

**STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

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In the Matter of the Notice of Intent to Revoke the Air Title  
V Permit and Air State Facility Permit of:

**ORDER OF  
DISPOSITION**

**TONAWANDA COKE CORPORATION,**

Permittee.

DEC Permit Nos.  
9-1464-00113/00031 and  
9-1464-00113/00035

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Appearances of Counsel:

-- Thomas S. Berkman, Deputy Commissioner and General Counsel (Theresa Mucha, Associate Regional Attorney, of counsel), for staff of the Department of Environmental Conservation

-- Hodgson & Russ LLP (Jeffrey Stravino, Julia Hilliker, Patrick Hines) and Harris Beach PLLC (Gene Kelly), for respondent Tonawanda Coke Corporation

**Proceedings**

The New York State Department of Environmental Conservation (Department) staff commenced this administrative enforcement proceeding by serving permittee Tonawanda Coke Corporation (TCC) with a combined notice of intent to revoke the Air Title V permit and Air State Facility permit, a cease and desist notice, and notice of violation dated July 20, 2018 (collectively Notice). The Notice advised TCC that the Department intended to revoke the Title V and Air State Facility permits issued to TCC. The Notice also alleged ongoing violations of the Department's air pollution regulations pertaining to opacity, a violation of the State Pollutant Discharge Elimination permit, violations of the State's petroleum bulk storage and chemical bulk storage laws, and violations of the State's Resource Conservation and Recovery Act, 42 USC § 6901 *et seq.*, regulations. The Notice demanded that TCC immediately cease and desist actions causing the violations and take all steps necessary to cease operations associated with the violations to prevent harm to TCC's employees, the surrounding community, and the environment.

The matter was assigned to me on August 6, 2018. On October 10, 2018, pursuant to my ruling dated October 5, 2018, granting Department staff's motion to amend the Notice, staff served an amended notice of intent to revoke TCC's Air Title V Facility and Air State Facility permits to incorporate notices of violation Department staff served on TCC dated July 23, 2018, August 3, 2018, August 22, 2018, September 6, 2018, September 21, 2018, and September 26, 2018.

I convened a hearing in this matter on October 10, 2018. At the hearing, the parties advised me that they wanted to adjourn the hearing to pursue settlement negotiations. I held a conference call with the parties on October 12, 2018, during which the parties advised me they wished to continue settlement discussions and would advise me on the status of those discussions by email on October 16, 2018. On October 16, 2018, Mr. Stravino advised me that TCC and Department staff had been in daily contact, and that TCC was in the process of shutting down its operations at its facility in Tonawanda, New York, and had filed for bankruptcy.

On November 2, 2018, Mr. Stravino advised me that TCC had shut down its Tonawanda operations and, as of October 27, 2018, no longer had any employees on-site. Mr. Stravino further advised me that TCC had appeared in bankruptcy court and would be filing a motion with the court to surrender its environmental permits. Department staff did not object to TCC seeking permission with the bankruptcy court to surrender its permits provided that TCC also filed a stipulation to close the proceeding.

On January 28, 2019, Ms. Mucha advised me that the bankruptcy court had issued an order in December directing that the environmental permits and registrations set forth therein are deemed abandoned upon entry of the order, but that the Department had not received the letters from TCC to surrender its permits nor the signed stipulation agreement to close this proceeding. The same day, Mr. Stravino submitted a stipulation of discontinuance that he signed on behalf of TCC. Mr. Stravino stated that he did not believe that it was necessary for TCC to take any additional action with the Department to surrender its permits. I advised Mr. Stravino that since this is a New York State administrative proceeding governed by State law and regulations, the Office of Hearings and Mediations Services requests a statement from TCC that it is surrendering its environmental permits, consistent with the bankruptcy court order and the stipulation of discontinuance.

On February 5, 2019, Mr. Stravino submitted permit relinquishment letters to me and Department staff. Ms. Mucha advised me that these documents resolve the issues that are the subject of the permit revocation proceeding brought by Department staff and, on February 5, 2019, submitted a copy of the stipulation of discontinuance signed by the Region 9 Regional Director.

## **Discussion**

A stipulation executed by all the parties to the proceeding resolving any or all issues removes those issues from further consideration in the hearing (*see* 6 NYCRR 622.18[c]). Where the parties' agreement resolves all remaining issues, as is the case here, the agreement must be incorporated into a written stipulation and accepted by all parties. The stipulation must then be submitted to the administrative law judge to be included in the hearing record, along with written statements, signed by the parties or their representatives, stating that the stipulation resolves all issues between the parties (*see* DEC Organization and Delegation Memorandum 94-13, *Effect of Stipulations on Decision-Making in Permit and Enforcement Hearings*, May 5, 1994 at 2).

In this proceeding, I have received into the record a signed stipulation of discontinuance of the parties and permit relinquishment letters from TCC that resolve all issues in this proceeding.

**Order of Disposition**

ACCORDINGLY, IT IS HEREBY ORDERED that the hearing record in this proceeding is closed.

\_\_\_\_\_/s/\_\_\_\_\_  
Lisa A. Wilkinson  
Administrative Law Judge

Dated: February 5, 2019  
Albany, New York

cc: James McClymonds, CALJ  
Louis Alexander