

US EPA ARCHIVE DOCUMENT



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

APR 12 2010

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

COPY

James D. Crane, Owner & CEO  
Tonawanda Coke Corporation  
3875 River Road  
Tonawanda, New York 14150-6507


**RE: Notice of Violation - EPA Index No. CAA-02-2010-1303**

Dear Mr. Crane:

The United States Environmental Protection Agency (EPA) issues the enclosed Notice of Violation (NOV) to Tonawanda Coke Corporation (TCC), pursuant to Section 113(a)(1) of the Clean Air Act (Act), 42 U.S.C. § 7413(a)(1). The NOV alleges that TCC failed to comply with requirements in 6 N.Y.C.R.R. Part 214, entitled "By-product Coke Oven Batteries," and in 6 N.Y.C.R.R. Part 201, entitled "Permits and Certificates," which are approved by EPA into the New York State Implementation Plan.

As indicated in the NOV, if you wish to request a conference with EPA to discuss the NOV, you may do so in writing within seven (7) calendar days of your receipt of the NOV. If you have any questions, or would like to schedule the conference provided for in the NOV, please contact Erick Ihlenburg, Assistant Regional Counsel, at (212) 637-3250.

Sincerely,

  
Dore LaPosta, Director  
Division of Enforcement and Compliance Assistance  
U.S. Environmental Protection Agency – Region 2

Enclosure

US EPA ARCHIVE DOCUMENT

cc: Mr. Rick Kennedy, Esq.  
Hodgson Russ, LLP  
The Guaranty Building  
140 Pearl Street, Suite 100  
Buffalo, New York 14202-4040

Mr. Larry Sitzman, Regional Air Pollution Control Engineer  
New York State Department of Environmental Conservation – Region 9  
Division of Air Resources  
270 Michigan Avenue  
Buffalo, New York 14203 – 2999

Mr. Robert J. Stanton, Director  
New York State Department of Environmental Conservation  
Division of Air Resources  
Bureau of Stationary Sources  
625 Broadway, 2nd Floor  
Albany, New York 12233 - 3254

Ms. Colleen McCarthy, Senior Counsel  
New York State Department of Environmental Conservation  
Bureau of Air Resources  
625 Broadway, 14th Floor  
Albany, New York 12233 – 5500

Ms. Maureen Brady, Associate Counsel—Legal Affairs  
New York State Department of Environmental Conservation  
Region 9  
270 Michigan Avenue  
Buffalo, New York 14203-2999

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

IN THE MATTER OF:

Tonawanda Coke Corporation  
Tonawanda, New York

RESPONDENT

**Notice of Violation**

Index No.: CAA-02-2010-1303

**Statutory Authority**

The United States Environmental Protection Agency (EPA) Region 2 Director of the Division of Enforcement & Compliance Assistance (Director) issues this **Notice of Violation (NOV)** to **Tonawanda Coke Corporation (TCC or Respondent)** for violations at its by-product coking facility located in Tonawanda, New York (Facility). EPA issues this NOV pursuant to Section 113(a)(1) of the Clean Air Act (CAA or the Act), 42 U.S.C. § 7413(a)(1). The authority to make findings of violations and issue this NOV is delegated to the Director from the EPA Administrator through the Regional Administrator. Section 113(a)(1) of the Act requires that the EPA notify both the person in violation and the State in which the violation occurred whenever EPA finds that a person has violated or is in violation of any requirement of an applicable implementation plan.

### Statutory and Regulatory Background

1. Section 109 of the Act directs EPA to promulgate regulations establishing primary and secondary national ambient air quality standards (NAAQS) for each air pollutant for which air quality criteria have been issued pursuant to Section 108 of the Act (criteria pollutants).
2. Pursuant to Section 109 of the Act, EPA promulgated the NAAQS at 40 C.F.R. Part 50.
3. Section 110 of the Act provides that, among other things, after promulgation of a NAAQS under Section 109 of the Act for any criteria pollutant, each state shall adopt a plan that provides for the implementation, maintenance and enforcement of such NAAQS in each air quality control region (or portion thereof) in that state. These plans, once approved by EPA, are referred to as state implementation plans (SIP).
4. Section 110 of the Act provides that, among other things, each SIP submitted to EPA for approval must include enforceable emission limitations and other control measures, means or techniques as may be necessary or appropriate to meet the applicable requirements of the Act; must include a program to provide for the enforcement of such control measures; and must require, as may be prescribed by EPA, the installation, maintenance and replacement of equipment, and the implementation of other necessary steps, to monitor emissions from stationary sources.

5. To meet the requirements of Section 110 of the Act, on August 23, 1994, New York State adopted the current 6 N.Y.C.R.R. Part 214, entitled "By-Product Coke Oven Batteries" (Part 214), which became effective 30 days after its adoption.
6. On July 20, 2006, EPA approved the current Part 214 into the New York SIP, making the requirements in Part 214 federally enforceable. 71 Fed. Reg. 41,163; 40 C.F.R. § 52.1679.
7. Section 214.1(b)(1) of Part 214 defines "by-product coke oven battery" as a process for the destructive distillation of coal and separation of gaseous and liquid distillates from the carbon residue or coke, which includes ovens, charging systems (including larry cars, jumper pipes, charging conveyors from coal storage and or weigh bins), auxiliary gas collection systems, heating systems and flues, pushing systems, door machines, mud trucks, quench cars, quenching systems, desulfurization systems, sulfur recovery units, waste heat stacks and air cleaning devices or control equipment (including oven patching equipment, door hoods, sheds and other hoods either movable or stationary and with or without water sprays).
8. Section 214.2 of Part 214 provides that by-product coke oven batteries must comply with any applicable emission standard, visible emission limitations and other requirements in Part 214, unless exempted under Section 214.10 of Part 214.
9. Section 214.3(a) of Part 214 provides that visible emissions must not exceed 150 seconds from any five consecutive charges at a single battery when measured in

- accordance with the procedures set forth in subdivisions (b), (c), (d) and (e) of Section 214.3.
10. Section 214.6(a) of Part 214 provides that the average opacity of emissions from waste heat (underfire) stack must not exceed 20 percent as measured in accordance with the procedures set forth in Section 214.6(b) of Part 214.
  11. On December 23, 1997, EPA approved into the New York SIP, revisions to 6 N.Y.C.R.R. Part 201, entitled "Permits and Certificates" (Part 201), making the SIP-approved requirements in Part 201 federally enforceable. 62 Fed. Reg. 67,004.
  12. On October 3, 2005, EPA approved the current Part 201 into the New York SIP. 70 Fed. Reg. 57,511; 40 C.F.R. § 52.1679.
  13. Section 201.1 of the SIP-approved Part 201 provides, among other things, that Part 201 is applicable throughout the State of New York.
  14. Section 201.2(b) of the SIP-approved Part 201 provides that no person shall operate an air contamination source without having a valid certificate to operate issued by the New York State Department of Environmental Conservation (NYSDEC), except as otherwise provided in Section 201.2(b)(1) through (3) of Part 201.
  15. On December 23, 1997, EPA approved into the New York SIP, revisions to 6 N.Y.C.R.R. Part 200, entitled "General Provisions" (Part 200), making the SIP-approved requirements in Part 200 federally enforceable. 62 Fed. Reg. 67,004.
  16. On May 22, 2001, EPA approved the current Part 200 into the New York SIP. 66 Fed. Reg. 28,062; 40 C.F.R. § 52.1679.

17. Section 200.1(d) of the SIP-approved Part 200 defines “air contaminant or air pollutant” as a chemical, dust, compound, fume, gas, mist, smoke, vapor, pollen or any combination thereof.
18. Section 200.1(f) of the SIP-approved Part 200 defines an “air contamination source or emission source” as any apparatus, contrivance or machine capable of causing emission of any air contaminant to the outdoor atmosphere, including any appurtenant exhaust system, air cleaning device, but excepting an indirect source of air contamination as defined in 6 N.Y.C.R.R. Part 203. Where a process at an emission unit uses more than one apparatus, contrivance or machine in combination, the combination may be considered a single emission source.
19. Section 200.1(s) of the SIP-approved Part 200 defines “emission” as the release of any air contaminant into the outdoor atmosphere.

#### **Findings of Fact**

20. Respondent TCC owns and operates a coke facility, located at 3875 River Road in Tonawanda, New York, which utilizes a process for the destructive distillation of coal and separation of gaseous and liquid distillates from the carbon residue or coke, and which includes ovens, charging systems, auxiliary gas collection systems, heating systems and flues, pushing systems, quenching systems and towers, and a waste heat stack, among other things.
21. On February 13, 2009, February 17, 2009, February 24, 2009 and March 13, 2009, inspectors from the NYSDEC observed that the average opacity emissions



from TCC's waste heat stack exceeded 20 percent. The opacity of emissions was computed by averaging the results of twenty four (24) consecutive opacity observations made at 15-second intervals. Seven (7) exceedances were observed on February 13, 2009; five (5) exceedances were observed on February 17, 2009; three (3) exceedances were observed on February 24, 2009; and eight (8) exceedances were observed on March 13, 2009.

22. From April 13, 2009 through April 21, 2009, EPA conducted an inspection at the Facility (EPA Inspection) to evaluate TCC's compliance with applicable Clean Air Act requirements.
23. During the EPA Inspection, EPA observed that TCC operated a pressure relief valve (PRV) on the coke oven gas (COG) line returning to the coke ovens, which released COG to the outdoor atmosphere.
24. During the EPA Inspection, EPA observed that the COG pressure was measured in the COG line routed from the exhausters. The COG pressure is typically between 100 and 150 centimeters (cm) oil.
25. During the EPA Inspection, EPA observed that the PRV was set to release COG when the pressure reached 120 to 130 cm oil.
26. During the EPA Inspection, on April 21, 2009, EPA observed that the PRV released COG to the outdoor atmosphere as frequently as every 30 minutes, as documented on the circular chart on which data was being recorded. The circular chart provided by TCC for April 20, 2009 also documents COG pressure exceeding 130 cm oil.

27. EPA's subsequent review of the Facility files indicates that Respondent owned and operated the PRV without a valid NYSDEC Part 201 certificate to operate.
28. On September 1, 2009, EPA issued TCC a CAA Section 114 request for information, Reference number CAA-02-2009-1475 (Section 114 Letter).
29. EPA received TCC's responses to the Section 114 Letter on October 5, 2009.
30. Question 29(c) of the Section 114 Letter required TCC to provide copies of its daily Method 303 observation records for the past five (5) years.
31. In TCC's response to Question 29(c) of the Section 114 Letter, TCC provided copies of the daily Method 303 observation records for the past year. These records showed that charging visible emissions exceeded 150 seconds from any five consecutive charges at a single battery on May 5, 2008; May 8, 2008; May 16, 2008; September 19, 2008; December 29, 2008; and August 27, 2009.

#### **Conclusions of Law and Findings of Violation**

32. From the Findings of Fact set forth above, EPA finds that Respondent is the owner and/or operator of a by-product coke oven battery.
33. From the Findings of Fact set forth above, EPA finds that Respondent is subject to 6 N.Y.C.R.R. Part 214 (By-Product Coke Oven Batteries).
34. From the Findings of Fact set forth above, EPA finds that on twenty-three (23) instances between February 13, 2009 and March 13, 2009, Respondent exceeded the average opacity of emissions limit of 20 percent at its waste heat stack, in violation of Section 214.6(a) of Part 214.

35. From the Findings of Fact set forth above, EPA finds that Respondent operated a PRV at the Facility, which is an air contamination source under Parts 200 and 201.
36. From the Findings of Fact set forth above, EPA finds that Respondent operated the PRV without having a valid certificate to operate issued by the NYSDEC, in violation of Section 201.2(b) of Part 201.
37. From the Findings of Fact set forth above, EPA finds that on six (6) instances between May 5, 2008 and August 27, 2009, the visible emissions from Respondent's by-product coke oven battery exceeded 150 seconds from any five consecutive charges, in violation of Part 214.3(a) of Part 214.

### Enforcement

Section 113(a)(3) of the Act authorizes EPA to take any of the following actions in response to Respondent's violation(s) of the Act:

- issue an administrative penalty order for penalties up to \$25,000 per day for each violation in accordance with Section 113(d) of the Act, and adjust the maximum penalty provided by the Act up to \$27,500 per day for each violation that occurs from January 30, 1997 through March 14, 2004, \$32,500 per day for each violation that occurs from March 15, 2004 through January 12, 2009, and \$37,500 per day for each violation that occurs after January 12, 2009, in accordance with the Debt Collection Improvement Act, 31 U.S.C. 3701 et seq. (DCIA), and 40 C.F.R. Part 19, promulgated pursuant to the DCIA;
- issue an order requiring such person to comply with a requirement of the Act, of which EPA has determined Respondent to be in violation; and
- bring a civil action pursuant to Section 113(b) of the Act for injunctive relief and/or civil penalties, and in accordance with the DCIA and 40 C.F.R. Part 19.

In addition, for any person who knowingly violates any requirement or prohibition of the SIP for more than thirty (30) days after date of the issuance of a NOV, Section 113(c) of the Act provides for criminal penalties or imprisonment, or both. Under Section 306 of the Act, the regulations promulgated thereunder (40 C.F.R. Part 15), and Executive Order 11,738, facilities subject to federal contracts, grants and loans must be in full compliance with the Act and all regulations promulgated pursuant thereto. Violation of the Act may result in the subject facility, or other facilities owned or operated by Respondent, being ineligible for participation in any federal contract, grant, or loan program.

#### **Penalty Assessment Criteria**

Section 113(e)(1) of the Act states that if a penalty is assessed pursuant to Sections 113 or 304(a) of the Act, the Administrator or the court, as appropriate, shall, in determining the amount of the penalty to be assessed, take into consideration the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence (including evidence other than the applicable test method), payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, the seriousness of the violation, and other factors as justice may require.

Section 113(e)(2) of the Act allows the Administrator or the court, as appropriate, to assess a penalty for each day of violation. In accordance with Section 113(e)(2) of the Act, EPA will consider a violation to continue from the date the violation began until the date Respondent establishes that it has achieved continuous compliance. If

Respondent proves that there was an intermittent day of compliance or that the violation was not continuous in nature, then EPA will reduce the penalty accordingly.


### Opportunity for Conference

Respondent may request a conference with EPA concerning the violations alleged in this NOV. This conference will enable Respondent to present evidence regarding the findings of violation, the nature of the violations, and any efforts it may have taken or may propose to take to achieve compliance. Respondent may arrange to be represented by legal counsel.

Respondent's request for a conference must be confirmed in writing, within seven (7) calendar days of its receipt of this NOV. If requested, the conference will be held within thirty (30) calendar days of Respondent's receipt of this NOV. The request for a conference, or other inquiries concerning this NOV, should be made to:

Erick R. Ihlenburg  
U.S. Environmental Protection Agency – Region 2  
Office of Regional Counsel, Air Branch  
290 Broadway, 16<sup>th</sup> Floor  
New York, NY 10007-1866  
(212) 637-3250

Issued: April 12, 2010

  
\_\_\_\_\_  
Dore LaPosta, Director  
Division of Enforcement and Compliance Assistance  
U.S. Environmental Protection Agency – Region 2  
290 Broadway, 21<sup>st</sup> Floor  
New York, NY 10007-1866

To: Mr. James D. Crane, Owner & CEO  
Tonawanda Coke Corporation  
3875 River Road  
Tonawanda, New York 14150-6507

cc: Mr. Rick Kennedy, Esq.  
Hodgson Russ, LLP  
The Guaranty Building  
140 Pearl Street, Suite 100  
Buffalo, New York 14202-4040

Mr. Larry Stizman, RAPCE  
New York State Department of Environmental Conservation  
Region 9  
270 Michigan Avenue  
Buffalo, New York 14203-2999

Mr. Robert J. Stanton, P.E., Director  
New York State Department of Environmental Conservation  
Division of Air Resources  
Bureau of Stationary Sources  
625 Broadway, 2nd Floor  
Albany, New York 12233-3254

Ms. Colleen McCarthy, Senior Counsel  
New York State Department of Environmental Conservation  
Bureau of Air Resources  
625 Broadway, 14th Floor  
Albany, New York 12233-5500

Ms. Maureen Brady, Associate Counsel—Legal Affairs  
New York State Department of Environmental Conservation  
Region 9  
270 Michigan Avenue  
Buffalo, New York 14203-2999

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY THAT ON **April 12, 2010**, I MAILED A TRUE COPY OF THE ATTACHED DOCUMENT BY **CERTIFIED MAIL-RETURN RECEIPT REQUESTED**, **ARTICLE NUMBERS 7005-1820-0004-0273-9574** POSTAGE PRE-PAID, UPON THE FOLLOWING PERSON(S):

**James D. Crane, Owner & CEO  
Tonawonda Coke Corporation  
3875 River Road  
Tonawonda, New York 14150-6507**



**Geraldo Villaran**