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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA and STATE OF NEW YORK Plaintiff, v. TONAWANDA COKE CORPORATION, Defendant.	Civil Action No. COMPLAINT

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), and the State of New York, by authority of the Attorney General of the State of New York, acting at the request of the Commissioner of the New York State Department of Environmental Conservation, file this complaint and allege as follows:

I. NATURE OF THE ACTION

1. This is a civil action for civil penalties and injunctive relief under Sections 113 and 304 of the Clean Air Act ("CAA"), 42 U.S.C. §§ 7413, 7604, Section 309 of the Clean Water Act ("CWA"), 33 U.S.C. §§ 1319, Section 313 of the Emergency Planning and Community Right to Know Act ("EPCRA"), 42 U.S.C. § 11023, and Articles 19 and 71 of the New York State Environmental Conservation Law ("ECL"), and the regulations promulgated thereto at Parts 201, et seq., of Title 6 of the New York Codes, Rules and Regulations ("6 N.Y.C.R.R."), against Defendant Tonawanda Coke Corporation ("Tonawanda Coke") with respect to a by-product coke manufacturing facility ("Tonawanda Facility" or "Facility") that Tonawanda Coke owns and operates in Tonawanda, New York.

II. JURISDICTION, AUTHORITY AND VENUE

2. This Court has jurisdiction over the subject matter of this action and over the parties pursuant to 28 U.S.C. §§ 1331, 1345, 1355 and 1367; Sections 113(b) and 304 of the CAA, 42 U.S.C. §§ 7413(b) and 7604; Section 309(b) of the CWA, 33 U.C.C. § 1319(b); and Section 325(b)(3) of EPCRA, 42 U.S.C. § 11045(b)(3). The Court has personal jurisdiction over the parties to this action.

3. Authority to bring this action is vested in the United States Department of Justice by 28 U.S.C. §§ 516 and 519; Sections 113(b) and 305 of the CAA, 42 U.S.C. §§7413(b) and 7605; Sections 309(b) of the CWA, 33 U.S.C. § 1319(b); and Section 325(c)(4) of EPCRA, 42 U.S.C. § 11045(c)(4) and the Attorney General of the State of New York by Section 304 of the CAA, 42 U.S.C. § 7604 and ECL §§ 71-2103 and 71-2107.

4. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391 and 1395; Section 113(b) of the CAA, 42 U.S.C. § 7413(b); Section 309(b) of the CWA, 33 U.S.C. § 1319(b); and EPCRA § 325(c)(4), 42 U.S.C. § 11045(c)(4), because the events giving rise to the claims alleged herein occurred in this District and Defendant Tonawanda Coke does business and has its principal place of business in this District.

III. NOTICE

5. The United States has provided notice of the commencement of this action to the State of New York as required by Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and Section 309(b) of the CWA, 33 U.S.C. § 1319(b).

IV. DEFENDANT

6. Tonawanda Coke was incorporated in the State of New York in 1978 and its principal place of business is in the State of New York.

7. Tonawanda Coke owns and operates a by-product coke manufacturing facility in Tonawanda, New York.

8. At all times relevant to this action Tonawanda Coke has owned and operated the Tonawanda Facility.

9. Tonawanda Coke is a "person" within the meaning of Sections 302(e) of the CAA, 42 U.S.C. § 7602(e); Sections 311(a)(7) and 502(5) of the CWA, 33 U.S.C. §§ 1321(a)(7), 1362(5);

Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), and applicable federal and state regulations promulgated pursuant to these statutes.

V. STATUTORY AND REGULATORY BACKGROUND

A. CLEAN AIR ACT: Statutory and Regulatory Background

10. The CAA, 42 U.S.C. §§ 7401–7671q, establishes a regulatory scheme designed to protect and enhance the quality of the nation's air so as to promote the public health and welfare and the productive capacity of its population. 42 U.S.C. § 7401(b)(1).

11. Section 112(b)(1) of the CAA, 42 U.S.C. § 7412(b)(1), sets forth a list of Hazardous Air Pollutants. Section 112(b)(2) of the CAA requires the Administrator of the EPA (the "Administrator") periodically to review and revise the list set forth in Section 112(b)(1) and, where appropriate, add pollutants that present or may present a threat of adverse human health or environmental effects. Section 112(b) of the CAA designates benzene as a Hazardous Air Pollutant. 42 U.S.C. § 7412 (b), 42 Fed. Reg. 29332 (June 8, 1977).

12. Section 112(c) of the CAA, 42 U.S.C. § 7412(c), requires EPA to publish a list of categories and subcategories of major and area sources of listed Hazardous Air Pollutants. Section 112(d) of the CAA requires EPA to promulgate emission standards for each category or subcategory of major and area sources of listed Hazardous Air Pollutants. These emissions standards are called National Emissions Standards for Hazardous Air Pollutants ("NESHAP"), and are found at 40 C.F.R. Part 61 and 63.

13. Section 112(a)(1) of the CAA, 42 U.S.C. § 7412(a)(1), defines "major source" as any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit ten tons per year ("tpy") or more of any

Hazardous Air Pollutant or twenty-five tpy or more of any combination of Hazardous Air Pollutants.

14. Title V of the CAA, 42 U.S.C. §§ 7661-7661e, establishes an operating permitting program designed to include all applicable requirements of the CAA in a single permit, and to provide for permitting for sources of Hazardous Air Pollutants. Section 502 of the CAA, 42 U.S.C. § 7661a, requires states to submit an approvable Title V permitting program before November 15, 1993. Pursuant to Section 502, the Administrator has promulgated regulations at 40 C.F.R. Part 70 setting forth the minimum requirements for an approvable Title V program. 57 Fed. Reg. 32295 (July 21, 1992).

15. Section 110 of the CAA requires each state to adopt a State Implementation Plan to meet requirements of the CAA, including the requirement to attain and maintain national ambient air quality standards ("NAAQS"). On April 23, 1984, New York State adopted 6 N.Y.C.R.R. Part 214, entitled "By-Product Coke Oven Batteries" ("Part 214"), which became effective 30 days after its adoption as part of its State Implementation Plan. On March 26, 1991, EPA approved Part 214 into the New York State Implementation Plan, making the requirements in Part 214 federally enforceable. 56 Fed. Reg. 12,452. On August 23, 1994, New York State adopted revisions to 6 N.Y.C.R.R. Part 214 that became effective on September 22, 1994. On July 20, 2006, EPA approved these revisions of Part 214 into the State Implementation Plan, and the requirements became federally enforceable. 71 Fed. Reg. 41,163; 40 C.F.R. § 52.1679.

Clean Air Act General Duty Clause

16. The General Duty Clause, Section 112(r)(1) of the Act, 42 U.S.C. § 7412(r)(1), provides in pertinent part as follows:

> The owners and operators of stationary sources producing, processing, handling or storing [any extremely hazardous] substances have a general duty in the same manner

> and to the same extent as Section 654 of Title 29 [29 U.S.C. § 654)] to identify hazards which may result from such releases [from any extremely hazardous substance] using appropriate hazard assessment techniques, to design and maintain a safe facility taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases which do occur.

17. Section 113 of the CAA authorizes EPA to commence a civil action for injunctive relief and civil penalties against any person who has violated any requirement or prohibition of the Act or regulations promulgated thereunder, or who has violated an applicable permit or implementation plan. The United States may seek penalties of up to $32,500 per day for each violation occurring between March 15, 2004 and January 12, 2009, and $37,500 per day for each violation occurring after January 12, 2009. 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701; 40 C.F.R. § 19.4.

NESHAP General Duty Requirement

18. 40 C.F.R. § 61.12(c) imposes on owners or operators of stationary sources a general duty to "maintain and operate the source, including associated equipment for air pollution control, in a manner consistent with good air pollution control practice for minimizing emissions."

NESHAP for Benzene Emissions from Coke By-Product Recovery – NESHAP Subpart L

19. Pursuant to authority granted to the Administrator by Sections 112 and 114 of the CAA, 42 U.SC. §§ 7412, 7414, EPA promulgated 40 C.F.R. Part 61, Subpart L, §§ 61.130 through 61.139, which established the NESHAP for Benzene Emissions from Coke By-Product Recovery Plants. 54 Fed. Reg. 38,073 (September 14, 1989).

20. 40 C.F.R. § 61.130(a) provides that NESHAP Subpart L applies to specific sources at furnace and foundry coke by-product recovery plants, including but not limited to tar-intercepting sumps, and to the following equipment that is intended to operate in benzene

service: pumps, valves, exhausters, pressure relief devices, sampling connection systems, open-ended valves or lines, flanges or other connectors, and control devices or systems required by 40 C.F.R. § 61.135. NESHAP Subpart L also applies to excess ammonia-liquor storage tanks and light-oil storage tanks at furnace coke by-produce recovery plants, among other sources. 40 C.F.R. § 61.130(b).

21. 40 C.F.R. § 61.131 defines "coke by-product recovery plant" as "any plant designed and operated for the separation and recovery of coal tar derivatives (by-products) evolved from coal during the coking process of a coke oven battery."

22. 40 C.F.R. § 61.131 defines "foundry coke" as "coke that is produced from raw materials with less than 26 percent volatile material by weight and that is subject to a coking period of 24 hours or more." "Furnace coke" is defined in 40 C.F.R. § 61.131 as "coke produced in by-product ovens that is not foundry coke." Once a plant becomes a furnace coke by-product recovery plant, it will continue to be considered a furnace coke by-product recovery plant, regardless of the coke production in subsequent years, 40 C.F.R. § 61.136(c).

23. 40 C.F.R. § 61.131 defines "in benzene service" as "a piece of equipment, other than an exhauster, that either contains or contacts a fluid (liquid or gas) that is at least 10 percent benzene by weight or any exhauster that either contains or contacts a fluid (liquid or gas) at least 1 percent benzene by weight as determined by the provisions of §61.137(b)."

24. 40 C.F.R. § 61.132(a)(1) requires owners or operators of furnace or foundry coke by-product recovery plants to enclose and seal all openings on each process vessel, tar storage tank, and tar-intercepting sump.

25. 40 C.F.R. § 61.132(a)(2) requires owners or operators of furnace or foundry coke by-product recovery plants to duct gasses from each process vessel, tar storage tank, and tar

intercepting sump to the gas collection system, gas distribution system, or other enclosed point in the by-product recovery process where the benzene in gas will be recovered or destroyed.

26. Under 40 C.F.R. § 61.132(b), following the installation of any control equipment to come into compliance with 40 C.F.R. § 61.132(a), owners or operators must monitor connections and seals on each control system to determine if it is operating with no detectible emissions (as indicated by an instrument reading of less than 500 ppm above background and visual inspections), using Method 21 and procedures specified in 40 C.F.R. § 61.245(c), and shall visually inspect each source (including sealing materials) and the ductwork of the control system for evidence of visible defects such as gaps or tears.

27. 40 C.F.R. § 61.135(c) requires owners and operators of equipment in benzene service to mark all equipment in benzene service subject to the provisions of NESHAP Subpart L in such a manner that it can be distinguished readily from other pieces of equipment in benzene service.

28. 40 C.F.R. § 61.132(d) requires owners or operators of furnace coke by-product recovery plants to comply with the sealing, ducting and monitoring requirements of Section 61.132 with regard to light-oil storage tanks and excess ammonia-liquor storage tanks.

29. 40 C.F.R. § 61.135(d)(2) requires that when a leak is detected, it shall be repaired as soon as practicable, but no later than fifteen calendar days after it is detected. A first attempt at repair must be made no later than five calendar days after detection.

30. 40 C.F.R. § 61.138(a)(1) requires detailed schematics, design specifications, and piping and instrumentation diagrams to be recorded and kept in a readily accessible location.

31. 40 C.F.R. § 61.138(b) provides a list of information that must be recorded and maintained for two years following each semiannual (and other) inspection and each annual maintenance inspection, including (1) the date of the inspection and the name of the inspector;

(2) a brief description of each visible defect in the source or control equipment and the method and date of repair of the defect; (3) the presence of a leak, as measured by Method 21, and the date of attempted and actual repair; and (4) a brief description of system abnormalities found during annual maintenance inspections, the repairs made, the date of attempted repair, and the date of actual repair.

32. 40 C.F.R. § 61.138(e)(1) requires owners and operators to submit a report in writing notifying the Administrator that the requirements of 40 C.F.R. Part 61 Subparts L and V have been implemented. The report must include the following information: (1) the type of source; (2) for equipment in benzene service, the equipment identification number and process unit identification, percent by weight benzene in the fluid at the equipment, and process fluid state in the equipment (gas/vapor or liquid); and (3) method of compliance with the standard, including whether the source will be a furnace or foundry coke by-product recovery plant for purposes of 40 C.F.R. § 61.132(d). 40 C.F.R. § 61.138(e)(2) provides that the initial report must be submitted within 90 days of the effective date, which is the date of the regulation's promulgation, unless a waiver of compliance is granted.

33. Pursuant to 40 C.F.R. § 61.138(f), owners and operators must submit a semiannual 40 C.F.R. Part 61 Subpart L and V report, starting six months after the initial report required by 40 C.F.R. § 61.138(e)(1), which details additional information, including revisions if changes have occurred since the initial report or subsequent revisions to the initial report.

NESHAP for Equipment Leaks (Fugitive Emission Sources) – NESHAP Subpart V

34. Pursuant to Sections 112 and 114 of the CAA, EPA promulgated the "National Emission Standard for Equipment Leaks (Fugitive Emissions Sources)," 40 C.F.R. Part 61, Subpart V, §§ 61.240 through 61.247 ("NESHAP Subpart V"). 49 Fed. Reg. 23,513 (June 6,

1984).

35. 40 C.F.R. § 61.135(a) provides that each owner or operator of equipment in benzene service shall comply with the requirements of 40 C.F.R. Part 61, Subpart V, except as otherwise provided.

36. 40 C.F.R. § 61.242-1 requires owners and operators to demonstrate compliance with testing and monitoring requirements for the following sources that operate in Volatile Hazardous Air Pollutant service: "pumps, compressors, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, surge control vessels, bottoms receivers, and control devices or systems required by this subpart." 40 C.F.R. § 61.240.

37. 40 C.F.R. § 61.242-2(a)(1) requires monthly monitoring of each pump to detect leaks using Method 21, as specified in 40 C.F.R. §61.245(b). 40 C.F.R. § 61.242-7(a) requires monthly monitoring of each valve to detect leaks by Method 21, as specified in 40 C.F.R. § 61.245(b). Pursuant to 40 C.F.R. § 61.242-7(c)(1), if a valve leak is not detected for two consecutive months, monitoring may occur on a quarterly basis.

38. 40 C.F.R. § 61.245(b)(1) requires owners and operators to comply with Method 21 when testing equipment for leaks. 40 C.F.R Part 60, Appendix A, Method 21.

39. 40 C.F.R. § 61.245(b)(3) requires testing instruments to be calibrated before use on each day of its use by the procedures specified in Method 21. 40 C.F.R. § 61.245(b)(3)(i) provides that gases used to calibrate shall contain zero air, less than 10 ppm of hydrocarbon in air. 40 C.F.R. § 61.245(b)(3)(ii) provides that gasses used to calibrate shall be a mixture of methane or n-hexane and air at a concentration of approximately, but less than, 10,000 ppm methane or n-hexane. Sections 3.2 and 3.4 of Method 21 provide that calibration gas used to calibrate leak detection equipment must have a specified shelf life affixed to the cylinder. 40

C.F.R Part 61, Appendix A, Method 21.

40. 40 C.F.R. § 61.246(b)(1) provides that when a leak is detected, "a weatherproof and readily visible identification, marked with the equipment identification number, shall be attached to the leaking equipment."

NESHAP For Benzene Waste Operations – NESHAP Subpart FF

41. Pursuant to Sections 112 and 114 of the CAA, 42 U.S.C. §§ 7412, 7414, EPA promulgated the "National Emissions Standards for Benzene Waste Operations," 40 C.F.R. Part 61, Subpart FF, §§ 61.340 through 61.359 ("NESHAP Subpart FF"). 55 Fed. Reg. 8,346 (March 7, 1990).

42. 40 C.F.R. § 61.340(a) provides that NESHAP Subpart FF applies to owners or operators of coke by-product recovery plants, among other sources.

43. 40 C.F.R. § 61.355(a) requires owners or operators of a coke by-product recovery plant to determine the Total Annual Benzene quantity from facility waste. To calculate the Total Annual Benzene quantity, owners and operators must calculate the annual benzene quantity by multiplying the annual waste quantity for each waste stream by the flow-weighted annual average benzene concentration for each waste stream. The annual benzene quantity for each waste stream generated for the year must then be added to the annual benzene quantity for each process unit turnaround waste annualized to get the Total Annual Benzene quantity.

44. 40 C.F.R. § 61.355(b) provides that, for purposes of calculating the Total Annual Benzene, owners or operators must determine the annual waste quantity at the point of waste generation by one of the methods enumerated in § 61.355(b)(5) though (7), unless otherwise provided.

45. 40 C.F.R. § 61.355(a)(4)(i) provides that, if the Total Annual Benzene quantity from

facility waste is less than 10 mg/yr (11 ton/yr) but is equal to or greater than 1 mg/yr (1.1 ton/yr), the owner or operator shall comply with the recordkeeping requirements of § 61.356 and reporting requirements of § 61.357 of NESHAP Subpart FF, which requires each owner or operator of a coke by-product recovery plant to submit to the Administrator within 90 days after January 7, 1993, or by the initial startup for a new source with an initial startup after the effective date, a report that summarizes the regulatory status of each waste stream subject to 40 C.F.R. Part 61, Subpart FF.

46. 40 C.F.R. § 61.357(c) provides that a report, providing the information listed in § 61.357(a)(1) through (3), shall be submitted annually and whenever there is a change in the process generating the waste stream that could cause the Total Annual Benzene quantity from facility waste to increase to 10 Mg/yr or more.

National Emissions Standards for Coke Oven Batteries – 40 C.F.R. Part 63, Subpart L

47. Pursuant to Sections 112 and 114 of the Act, 42 U.S.C. §§ 7412, 7414, EPA promulgated the "National Emission Standards for Coke Oven Batteries," 40 C.F.R. Part 63, Subpart L, §§ 63.300 through 63.313 ("Maximum Achievable Control Technology (MACT) Subpart L"). 58 Fed. Reg. 57,911 (October 27, 1993).

48. Pursuant to 40 C.F.R. § 63.300(a), the provisions of MACT Subpart L apply to, among other sources, existing by-product coke oven batteries at a coke plant, on and after the specified dates, unless otherwise specified in MACT Subpart L.

49. 40 C.F.R § 63.306(a) requires owners and operators to prepare and submit a written emissions control work practice plan for each coke oven battery. Pursuant to 40 C.F.R. § 63.306(b)(1), the work practice plan must include an initial and refresher training program for all coke plant operating personnel with responsibilities that impact emissions, including contractors,

in job requirements related to emission control and the requirements of MACT Subpart L.

50. Pursuant to 40 C.F.R. § 63.308(a), the owner or operator of a by-product coke oven battery shall inspect the collecting main for leaks at least once daily according to the procedures in Method 303 in Appendix A to Part 63. 40 C.F.R. § 63.308(b) provides that the owner or operator shall record the time and date a leak is first observed, the time and date the leak is temporarily sealed, and the time and date of repair.

51. 40 C.F.R. § 63.311(b) provides that the owner or operator of an existing coke oven battery must submit written statement(s) to certify compliance to EPA within 45 days of the applicable compliance date. The initial compliance statement must include the information listed in 40 C.F.R. § 63.311(b)(1) through (7). 40 C.F.R. § 63.311(d) requires the owner or operator to submit a semiannual compliance certification which includes the criteria listed in 40 C.F.R. § 63.311(d)(1) through (9).

Coke Oven MACT, 40 C.F.R. Part 63, Subpart CCCCC

52. Pursuant to Sections 112 and 114 of the Act, 42 U.S.C. §§ 7412, 7414, EPA promulgated the "National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching and Battery Stacks," 40 C.F.R. Part 63, Subpart CCCCC, §§ 63.7280 through 63.7352 ("Coke Oven MACT"). 68 Fed. Reg. 18,025 (April 14, 2005).

53. 40 C.F.R. § 63.7281 provides that the Coke Oven MACT applies to owners or operators of coke oven batteries at coke plants that are (or are part of) a major source of Hazardous Air Pollutant emissions. A major source is a plant site that emits or has the potential to emit any single Hazardous Air Pollutant at a rate of 10 tons or more per year or any combination of Hazardous Air Pollutant at a rate of 25 tons or more per year.

54. 40 C.F.R. § 63.7291 requires that owners or operators must, among other things,

observe and record the opacity of fugitive pushing emissions from each oven at least once every 90 days, and observe and record the opacity of fugitive pushing emissions for at least four consecutive pushes per battery each day. If the average opacity for any individual push exceeds 30 percent opacity for any short battery, the owner or operator must take corrective action and/or increase coking time for that oven. If at any time the owner or operator places an oven on increased coking time as a result of fugitive pushing emissions that exceed 30 percent for a short battery, the oven must be kept on the increased coking time until it qualifies for decreased coking time using the procedures in § 63.7291(a)(7)(ii) or (a)(7)(iii).

55. 40 C.F.R. § 63.7330 requires that, for each by-product coke oven battery, the owner or operator must monitor at all times the opacity of emissions exiting each stack using a Continuous Opacity Monitoring System according to the requirements in § 63.7331(j).

NY State Implementation Plan Requirements, 6 N.Y.C.R.R. Parts 214 and 201

56. Pursuant to 6 N.Y.C.R.R. § 214.2, the by-product coke oven batteries must comply with any applicable emission standard, visible emission limitations and other requirements in Part 214, unless exempted under 6 N.Y.C.R.R. 214.10.

57. Pursuant to 6 N.Y.C.R.R. § 214.3(a), 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.

58. Pursuant to 6 N.Y.C.R.R. § 214.4(a), a by-product coke oven battery must be equipped with coke pushing and transport to quench tower control equipment to limit particulate emissions to the atmosphere during pushing and transport to the quench tower unless exempted under 6 N.Y.C.R.R. 214.10(b).

59. Pursuant to 6 N.Y.C.R.R. § 214.6(a), the average opacity of emissions from a waste

heat stack must not exceed 20 percent as measured in accordance with the procedures set forth in 6 N.Y.C.R.R. 214.6(b).

60. Pursuant to 6 N.Y.C.R.R. § 214.10(b), a source owner required to comply with the coke pushing and transport emission control requirements specified in 6 N.Y.C.R.R. § 214.4(a) may be exempted from such requirements upon the acceptance by the New York State Department of Environmental Conservation ("NYSDEC") of an alternative emission reduction plan that satisfies the criteria in Section 214.10(b). The alternative plan will become effective upon approval by EPA.

6 N.Y.C.R.R.Part 211

61. 6 N.Y.C.R.R. 211.1 provides that no person shall cause or allow emission of air contaminants to the outdoor atmosphere of such quantity, characteristic or duration which are injurious to human, plant or animal life or to property, or which unreasonably interfere with the comfortable enjoyment of life or property. This prohibition applies, but is not limited to, any particulate, fume, gas, mist, odor, smoke, vapor, toxic or deleterious emission.

62. 6 N.Y.C.R.R. 200.1(d) defines air contaminant or air pollutant as a chemical, dust, compound, fume, gas, mist, odor, smoke, vapor, pollen or any combination thereof.

Title V Permit

63. Section 502(a) of the CAA, 42 U.S.C. §7661a, provides that after the effective date of any permit program approved or promulgated pursuant to Title V of the CAA, it shall be unlawful for any person to violate any requirement of a permit issued under Title V of the CAA, or to operate a Title V affected source, including a major source, except in compliance with a permit issued by a permitting authority under Title V of the CAA.

64. Section 503(a) of the CAA, 42 U.S.C. § 7661b, provides that any source specified in

Section 502(a) of the CAA shall become subject to a permit program and shall be required to have a permit to operate by the relevant date. Section 503(b)(2) of the CAA provides that the regulations promulgated pursuant to Section 502(b) shall include requirements that the permittee periodically, but no less frequently than annually, certify that the facility is in compliance with any applicable requirements of the Title V permit, and promptly report any deviations from permit requirements to the permitting authority.

65. In accordance with Section 502(d)(1) of the CAA, 42 U.S.C. §7661a(d)(1), New York developed and submitted 6 N.Y.C.R.R. Part 201 (Title V Operating Permit Program), to meet the requirements of Title V of the CAA and 40 C.F.R. Part 70. This program is a merged Title V and state operating permit program. EPA granted interim approval of the New York Title V Operating Permit Program on December 9, 1996, 61 Fed. Reg. 57,589 (Nov. 7, 1996), and granted full approval of the program on February 5, 2002, 67 Fed. Reg. 5,216 (Feb. 5, 2002).

66. Pursuant to 6 N.Y.C.R.R. § 201-6.3, an owner operator of a facility subject to title V permitting must include certain required items in a permit application for the permit application to be considered a complete application. Specifically, Section 201-6.3(d)(10)(iii), requires the inclusion of a "schedule for submission of compliance certifications during the permit term, to be submitted no less frequently than annually, or more frequently if specified by the underlying applicable requirement or by the department in the permit."

67. On April 30, 2002, the NYSDEC issued Tonawanda Coke the Facility Title V Permit, Permit ID # 9-1464-00113/00031, with an expiration date of May 1, 2007. Tonawanda Coke submitted a timely renewal application to NYSDEC under 6 N.Y.C.R.R. § 621.13(a) and Condition 3 of the Title V Permit, which has the effect of administratively extending the permit pending its renewal.

68. Section 113(a)(3) of the CAA, 42 U.S.C. § 7413(a)(3), authorizes EPA to bring a civil action if the Administrator finds that any person is in violation of any regulation promulgated under Section 112 of the CAA, 42 U.S.C. § 7412, and any requirement or prohibition of Title V of the CAA, 42 U.S.C. § 7661 et seq. and its implementing regulations.

69. Section 304 of the CAA, 42 U.S.C. § 7604, authorizes New York to bring a civil action against any person in violation of an emission standard or limitation under the CAA to enforce such emission standard or limitation and to apply any appropriate civil penalties.

70. Section 113(b) of the CAA, 42 U.S.C. § 7413(b), authorizes the Court to enjoin a violation, to require compliance, and to assess a civil penalty for each day of each violation.

B. CLEAN WATER ACT: Statutory and Regulatory Background

71. The objective of the CWA is to restore and maintain the chemical, physical and biological integrity of the Nation's waters. 33 U.S.C. §1251(a). To achieve this objective, Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the "discharge of any pollutant by any person" to waters of the United States, except, *inter alia*, in compliance with a National Pollutant Discharge Elimination System ("NPDES") permit issued by EPA or an authorized state pursuant to Section 402 of CWA, 33 U.S.C. § 1342.

72. Section 402(a)(1) of the CWA, 33 U.S.C. § 1342(a)(1), provides that the Administrator may, after an opportunity for a public hearing, issue a permit for the discharge of any pollutant to the waters of the United States, upon the condition that such discharge will meet all applicable requirements of the CWA and such other conditions as the permitting authority determines necessary to carry out the provisions of the CWA.

73. Section 402 of the CWA, 33 U.S.C. § 1342, directs the Administrator to prescribe conditions for NPDES permits to assure compliance with the requirements of the CWA, including conditions on data and information collection, reporting, and such other requirements as the

Administrator deems appropriate.

74. Effluent limitations, as defined in Section 502(11) of the CWA, 33 U.S.C. § 1362(11), are restrictions on quantity, rate, and concentration of chemical, physical, biological, and other constituents which are discharged from point sources. Effluent limitations are among the conditions and limitations prescribed in NPDES permits issued under Section 402(a) of the CWA, 33 U.S.C. § 1342(a).

75. Section 402(p) of the CWA sets forth requirements for the issuance of NPDES permits for the discharge of storm water associated with industrial activity. Section 307 of the CWA and 40 C.F.R. Part 403 require certain pollutants discharged to treatment works to meet additional pretreatment effluent limitations.

76. Section 402(b) provides that states may issue their own NPDES permits for storm water discharges into navigable waters within their jurisdiction if they are authorized by EPA. The Administrator has authorized the State of New York to administer New York's program for permitting discharges of pollutants to navigable waters. Memorandum of Agreement Between Chairman of New York State Board on Electric Generation Siting and the Environment and The United States Environmental Protection Agency, Region II (Aug. 14 1975). NYSDEC is the state agency with the authority to administer permits under the State's permitting program. Id.; 33 U.S.C. §1342(b). The United States may enforce state issued NPDES permits under the CWA. 33 U.S.C. 1342(i).

77. Section 309(b) of the CWA, 33 U.S.C. § 1319(b), authorizes the Administrator to commence a civil action for appropriate relief, including a permanent or temporary injunction, against any person who violates Section 301 of the CWA, 33 U.S.C. § 1311, or violates any permit condition or limitation in a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

78. Section 309(d) of the CWA, 33 U. S. C. § 1319(d), provides that any person who

violates Section 301 of the CWA, 33 U.S.C. § 1311, or violates any permit condition or limitation in a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, shall be subject to a civil penalty payable to the United States. The United States may seek penalties of up to $32,500 per day for each violation occurring between March 15, 2004 and January 12, 2009, and $37,500 per day for each violation occurring after January 12, 2009. 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701; 40 C.F.R. 19.4.

C. EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ACT: Statutory and Regulatory Background

79. EPCRA provides communities with information on potential chemical hazards within their boundaries and fosters state and local emergency planning efforts to control any accidental releases. Emergency Planning and Community Right-to-Know Programs, Interim Final Rule, 51 Fed. Reg. 41,570 (Nov. 17, 1986).

80. Pursuant to Section 313 of EPCRA, and the regulations promulgated thereunder, owners or operators of a facility subject the requirements of Section 313(b) are required to submit annually, no later than July 1 of each year, a Toxic Chemical Release Inventory Reporting Form, EPA Form 9350-1 ("Form R"), for each toxic chemical listed under 40 C.F.R. § 372.65 that was manufactured, imported, processed, or otherwise used during the preceding calendar year in quantities exceeding the established toxic chemical thresholds listed in 41 U.S.C. § 11023(f)(1).

81. Ammonia and Benzene are each a "toxic chemical" as defined by 40 C.F.R. § 372.3 and as listed in 40 C.F.R. § 372.65, for which the reportable threshold quantity is 25,000 pounds per year. 42 U.S.C § 11023(f)(1)(B)(iii).

82. According to emissions statements submitted by Tonawanda Coke to NYSDEC, and testing performed by Tonawanda Coke, Tonawanda Coke manufactured ammonia and benzene

in quantities that exceeded 25,000 pounds per year during the calendar years 2006, 2007, 2008, 2009 and 2010. Tonawanda Coke was thus required to include ammonia and benzene in its Form R submissions.

83. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), provides that any person who violates Section 313 of EPCRA shall be subject to civil penalties payable to the United States. The United States may seek penalties of up to $32,500 per day for each violation occurring between March 15, 2004 and January 12, 2009, and $37,500 per day for each violation occurring after January 12, 2009. 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701; 40 C.F.R. 19.4.

GENERAL ALLEGATIONS

84. At all times pertinent to this action, Tonawanda Coke has been and continues to be the owner and operator of the Facility.

85. The Facility is a "stationary source" within the meaning of Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C).

86. The Facility, which includes a by-product coke battery consisting of sixty coke ovens, operates twenty-four hours per day, seven days per week, 365 days per year.

87. The Facility produces coke through a destructive distillation process in which coal is heated in ovens in an oxygen-deficient atmosphere. The volatile materials in the heated coal are removed from the ovens as Coke Oven Gas. Coke Oven Gas is processed to remove desired by-products and the gas is combusted in boilers to produce steam for the facility, or rerouted to the battery as a fuel.

88. Coke Oven Gas contains substances including, but not limited to, benzene, benzene soluble organics, hydrogen sulfide, ammonia, sulfur dioxide, ethylene, ethane, acetylene, methane, propane, propylene, propadiene, butane, and butene.

89. Tonawanda Coke is a furnace coke manufacturer for purposes of NESHAP Subpart L.

During the years 2007 and 2008, more than 25 percent of the coke produced was furnace coke. As a furnace coke manufacturer, Tonawanda Coke is required to install additional pollution controls, including enclosing and sealing all openings and duct all gasses from light oil storage tanks and excess ammonia liquor storage tanks.

90. The Facility emits more than 10 tpy of benzene and is therefore a "major source" of Hazardous Air Pollutants under Section 112 of the Act and its implementing regulations.

91. Tonawanda Coke was required to obtain a SPDES permit because of the Facility's direct and indirect discharges to the Niagara River. 33 U.S.C. 1331(a), 33 U.S.C. 1342(b), 40 C.F.R. § 122.41(a). Tonawanda Coke's SPDES Individual Discharge Permit, No. NY0002399 ("SPDES Permit"), originally became effective on November 23, 2005, and has been administratively extended based on Tonawanda Coke's timely submittal of a permit renewal application. The SPDES Permit authorizes the discharge of non contact cooling water, boiler blow down and storm water from the settling pond from Outfall 001, coal pile runoff from Outfall 002, and non-contact cooling water from a steam turbine from Outfall 003 directly to the Niagara River via Outfall 004.

92. Tonawanda Coke's discharges to the Town of Tonawanda's Treatment Plant were originally authorized under the Town's Industrial User Sewer Connection Permit, No. 331. The Industrial User Permit authorizes Tonawanda Coke to discharge process wastewater from the facility's weak liquor storage, which flows to the ammonia steam stripper, then to the equalization tank, and finally is discharged to the town's Treatment Plant. These discharges are subject to the iron and steel point source categorical standards in 40 C.F.R. 420 Subpart A – Cokemaking Subcategory, Existing Source.

93. On October 26, 2010, the Town of Tonawanda issued Industrial User Permit 331-S,

which temporarily authorized Tonawanda Coke to discharge storm water from remedial activities to the Town of Tonawanda sewer system.

94. Tonawanda Coke is the owner and/or operator of a "covered facility" subject to the requirements of Section 113(a) of EPCRA, 42 U.S.C. § 11023(a). 42 U.S.C. § 11023(b).

95. In 2009, the Facility was inspected on several occasions to determine compliance with the CAA, CWA, EPCRA and ECL Article 19:

a. On April 14, 2009 through April 21, 2009, the National Enforcement Investigation Center, EPA Region 2 and NYSDEC conducted a Clean Air Act compliance evaluation at the Facility. From May 24, 2010 until May 28, 2010, EPA inspectors conducted a second compliance evaluation at the Facility to assess fugitive Coke Oven Gas emissions from the Facility's byproducts area. A third compliance evaluation was conducted at the Facility on October 12 through 14, 2010 to assess fugitive Coke Oven Gas emissions from the Facility's by-products area.

b. On May 20, 2009 through May 21, 2009, EPA and NYSDEC conducted a Clean Water Act compliance evaluation inspection at the Facility. On November 4, 2009 through November 5, 2009, NYSDEC conducted a compliance sampling inspection to determine compliance with the CWA at the Facility.

c. On May 5, 2009, EPA conducted an EPCRA 313 Compliance Inspection.

d. On June 17, 2009, EPA conducted an inspection of the Facility regarding the release notification provisions of Section 103(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9603(a), and Section 304 of the Emergency Planning

and Community Right to Know Act ("EPCRA"), 42 U.S.C. § 11004.

e. On March 3, 2010, April 19, 2010, January 10, 2013 and September 24, 2013, NYSDEC took opacity readings of Tonawanda Coke's waste heat stack to determine compliance with 6 N.Y.C.R.R § 214.6 and Tonawanda Coke's Title V Permit.

During the inspections described above, the inspection teams discovered evidence of a number of violations of environmental statutes and regulations.

96. On September 1, 2009, EPA issued a Request For Information to Tonawanda Coke pursuant to authority granted by Section 114 of the CAA, 42 U.S.C. § 7414. Tonawanda Coke submitted a timely response to the CAA Request for Information on October 5, 2009. On December 3, 2009, EPA submitted a Request For Information to Tonawanda Coke pursuant to authority granted by Section 308(a) of the CWA, 33 U.S.C. 1318(a). The CWA Request for Information was subsequently amended on December 22, 2009. After a series of extensions, Tonawanda Coke submitted its response to EPA's Request for Information on January 21, 2010. The information submitted in Tonawanda Coke's Request for Information responses revealed evidence of a number of violations of environmental statutes and regulations.

97. On December 18, 2009, EPA issued a request for information letter to Tonawanda Coke pursuant to Section 104(e) of CERCLA. Tonawanda Coke submitted a response dated January 15, 2010.

98. NYSDEC issued Notices of Violation, dated June 16, 2010, January 11, 2013 and October 1, 2013, to Tonawanda Coke for the documented opacity violations on the dates referenced in paragraph 95(e) above.

VI. CLAIMS FOR RELIEF

A. CLEAN AIR ACT

FIRST CLAIM FOR RELIEF
(NESHAP General Duty Requirement)

99. Paragraphs 1 through 98 are realleged and incorporated herein by reference.

100. On a continuous basis since at least April 2009, Tonawanda Coke failed to minimize leaks of Coke Oven Gas, which contains benzene, from the Facility by-products area. Approximately two-thirds of the total Facility benzene emissions were emitted from various leaks in the by-products area. Tonawanda Coke therefore violated 40 C.F.R. § 61.12(c) by failing to maintain and operate the Facility's by-products area in a manner consistent with good air pollution control practice for minimizing emissions.

101. Unless restrained by an Order of the Court, these violations of the Clean Air Act and its implementing regulations will continue.

102. Pursuant to Section 113(b) of CAA, 42 U.S.C. § 7413(b), the Federal Civil Penalties Inflation Adjustment Act of 1990, 31 U.S.C. § 3701, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and its implementing regulations, 40 C.F.R. § 19.4, and Section 304(a) of the CAA, 42 U.S.C. § 7604(a), Tonawanda Coke is liable for a civil penalty of up to $37,500 per day for each violation alleged in paragraph 100.

SECOND CLAIM FOR RELIEF
(NESHAP Subpart L for Benzene Emissions from Coke By-Product Recovery)

103. Paragraphs 1 through 102 are realleged and incorporated herein by reference.

104. On a continuous basis from at least April 2009 until on or around March 5, 2010, Tonawanda Coke failed to enclose and seal all openings on two tar-intercepting sumps and one downcomer sump in violation of 40 C.F.R. § 61.132(a)(1).

105. On a continuous basis from at least April 2009 until on or around April 30, 2010, Tonawanda Coke failed to duct gases from each process vessel, tar storage tank, and tar intercepting sump to the gas collection system, gas distribution system, or other enclosed point in the by-product recovery process where the benzene in gas is recovered or destroyed in violation of 40 C.F.R. § 61.132(a)(2).

106. On a continuous basis from at least April 2009 until on or around April 1, 2010, Tonawanda Coke operated three unenclosed and unsealed weak ammonia-liquor storage tanks, an unenclosed and unsealed surge tank, an unenclosed and unsealed ammonia removal system sump, and an unenclosed and unsealed light-oil storage tank in violation of 40 C.F.R. § 61.132(d).

107. On a continuous basis from at least April 2009 until on or around March 5, 2010, Tonawanda Coke failed to mark at least 36 pieces of equipment in benzene service subject to the requirements of NESHAP Subpart L in violation of 40 C.F.R. § 61.135(c).

108. Tonawanda Coke failed to make a first attempt to repair a leak on exhauster #2 within five days of the discovery of a leak at the bearing seal of exhauster #2 on April 17, 2009, in violation of 40 C.F.R. § 61.135(d)(2).

109. From approximately November 2006 until May 2010, Tonawanda Coke failed to keep detailed schematics, design specifications, and piping and instrumentation diagrams in a readily accessible location in violation of 40 C.F.R. § 61.138(a)(1). During the April 2009 Inspection, inspectors requested but were not provided with such documents. Tonawanda Coke's failure to maintain such documents was confirmed by Tonawanda Coke's response to the CAA Request for Information, in which it stated such documents do not exist.

110. From approximately November 2006 until February 2010, Tonawanda Coke failed to keep records of monitoring and visual inspections of the control equipment installed on the process vessels, tar storage tanks and tar intercepting sumps for a minimum of two years after each semi-annual inspection and each annual maintenance inspection in violation of 40 C.F.R. § 61.138(b).

111. Tonawanda Coke failed to include all required information in NESHAP Subpart L semi-annual compliance reports submitted by Tonawanda Coke on March 13, 2007, September 17, 2007, March 14, 2008, September 18, 2008, and March 16, 2009 in violation of 40 C.F.R. § 61.138(f).

112. Unless restrained by an Order of the Court, these violations of the Clean Air Act and its implementing regulations will continue.

113. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), the Federal Civil Penalties Inflation Adjustment Act of 1990, 31 U.S.C. § 3701, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and its implementing regulations, 40 C.F.R. § 19.4, and Section 304(a) of the CAA, 42 U.S.C. § 7604(a), Tonawanda Coke is liable for a civil penalty of up to $37,500 per day for each violation alleged in paragraphs 104-111.

THIRD CLAIM FOR RELIEF
(NESHAP Subpart V for Equipment Leaks)

114. Paragraphs 1 through 113 are realleged and incorporated herein by reference.

115. On at least four occasions, Tonawanda Coke failed to conduct monthly equipment leak monitoring of one pump in benzene service in violation of 40 C.F.R. § 61.242-2(a)(1).

116. On at least four occasions, Tonawanda Coke failed to conduct equipment leak monitoring of 35 valves in benzene service in violation of 40 C.F.R. § 61.242-7(a).

117. On at least thirty-nine occasions, Tonawanda Coke failed to accurately calibrate

testing equipment using zero calibration gas before conducting required monthly equipment leak monitoring in violation of 40 C.F.R. § 61.245(b)(3).

118. On at least thirty-nine occasions, Tonawanda Coke failed to use a calibration gas that was a mixture of methane or n-hexane and air at a concentration of approximately, but less than, 10,000 ppm methane or n-hexane in violation of 40 C.F.R. § 61.245(b)(4)(ii). Tonawanda Coke used a calibration gas mixture of methane-in-air, with a concentration of 497.8 ppm methane.

119. On at least thirty-nine occasions, Tonawanda Coke used a calibration gas that did not have a specified shelf life, as required by §§ 3.3 and 3.4 of Method 21, in violation of 40 CFR § 61.245.

120. During the April 2009 Inspection, EPA observed that Tonawanda Coke failed to attach to four pieces of leaking equipment a weatherproof and readily visible identification marked with the equipment identification number in violation of 40 CFR § 61.246(b)(1).

121. Unless restrained by an Order of the Court, these violations of the Clean Air Act and its implementing regulations will continue.

122. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), the Federal Civil Penalties Inflation Adjustment Act of 1990, 31 U.S.C. § 3701, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and its implementing regulations, 40 C.F.R. § 19.4 and Section 304(a) of the CAA, 42 U.S.C. § 7604(a), Tonawanda Coke is liable for a civil penalty of up to $37,500 per day for each violation alleged in paragraphs 115-120.

FOURTH CLAIM FOR RELIEF
(NESHAP Subpart FF for Benzene Waste Operations)

123. Paragraphs 1 through 122 are realleged and incorporated herein by reference.

124. Tonawanda Coke failed to accurately determine the annual waste quantity at the point of generation of each waste stream using one of the methods designated in 40 C.F.R. §

61.355(b)(5) in 2007, 2008, 2009, 2010 and 2011, in violation of 40 C.F.R. § 61.355(b).

125. Unless restrained by an Order of the Court, these violations of the Clean Air Act and its implementing regulations will continue.

126. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), the Federal Civil Penalties Inflation Adjustment Act of 1990, 31 U.S.C. § 3701, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and its implementing regulations, 40 C.F.R. § 19.4, and Section 304(a) of the CAA, 42 U.S.C. § 7604(a), Tonawanda Coke is liable for a civil penalty of up to $37,500 per day for each violation alleged in paragraph 124.

FIFTH CLAIM FOR RELIEF
(MACT Subpart L, National Emissions Standards for Coke Oven Batteries)

127. Paragraphs 1 through 126 are realleged and incorporated herein by reference.

128. Tonawanda Coke failed to provide refresher training during 2007, 2008 and 2009 for all coke plant operating personnel with responsibilities that impact emissions about job requirements related to emission control and the requirements of MACT, Subpart L, in violation of 40 C.F.R. § 63.306.

129. Tonawanda Coke failed to record and maintain records of daily inspections, including the time and date a collecting main leak is temporarily sealed, and the time and date of repair of a collecting main leak, on at least 101 occasions between October 13, 2004 and August 27, 2009 in violation of 40 C.F.R. § 63.308(b).

130. Tonawanda Coke failed to include all the criteria listed in 40 C.F.R. § 63.311(d)(1) through (9) in its MACT Subpart L semi-annual compliance certification in 2007, 2008, 2009, 2010 and 2011 in violation of 40 C.F.R. § 63.311(d).

131. Unless restrained by an Order of the Court, these violations of the Clean Air Act and its implementing regulations will continue.

132. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), the Federal Civil Penalties Inflation Adjustment Act of 1990, 31 U.S.C. § 3701, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and its implementing regulations, 40 C.F.R. § 19.4, and Section 304(a) of the CAA, 42 U.S.C. § 7604(a), Tonawanda Coke is liable for a civil penalty of up to $37,500 per day for each violation alleged in paragraphs 128-130.

SIXTH CLAIM FOR RELIEF
(MACT Subpart CCCCC, Coke Oven NESHAP)

133. Paragraphs 1 through 132 are realleged and incorporated herein by reference.

134. On a continuous basis since at least October 2010, Tonawanda Coke failed to install a Continuous Opacity Monitoring System on all stacks serving the Facility coke oven battery, as required for all major sources of Hazardous Air Pollutants subject to MACT Subpart CCCCC, in violation of 40 C.F.R. § 63.7330.

135. Unless restrained by an Order of the Court, these violations of the Clean Air Act and its implementing regulations will continue.

136. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), the Federal Civil Penalties Inflation Adjustment Act of 1990, 31 U.S.C. § 3701, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and its implementing regulations, 40 C.F.R. 19.4, and Section 304(a) of the CAA, 42 U.S.C. § 7604(a), Tonawanda Coke is liable for a civil penalty of up to $37,500 per day for each violation alleged in paragraph 134.

SEVENTH CLAIM FOR RELIEF
(CAA General Duty Clause)

137. Paragraphs 1 through 136 are realleged and incorporated herein by reference.

138. At its Facility, Tonawanda Coke stores, processes, handles, and/or produces substances listed as regulated extremely hazardous substances pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3) including hydrogen sulfide, ammonia, sulfur dioxide, ethylene,

ethane, acetylene, methane, propane, propylene, and propadiene.

139. Pursuant to Section 112(r)(1) of the Act, Tonawanda Coke has a general duty, in the same manner and to the same extent as 29 U.S.C. § 654, to (a) identify hazards which may result from accidental releases of a regulated substance or other extremely hazardous substance, using appropriate hazard assessment techniques, (b) design and maintain a safe facility taking such steps as are necessary to prevent releases, and (c) minimize the consequences of accidental releases which do occur.

140. On at least two occasions, there were incidents at Tonawanda Coke's Facility, involving failures of equipment which resulted in raw coke oven gas being sent to a flare. Raw coke oven gas contains regulated extremely hazardous substances pursuant to Section 112(r) of the CAA. These incidents also resulted in releases to the air of substances which are regulated extremely hazardous substances pursuant to Section 112(r) of the CAA.

141. EPA and NYSDEC inspections, and recent EPA enforcement actions to Tonawanda Coke, detailed numerous concerns regarding the equipment at the Facility which is used to handle regulated extremely hazardous substances pursuant to Section 112(r) of the CAA. The failures to properly maintain, inspect, and/or keep in good repair equipment at the Facility which is used to handle such substances could lead to a substantial releases of these substances from the Facility.

142. Tonawanda Coke has failed to properly inspect, maintain, and/or keep in good repair equipment at the Facility which would prevent future releases of substances which are regulated pursuant to Section 112(r) of the CAA, there have been releases to the air of substances regulated pursuant to Section 112(r) of the CAA, and Tonawanda Coke has failed to such steps as are necessary to prevent releases and future releases of regulated substances or other extremely

hazardous substances. Tonawanda Coke failed to satisfy the general duty referred to in Paragraph 129 above, in that, among other things, Tonawanda Coke has not designed and maintained a safe facility taking such steps as are necessary to prevent releases and future releases of a regulated extremely hazardous substances pursuant to Section 112(r) of the CAA. Therefore, Tonawanda Coke violated the provisions of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

143. Unless restrained by an Order of the Court, these violations of the Clean Air Act and its implementing regulations will continue.

144. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), the Federal Civil Penalties Inflation Adjustment Act of 1990, 31 U.S.C. § 3701, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and its implementing regulations, 40 C.F.R. § 19.4, and Section 304(a) of the CAA, 42 U.S.C. § 7604(a), Tonawanda Coke is liable for a civil penalty of up to $37,500 per day for each violation alleged in paragraph 142.

EIGHTH CLAIM FOR RELIEF
(New York State Implementation Plan Requirements)

145. Paragraphs 1 through 144 are realleged and incorporated herein by reference.

146. On at least 30 instances in 2008 and 2009, Tonawanda Coke allowed visible emissions from a single battery to exceed 150 seconds for five consecutive charges in violation of 6 N.Y.C.R.R. 214.3(a).

147. On a continuous basis since November 15, 2006, Tonawanda Coke failed to equip the byproduct coke oven battery with coke pushing and transport to quench tower control equipment in violation of 6 N.Y.C.R.R. § 214.4(a).

148. On at least three occasions in 2007, 2008 and 2009, Tonawanda Coke failed to correctly determine compliance with the Total Dissolved Solids limit of 1,600 mg/l in violation

of 6 N.Y.C.R.R. 214.5(b). Instead of taking the arithmetic average of the Total Dissolved Solids concentrations of four samples of make-up water, Tonawanda Coke took and recorded the arithmetic average of Total Dissolved Solids concentrations of only three samples.

149. On at least twenty-three occasions between February 13, 2009 and March 13, 2009, Tonawanda Coke exceeded the average opacity limit of 20 percent at its waste heat stack in violation of 6 N.Y.C.R.R. § 214.6(a).

150. Tonawanda Coke exceeded the average opacity limit of 20 percent at its waste heat stack on March 3, 2010, April 19, 2010, January 10, 2013 and September 24, 2013, in violation of 6 N.Y.C.R.R. § 214.6(a).

151. Unless restrained by an Order of the Court, these violations of the Clean Air Act and its implementing regulations will continue.

152. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), the Federal Civil Penalties Inflation Adjustment Act of 1990, 31 U.S.C. § 3701, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and its implementing regulations, 40 C.F.R. § 19.4, and Section 304(a) of the CAA, 42 U.S.C. § 7604(a), Tonawanda Coke is liable for a civil penalty of up to $37,500 per day for each violation alleged in paragraph 146-150.

NINTH CLAIM FOR RELIEF
(Title V Permit)

153. Paragraphs 1 through 152 are realleged and incorporated herein by reference.

154. In Tonawanda Coke's Title V Annual Compliance Certifications submitted in 2007, 2008, 2009 and 2010, Tonawanda Coke failed to identify non-compliance with the requirements of its Title V Permit in violation of 6 N.Y.C.R.R. § 201-6.3(d)(10)(iii) and Section 503(b)(2) of the Act, 42 U.S.C. § 7661b(b)(2).

155. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), the Federal Civil

Penalties Inflation Adjustment Act of 1990, 31 U.S.C. § 3701, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and its implementing regulations, 40 C.F.R. § 19.4, and Section 304(a) of the CAA, 42 U.S.C. § 7604(a), Tonawanda Coke is liable for a civil penalty of up to $37,500 per day for each violation alleged in paragraph 141.

TENTH CLAIM FOR RELIEF
(Emissions from Tonawanda Coke's By-Product Area)

156. Paragraphs 1 through 155 are reallaged and incorporated herein by reference.

157. Tonawanda Coke's Title V Permit includes, as an applicable requirement, 6 N.Y.C.R.R § 211.1 as Permit condition number 107.

158. 6 N.Y.C.R.R. § 201-6.5(a)(2) requires that a permittee must comply with all conditions of a Title V permit and that any non-compliance constitutes a violation and grounds for an enforcement action, permit termination, revocation or denial of a permit renewal application.

159. The May and October 2010 inspections revealed that Tonawanda Coke's by-product area emitted a significant amount of benzene into the air.

160. NYSDEC received complaints from members of the Tonawanda community of odors, among other concerns, attributed to Tonawanda Coke that unreasonably interfered with their comfortable enjoyment of life and property.

161. Tonawanda Coke has caused or allowed emissions of air contaminants to the outdoor atmosphere of such quantity, characteristic or duration which are injurious to human, plant or animal life or to property, or which unreasonably interfere with the comfortable enjoyment of life or property in violation of 6 N.Y.C.R.R. §211.1 and permit condition number 107 of Tonawanda Coke's Title V Permit.

162. Pursuant to Section 304(a) of the CAA, 42 U.S.C. § 7604(a) and ECL § 71-2103,

Tonawanda Coke is liable for a civil penalty of up to $37,500 per day for each violation alleged in paragraphs 157 – 161.

B. CLEAN WATER ACT

ELEVENTH CLAIM FOR RELIEF
(Violation of SPDES Permit No. NY0002399)

163. Paragraphs 1 through 162 are realleged and incorporated herein by reference.

164. On at least eleven occasions, Tonawanda Coke violated its SPDES Permit effluent limits at Outfall 002. On eight of those occasions, Tonawanda Coke violated its limit for Total Suspended Solids, and on three of those occasions, Tonawanda Coke violated its limit for Total Iron.

165. Since at least May 2009, Tonawanda Coke failed to properly operate and maintain the Facility in violation of SPDES Permit Special Condition 1 and 6. N.Y.C.R.R. 750-2.8(a)(2).

166. Since at least May 2009, process wastewater and power plant turbine condenser cooling water were being discharged into storm sewer tributary Outfall 001, in violation of the SPDES Permit Final Permit Limits. Outfall 001 is permitted to discharge boiler blowdown, and stormwater runoff, but not non-contact cooling water from the power plant.

167. From at least May 20, 2008 until May 26, 2009, the flow meter for Outfall 003 had not been calibrated, in violation of the SPDES Permit Recording, Reporting and Additional Monitoring Requirement (a), and 6 N.Y.C.R.R. Part 750-2.5(a)(5), which requires routine calibration and maintenance of outfall flow meters to ensure the accuracy of their measurements.

168. Unless restrained by an Order of the Court, these violations of the CWA and its implementing regulations will continue.

169. Pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d), the Federal Civil Penalties Inflation Adjustment Act of 1990, 31 U.S.C. § 3701, as amended by the Debt Collection

Improvement Act of 1996, 31 U.S.C. § 3701, and its implementing regulations, 40 C.F.R. § 19.4, Tonawanda Coke is liable for a civil penalty of up to $37,500 per day for each violation alleged in paragraphs 164-168.

TWELFTH CLAIM FOR RELIEF
(Violation of Industrial User Permit No. 331 and Industrial User Permit No. 331-S)

170. Paragraphs 1 through 169 are realleged and incorporated herein by reference.

171. On at least two occasions in 2009 and six occasions in 2010, Tonawanda Coke exceeded the cyanide limit of 1.1 mg/l in violation of Industrial User Permit No. 331 Part 1.A, Industrial User Permit No. 331-S Part 1.A, and 40 C.F.R. Part 403.

172. On at least four occasions since at least March 26, 2010 Tonawanda Coke violated the ammonia and naphthalene categorical limits set forth in Industrial User Permit No. 331 Part 1.B, Industrial User Permit No. 331-S Part 1.B, and 40 C.F.R. Part 420 Subpart A.

173. On or about April 12, 2010, Tonawanda Coke measured the flow rate for its process wastewater discharges at a point prior to the equalization tank, in violation of Industrial User Permit No. 331 Part 1.B, which required monitoring of the post equalization tank effluent.

174. On or about May 20, 2009, process wastewater was routed directly to the sanitary sewer and not through the system sampling point prior to discharge, in violation of Industrial User Permit No. 331 Part 1.

175. On or about May 20, 2009, the magnetic flow meter, which is used for reporting compliance with categorical standards, had not been calibrated and there were no calibration records available, in violation of Industrial User Permit No. 331 Part IV.5.f.

176. Unless restrained by an Order of the Court, these violations of the CWA and its implementing regulations will continue.

177. Pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d), the Federal Civil Penalties

Inflation Adjustment Act of 1990, 31 U.S.C. § 3701, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and its implementing regulations, 40 C.F.R. § 19.4, Tonawanda Coke is liable for a civil penalty of up to $37,500 per day for each violation alleged in paragraphs 171-176.

C. EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ACT

THIRTEENTH CLAIM FOR RELIEF
(Failure to Report Activities involving Toxic Chemicals)

178. Paragraphs 1 through 177 are realleged and incorporated herein by reference.

179. Tonawanda Coke failed to report the manufacture of ammonia and benzene in quantities that exceed the 25,000 pound per year reporting threshold quantity for the calendar years 2006, 2007, 2008, 2009 and 2010, in the case of ammonia, and 2009, 2010, 2011, and 2012, in the case of benzene, in violation of 40 C.F.R § 372.30(d).

180. Pursuant to Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), the Federal Civil Penalties Inflation Adjustment Act of 1990, 31 U.S.C. § 3701, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and its implementing regulations, 40 C.F.R. § 19.4, Tonawanda Coke is liable for a civil penalty of up to $37,500 per day for each violation alleged in paragraph 179.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, the United States of America and New York, respectfully requests that this Court grant the following relief:

1. Permanently enjoin Tonawanda Coke from further violations of the CAA, the CWA, the EPCRA, and ECL Article 19, and, where applicable, their implementing permits and regulations.
2. Order Tonawanda Coke to promptly take all steps necessary or appropriate to comply

with the foregoing laws, regulations and permits.

3. Award the United States and New York civil penalties for each violation of the CAA, CWA, EPCRA and the ECL, and applicable regulations, in an amount not to exceed $32,5000 per day for each violation that occurred after March 15, 2004 but before January 12, 2009, and $37,500 per day for each violation that occurred after January 12, 2009; and

4. Award such other relief as this Court may deem just and proper.

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