctly. Submit a written description of the method used to achieve compliance, and written certification that all process wastewater flows are being monitored by the flow meter used to assess compliance with the categorical standards in 40 C.F.R. Part 420;
- b. conduct an audit of the entire process wastewater system using dye testing, sampling, and/or other means to ensure that all categorical wastewaters (process wastewaters) are always flowing through the permitted categorical pretreatment monitoring point (post equalization tank and prior to guard gate where process wastewater mixes with sanitary wastewaters), as required by the IU Permit. If the audit identifies process wastewater that does not flow through the permitted monitoring point, then treat the process wastewater accordingly and reroute it through the categorical monitoring point. Submit a written description of all process wastewater sources, approximate flow rates and categorical pollutant concentrations of these wastewaters, if any, that were discovered to not be flowing through the permitted categorical monitoring point, along with written certification that all process wastewater is flowing through the categorical monitoring point, and that the Facility is in compliance with its IU Permit;
- c. submit an amended BMP Plan which adequately addresses all housekeeping, preventive maintenance, and "hot spot" identification to ensure compliance with the SPDES Permit;
- d. submit a report containing the amount of time and associated costs (including but not limited to capital costs, supplies, labor, operations and maintenance, installation, etc.) which were required to comply with this Order and achieve compliance with the SPDES Permit and IU Permit.

5. Respondent shall immediately cease placing tar decanter sludge on coal piles where runoff discharges to SPDES outfalls or directly discharges to waters of the United States. Immediately eliminate the discharge of tar decanter sludge runoff to all SPDES permitted outfalls. Within fifteen (15) calendar days of receipt of this Order, Respondent shall submit written certification that runoff or wastewater associated with tar decanter sludge

no longer discharges from SPDES permitted outfalls, or otherwise, to waters of the United States, and that tar decanter sludge is not placed on coal piles (except those in a 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 in accordance with RCRA).

Outfall 002 Plan of Action (POA) and Monitoring

6. Respondent shall:
 - a. within sixty (60) calendar days of receipt of this Order, submit a POA that includes an engineering design report, prepared by a professional engineer, licensed in New York State, for treatment of the coal pile runoff and/or other appropriate engineering remedies to ensure consistent compliance with SPDES limits at Outfall No. 002. The engineering report should also address, as appropriate, provisions for proper operation and maintenance of treatment facilities. The engineering design report must be incorporated into the Facility's BMP Plan.
 - b. within one hundred and fifty (150) calendar days of receipt of this Order, fully implement the Plan of Action, achieve consistent compliance with SPDES Permit limits at Outfall 002, and submit written certification that the POA has been fully implemented and that consistent compliance has been achieved.
7. Beginning in January 2010, Respondent shall conduct monthly effluent monitoring for all permitted parameters at Outfall 002, and weekly visual monitoring at Outfall 002, in accordance with the following provisions, and shall report the effluent monitoring results on its Discharge Monitoring Report (DMR):
 - a. monthly effluent monitoring for Outfall 002 permitted parameters must be conducted within the first 30 minutes (or as soon thereafter as practical, but not to exceed one hour) of when the runoff or snowmelt begins discharging from the Facility. Samples (except snowmelt samples) must be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. The 72-hour storm interval is waived if the preceding measurable storm did not result in a stormwater discharge (e.g., a storm events in excess of 0.1 inches may not result in a stormwater discharge at some facilities). If no qualifying storm event resulted in runoff from the Facility during a monitoring month than a sample of a non qualifying sample must be taken in accordance with the SPDES Permit for Outfall 002. Also include documentation with the monitoring records indicating that no qualifying storm event occurred that resulted in stormwater runoff during that month. Monitoring results shall be reported on that month's DMR and a copy of the DMR shall be submitted to EPA at the time that the DMR is submitted to the NYSDEC as required by the SPDES Permit;
 - b. the weekly visual monitoring for Outfall 002 must document observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and

must be made during daylight hours (e.g., normal working hours). The examination must be conducted in a well-lit area;

- c. weekly visual monitoring for Outfall 002 must be conducted in accordance with the requirements set forth in subparagraph a, above. If no qualifying storm event resulted in runoff from the Facility during the week, then visual monitoring of a non-qualifying discharge must be taken at Outfall 002.
- d. the report from the weekly visual monitoring for Outfall 002, must be submitted along with that month's DMR and must include the examination date and time, examination personnel, the nature of the discharge (i.e., runoff or snow melt), visual quality of the stormwater discharge (including observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of stormwater pollution), probable sources of any observed stormwater contamination and actions taken to eliminate these sources.
- e. if, after the implementation of the Outfall 002 POA, the effluent limitations are exceeded, or if visual examination indicates the presence of stormwater pollution (e.g., color, odor, floating solids, settled solids, suspended solids, foam, oil sheen, or other indicators), the permittee must evaluate the Facility for potential sources of stormwater contamination. Any sources of contamination that are identified must be remedied. Such remedies may include implementation of non-structural or structural BMPs to prevent recurrence. The Respondent's BMP Plan must be updated to reflect these revisions within 14 days of the effluent or visual monitoring event for items that can be readily resolved. More complicated maintenance or repairs shall be included in the BMP Plan and performed within one hundred and twenty (120) days of the non-compliance with effluent limitations or of visual monitoring that identified stormwater contamination.

CERTIFICATION

8. Any documents to be submitted by Respondent as part of this Order shall be sent by certified mail or its equivalent and shall be signed by an authorized representative of the Respondent (see 40 C.F.R. § 122.22), and shall include the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."


All information required to be submitted by this Order shall be sent by certified mail or its equivalent to the following addresses:

Mr. Henry Mazzecca, P.E., Chief
Compliance Section
Water Compliance Branch
Division of Enforcement and Compliance Assistance
290 Broadway, 20th Floor
New York, NY 10007-1866

Mr. Joseph DiMura, P.E., Director
Bureau of Water Compliance Programs
Division of Water, NYSDEC
625 Broadway
Albany, NY 12233-3506

This Order does not constitute a waiver from compliance with, or a modification of, the effective terms and conditions of the CWA, its implementing regulations, or the applicable permits, which remain in full force and effect. This Order is an enforcement action taken by EPA to ensure swift compliance with the CWA. Issuance of an Administrative Order shall not be deemed an election by EPA to forego any civil or criminal actions which could seek penalties, fines, or other appropriate relief under the CWA.

This Order shall become effective upon the date of execution by the Director, Division of Enforcement and Compliance Assistance.

Dated: December 17, 2007 Signed: 
Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

IN THE MATTER OF:

Tonawanda Coke Corp.
3875 River Road
Tonawanda, NY 14150

SPDES Permit No. NY0002399
Town of Tonawanda IU Permit No. 331

Proceeding pursuant to Sections 301, 308(a) and
309(a) of the Clean Water Act, 33 U.S.C. §§ 1311,
1318(a) and 1319(a)

RESPONDENT

ADMINISTRATIVE ORDER

CWA-02-2010-3012

**ACKNOWLEDGMENT OF RECEIPT OF
ADMINISTRATIVE COMPLIANCE ORDER**

I, _____, an officer of the Tonawanda Coke Corp. with the

title of, _____, do hereby acknowledge the receipt

of copy of the ADMINISTRATIVE ORDER, CWA-02-2010-3012.

DATE: _____

SIGNED: _____