

US EPA ARCHIVE DOCUMENT



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

7002 2030 0006 5359 0882

DEC - 7 2009

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

James D. Crane, Owner & CEO
Mark L. Kamholz, Manager—Environmental Compliance
Tonawanda Coke Corporation
3875 River Road
Tonawanda, New York 14150-6507

RE: Notice of Violation - EPA Index No. CAA-02-2010-1301

Dear Mr. Crane & Mr. Kamholz:

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," 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 Mr. Erick Ihlenburg, Assistant Regional Counsel, Office of Regional Counsel, Air Branch, 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. 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-02-2010-1301

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 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 214.2 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.
8. 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).
9. Section 214.1(b)(2) of Part 214 defines "charging" as the operation that introduces coal into a coke oven, beginning when coal enters the oven and continuing until all charging hole lids are replaced and sealed. "Charging" does

not include the period when lids are reopened to sweep spilled coal into the oven.

10. Section 214.5(a) of Part 214 provides that a person may not operate a wet quench tower of a coke oven battery unless it is equipped with a baffle system designed to effectively reduce particulate emissions during quenching.
11. Section 214.5(b) of Part 214 provides that the total dissolved solids concentration of any quench tower make-up water must not exceed 1,600 milligrams per liter (mg/l), except as provided in Section 214.5(c) of Part 214. Section 214.5(b) further provides that, among other things, compliance with the 1,600 mg/l limit will be determined by taking the arithmetic average of the total dissolved solids concentrations of each of four samples of make-up water obtained at 15-minute intervals.

Findings of Fact

12. 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, and pushing systems, among other things.
13. From April 13, 2009 through April 21, 2009, EPA inspectors conducted a full compliance evaluation at the Facility (EPA Inspection) to determine TCC's compliance with all applicable Clean Air Act requirements.
14. On September 8, 2009, EPA issued TCC a Section 114 Request for Information, Reference Number CAA-02-2009-1475 (114 Letter).

15. On October 9, 2009, TCC provided EPA with its responses to the above-referenced 114 Letter.
16. Question 8.a. of the 114 Letter required TCC to state whether the quench towers at the Facility have any baffles.
17. During the EPA Inspection, and in TCC's response to Question 8.a. of the 114 Letter, TCC indicated that the quench towers at the Facility are not equipped with any baffles.
18. Question 9 of the 114 Letter required TCC to provide copies of records of all analyses done pursuant to Section 214.5(b) of Part 214 during the past five (5) years, regarding concentrations of total dissolved solids (TDS) in the quench water.
19. In its response to Question 9 of the 114 Letter, TCC provided results of the analyses that were done on June 28, 2005, June 23, 2006, June 15, 2007, June 18, 2008, and June 18, 2009. TCC's results indicated that on these dates, three (3) samples of make-up water from the quench tower were obtained at 15-minute intervals to determine compliance with the 1,600 mg/l TDS limit in Part 214.

Conclusions of Law and Findings of Violation

20. 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 facility.
21. 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).

22. From the Findings of Fact set forth above, EPA finds that Respondent operates the wet quench towers of its coke oven battery without baffle systems designed to effectively reduce particulate emissions during quenching, in violation of Section 214.5(a) of Part 214.
23. From the Findings of Fact set forth above, EPA finds that on five (5) occasions between June 28, 2005 and June 18, 2009, Respondent failed to determine its compliance with the 1,600 mg/l TDS limit in Part 214 by taking the arithmetic average of the TDS concentrations of each of four (4) samples of make-up water obtained at 15-minute intervals, in violation of Section 214.5(b) 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, in accordance with Section 113(d) of the Act, 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, 16th Floor
New York, NY 10007-1866
(212) 637-3250

Issued: December 7, 2009



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

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

**Mr. Mark L. Kamholz, Manager—Environmental Control
Tonawanda Coke Corporation
3875 River Road
Tonawanda, New York 14150-6507**

**cc: 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**

Enclosure 2

CAA § 113

§ 7413.

(a) In general

(1) Order to comply with SIP

Whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated or is in violation of any requirement or prohibition of an applicable implementation plan or permit, the Administrator shall notify the person and the State in which the plan applies of such finding. At any time after the expiration of 30 days following the date on which such notice of a violation is issued, the Administrator may, without regard to the period of violation (subject to section 2462 of title 28)—

- (A) issue an order requiring such person to comply with the requirements or prohibitions of such plan or permit,
- (B) issue an administrative penalty order in accordance with subsection (d) of this section, or
- (C) bring a civil action in accordance with subsection (b) of this section.

(2) State failure to enforce SIP or permit program

Whenever, on the basis of information available to the Administrator, the Administrator finds that violations of an applicable implementation plan or an approved permit program under subchapter V of this chapter are so widespread that such violations appear to result from a failure of the State in which the plan or permit program applies to enforce the plan or permit program effectively, the Administrator shall so notify the State. In the case of a permit program, the notice shall be made in accordance with subchapter V of this chapter. If the Administrator finds such failure extends beyond the 30th day after such notice (90 days in the case of such permit program), the Administrator shall give public notice of such finding. During the period beginning with such public notice and ending when such State satisfies the Administrator that it will enforce such plan or permit program (hereafter referred to in this section as "period of federally assumed enforcement"), the Administrator may enforce any requirement or prohibition of such plan or permit program with respect to any person by—

- (A) issuing an order requiring such person to comply with such requirement or prohibition,

(B) issuing an administrative penalty order in accordance with subsection (d) of this section, or

(C) bringing a civil action in accordance with subsection (b) of this section.

(3) EPA enforcement of other requirements

Except for a requirement or prohibition enforceable under the preceding provisions of this subsection, whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated, or is in violation of, any other requirement or prohibition of this subchapter, section 7603 of this title, subchapter IV-A, subchapter V, or subchapter VI of this chapter, including, but not limited to, a requirement or prohibition of any rule, plan, order, waiver, or permit promulgated, issued, or approved under those provisions or subchapters, or for the payment of any fee owed to the United States under this chapter (other than subchapter II of this chapter), the Administrator may—

- (A) issue an administrative penalty order in accordance with subsection (d) of this section,
- (B) issue an order requiring such person to comply with such requirement or prohibition,
- (C) bring a civil action in accordance with subsection (b) of this section or section 7605 of this title, or
- (D) request the Attorney General to commence a criminal action in accordance with subsection (c) of this section.

(4) Requirements for orders

An order issued under this subsection (other than an order relating to a violation of section 7412 of this title) shall not take effect until the person to whom it is issued has had an opportunity to confer with the Administrator concerning the alleged violation. A copy of any order issued under this subsection shall be sent to the State air pollution control agency of any State in which the violation occurs. Any order issued under this subsection shall state with reasonable specificity the nature of the violation and specify a time for compliance which the Administrator determines is reasonable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. In any case in which an order under this subsection (or notice to a violator under paragraph (1)) is issued to a corporation, a copy of such order (or notice) shall be issued to

preconstruction requirements), an order under section 7477 of this title (relating to preconstruction requirements), an order under section 7603 of this title (relating to emergency orders), section 7661a (a) or 7661b (c) of this title (relating to permits), or any requirement or prohibition of subchapter IV-A of this chapter (relating to acid deposition control), or subchapter VI of this chapter (relating to stratospheric ozone control), including a requirement of any rule, order, waiver, or permit promulgated or approved under such sections or subchapters, and including any requirement for the payment of any fee owed the United States under this chapter (other than subchapter II of this chapter) shall, upon conviction, be punished by a fine pursuant to title 18 or by imprisonment for not to exceed 5 years, or both. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment.

- (2) Any person who knowingly—
 - (A) makes any false material statement, representation, or certification in, or omits material information from, or knowingly alters, conceals, or fails to file or maintain any notice, application, record, report, plan, or other document required pursuant to this chapter to be either filed or maintained (whether with respect to the requirements imposed by the Administrator or by a State);
 - (B) fails to notify or report as required under this chapter; or
 - (C) falsifies, tampers with, renders inaccurate, or fails to install any monitoring device or method required to be maintained or followed under this chapter^[2] shall, upon conviction, be punished by a fine pursuant to title 18 or by imprisonment for not more than 2 years, or both. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment.
- (3) Any person who knowingly fails to pay any fee owed the United States under this subchapter, subchapter III, IV-A, V, or VI of this chapter shall, upon conviction, be punished by a fine pursuant to title 18 or by imprisonment for not more than 1 year, or

both. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment.

- (4) Any person who negligently releases into the ambient air any hazardous air pollutant listed pursuant to section 7412 of this title or any extremely hazardous substance listed pursuant to section 11002 (a)(2) of this title that is not listed in section 7412 of this title, and who at the time negligently places another person in imminent danger of death or serious bodily injury shall, upon conviction, be punished by a fine under title 18 or by imprisonment for not more than 1 year, or both. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment.
- (5)
 - (A) Any person who knowingly releases into the ambient air any hazardous air pollutant listed pursuant to section 7412 of this title or any extremely hazardous substance listed pursuant to section 11002 (a)(2) of this title that is not listed in section 7412 of this title, and who knows at the time that he thereby places another person in imminent danger of death or serious bodily injury shall, upon conviction, be punished by a fine under title 18 or by imprisonment of not more than 15 years, or both. Any person committing such violation which is an organization shall, upon conviction under this paragraph, be subject to a fine of not more than \$1,000,000 for each violation. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment. For any air pollutant for which the Administrator has set an emissions standard or for any source for which a permit has been issued under subchapter V of this chapter, a release of such pollutant in accordance with that standard or permit shall not constitute a violation of this paragraph or paragraph (4).
 - (B) In determining whether a defendant who is an individual knew that the violation

Any such determination by the Administrator and the Attorney General shall not be subject to judicial review.

- (2)
- (A) An administrative penalty assessed under paragraph (1) shall be assessed by the Administrator by an order made after opportunity for a hearing on the record in accordance with sections 554 and 556 of title 5. The Administrator shall issue reasonable rules for discovery and other procedures for hearings under this paragraph. Before issuing such an order, the Administrator shall give written notice to the person to be assessed an administrative penalty of the Administrator's proposal to issue such order and provide such person an opportunity to request such a hearing on the order, within 30 days of the date the notice is received by such person.
- (B) The Administrator may compromise, modify, or remit, with or without conditions, any administrative penalty which may be imposed under this subsection.
- (3) The Administrator may implement, after consultation with the Attorney General and the States, a field citation program through regulations establishing appropriate minor violations for which field citations assessing civil penalties not to exceed \$5,000 per day of violation may be issued by officers or employees designated by the Administrator. Any person to whom a field citation is assessed may, within a reasonable time as prescribed by the Administrator through regulation, elect to pay the penalty assessment or to request a hearing on the field citation. If a request for a hearing is not made within the time specified in the regulation, the penalty assessment in the field citation shall be final. Such hearing shall not be subject to section 554 or 556 of title 5, but shall provide a reasonable opportunity to be heard and to present evidence. Payment of a civil penalty required by a field citation shall not be a defense to further enforcement by the United States or a State to correct a violation, or to assess the statutory maximum penalty pursuant to other authorities in the chapter, if the violation continues.
- (4) Any person against whom a civil penalty is assessed under paragraph (3) of this subsection or to whom an administrative penalty order is issued under paragraph (1) of

this subsection may seek review of such assessment in the United States District Court for the District of Columbia or for the district in which the violation is alleged to have occurred, in which such person resides, or where such person's principal place of business is located, by filing in such court within 30 days following the date the administrative penalty order becomes final under paragraph (2), the assessment becomes final under paragraph (3), or a final decision following a hearing under paragraph (3) is rendered, and by simultaneously sending a copy of the filing by certified mail to the Administrator and the Attorney General. Within 30 days thereafter, the Administrator shall file in such court a certified copy, or certified index, as appropriate, of the record on which the administrative penalty order or assessment was issued. Such court shall not set aside or remand such order or assessment unless there is not substantial evidence in the record, taken as a whole, to support the finding of a violation or unless the order or penalty assessment constitutes an abuse of discretion. Such order or penalty assessment shall not be subject to review by any court except as provided in this paragraph. In any such proceedings, the United States may seek to recover civil penalties ordered or assessed under this section.

- (5) If any person fails to pay an assessment of a civil penalty or fails to comply with an administrative penalty order—
- (A) after the order or assessment has become final, or
- (B) after a court in an action brought under paragraph (4) has entered a final judgment in favor of the Administrator,

the Administrator shall request the Attorney General to bring a civil action in an appropriate district court to enforce the order or to recover the amount ordered or assessed (plus interest at rates established pursuant to section 6621 (a)(2) of title 26 from the date of the final order or decision or the date of the final judgment, as the case may be). In such an action, the validity, amount, and appropriateness of such order or assessment shall not be subject to review. Any person who fails to pay on a timely basis a civil penalty ordered or assessed under this section shall be required to pay, in addition to such penalty and interest, the United States enforcement expenses, including but not limited to

corporate officer. Except in the case of knowing and willful violations, for purposes of paragraphs (1), (2), (3), and (5) of subsection (c) of this section the term "a person" shall not include an employee who is carrying out his normal activities and who is acting under orders from the employer.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT ON **December 8, 2009**, I MAILED A TRUE COPY OF THE ATTACHED DOCUMENT BY **CERTIFIED MAIL-RETURN RECEIPT** REQUESTED, **ARTICLE NUMBERS 7002-2030-0006-5359-0882** POSTAGE PRE-PAID, UPON THE FOLLOWING PERSON(S):

James D. Crane, Owner & CEO
Mark L. Kamholz, Manager-Environmental Compliance
Tonawonda Coke Corporation
3875 River Road
Tonawonda, New York 14150-6507


Geraldo Villaran