

IN THE DISTRICT COURT OF THE UNITED STATES

For the Western District of New York

**NOVEMBER 2009 GRAND JURY
(Empaneled 11/6/2009)**

THE UNITED STATES OF AMERICA

INDICTMENT

-vs-

**TONAWANDA COKE CORPORATION and
MARK L. KAMHOLZ**

Violations:

Title 42, United States Code, Sections
7413(c)(1), 6928(d)(2)(A), and Title 18,
United States Code, Sections 2 and 1505 (19
Counts)

INTRODUCTORY ALLEGATIONS

At all times relevant to this indictment:

The Defendants and the Coke Production Process:

1. The defendant, TONAWANDA COKE CORPORATION ("TCC") is a merchant by-product coke facility located at 3875 River Road, Tonawanda, New York, and has been in operation since in or about February of 1978. TCC is a privately held corporation organized under the laws of the State of New York.

2. From at least on or about March 13, 1981, to the present, the defendant, MARK L. KAMHOLZ, was the Manager of Environmental Control for TCC, and was responsible for maintaining the proper environmental permitting for the company, filing the necessary

reports associated with the required permits, and ensuring compliance with the permits and environmental regulations.

3. Coke is used in the steel-mill and foundry industries as an additive in the steel making process. Coke is produced through the prolonged heating of bituminous coal in sealed ovens at high temperatures. The heating of the coal takes place in groups of ovens called batteries. TCC operates a single coke battery consisting of 60 ovens, each measuring 13 feet high.

4. During the heating process, volatile materials are driven from the coal and removed from the ovens as coke oven gas (COG), which is sent through a by-product recovery system. The COG is then processed to recover materials, which are either sold to other companies or reused by TCC. One of the by-products recovered by TCC is coal tar, during which recovery process, a sludge is created, generally called coal tar sludge. The coal tar sludge generated during the by-product recovery process is reused by TCC as a coal additive, and is blended with the coal prior to being loaded into the coke oven. Reintroducing coal tar sludge to the coke ovens is permissible so long as the coal tar sludge is not placed on the ground prior to being loaded into the coke oven.

5. Because the production of coke involves potential impacts to the environment, the industry is regulated by federal and state

statutes and regulations, including the Clean Air Act and the Resource Conservation and Recovery Act.

The Clean Air Act

6. The Clean Air Act ("CAA"), as set forth at Title 42, United States Code ("U.S.C."), Sections 7401 et seq., was enacted by Congress to protect and enhance the quality of the Nation's resources so as to promote the public health and welfare. The U.S. Environmental Protection Agency ("EPA") is generally responsible for administering and enforcing the CAA.

7. Pursuant to 42 U.S.C. § 7661a, Title V of the 1990 amendments to the CAA created an operating permits program, known as the Title V program, that regulates the emission limits and compliance methods of stationary sources of air pollution. Title V also requires stationary sources to monitor and report whether they are operating in compliance with their permits. Title V was designed to put into a single operating permit all requirements that apply to a particular facility.

8. Pursuant to 42 U.S.C. § 7661c, and Title 40, Code of Federal Regulations ("C.F.R."), Section 70.6(a), each Title V permit must include, among other things, enforceable emissions limits and standards; a schedule of compliance; the permittee's consent to inspection and monitoring; and periodic submission of

necessary monitoring data (at least once every six months).

9. Pursuant to 40 C.F.R. § 70, Appendix A, state operating permit programs under Title V must be approved by EPA. The State of New York received interim approval of its program effective December 9, 1996. New York was granted final full approval of its program effective January 31, 2002, and that program is administered by the New York State Department of Environmental Conservation ("NYS-DEC"). The New York regulations pertaining to Title V operating permits are set forth in Title 6 of the New York Codes, Rules and Regulations ("NYCRR") Sub-parts 201-6.

10. Pursuant to 6 NYCRR §§ 201-6.1 and 201-2.1(b)(21), any stationary source that emits 100 tons per year or more of any air pollutant or air contaminant must obtain and comply with the requirements of a Title V operating permit. TCC emits nitrogen oxides and sulfur dioxide at levels above 100 tons per year, and therefore, is a stationary source, as defined in 42 U.S.C. §§ 7411(a)(3) and 7412(a)(3), which must operate pursuant to a Title V operating permit.

11. Defendants TONAWANDA COKE CORPORATION and MARK L. KAMHOLZ are "owners or operators" of a stationary source.

12. TCC was issued a Title V operating permit by the NYS-DEC

on April 30, 2002. The Title V permit expired on May 1, 2007; however, the permit has been administratively extended until a new Title V permit is issued by NYS-DEC because TCC submitted a timely Title V air permit renewal application.

13. Pursuant to Condition 4 of TCC's Title V operating permit, the owner or operator must apply for a permit for any emission source not already listed in the Title V permit. Any source of COG emission into the atmosphere which is not specifically referenced in the Title V permit is an unpermitted emission source. COG contains several chemical compounds, including benzene.

14. Benzene is a known human carcinogen, and long-term exposure to high levels of benzene in the air may cause numerous health problems, including leukemia, damage to bone marrow, a decrease in red blood cells, excessive bleeding, irregular menstrual periods, a decrease in the size of ovaries, drowsiness, and dizziness.

15. Pursuant to 40 C.F.R. § 63.7352, a quench tower is any structure in which hot incandescent coke is deluged or quenched with water. Quenching is a term to describe the process of cooling (wet quenching) the hot incandescent coke by direct contact with water that begins when the quench car enters the quench tower and

ends when the quench car exits the quench tower. Pursuant to Conditions 96 and 97 of TCC's Title V operating permit, all wet quench towers must be equipped with a baffle system designed to effectively reduce particulate emissions during quenching. Baffles are pollution control devices that are used to disrupt and deflect the flow of gases rising from a quench tower, and are typically constructed of treated wood, steel, or plastic.

16. Particulate matter is an air pollutant, and has been linked to a variety of health problems, including increased respiratory symptoms, such as irritation of the airways, coughing, or difficulty breathing; decreased lung function; aggravated asthma; development of chronic bronchitis; irregular heartbeat; nonfatal heart attacks; and premature death in people with heart or lung disease.

17. Pursuant to 42 U.S.C. §§ 7413(c) and 7661a(a), the knowing operation of a stationary source in violation of any requirement of a Title V permit is a crime under the CAA.

The Resource Conservation and Recovery Act

18. The Resource Conservation and Recovery Act ("RCRA") was enacted in 1976 to address the Nation's growing hazardous waste disposal problem resulting primarily from industrial operations. The intent of RCRA is to protect human health and the environment

by requiring the proper, safe management of hazardous waste from the time that it is created until the time when it is disposed, and all points in between.

19. Pursuant to 42 U.S.C. §§ 6901 et seq., RCRA, and the regulations promulgated thereunder, prohibit the treatment, storage, or disposal of any identified or listed hazardous waste without a permit issued by EPA or by an authorized state. Authorized state programs may impose more, but not less, stringent regulations than the federal program.

20. Pursuant to 40 C.F.R. § 272, Appendix A, EPA authorized the State of New York to administer the base RCRA program in New York. In New York, the designated agency under RCRA is the NYS-DEC. NYS-DEC regulations that govern hazardous waste are found at 6 NYCRR §§ 370 et seq.

21. Pursuant to 42 U.S.C. § 6921, RCRA requires EPA to identify and list "hazardous wastes." Pursuant to 40 C.F.R. §§ 261.20-24, and 261.30-33, wastes are hazardous either by virtue of their characteristics, for example, toxicity or ignitability, or by virtue of being specifically listed by EPA.

22. Pursuant to 40 C.F.R. § 261.24 and 6 NYCRR § 371.3(e), benzene wastes are considered "toxic," and therefore hazardous, if

they have a concentration of benzene equal to or greater than 0.5 milligrams per liter.

23. Pursuant to 40 C.F.R. § 261.32 and 6 NYCRR § 371.4(c), coal tar sludge, technically referred to as decanter tank tar sludge from coking operations (K087), is specifically listed as a hazardous waste under RCRA.

24. Pursuant to 42 U.S.C. § 6925, facilities that treat, store, or dispose of hazardous wastes must obtain a permit issued by EPA or by an authorized state prior to any treatment, storage, or disposal of such waste. Additionally, pursuant to 40 C.F.R. § 264.13, any facilities that treat, store, or dispose of hazardous wastes must conduct a detailed chemical and physical analysis of the hazardous waste prior to any treatment, storage, or disposal of such waste.

25. Pursuant to 42 U.S.C. § 6928(d), the knowing treatment, storage, or disposal of a hazardous waste without a permit is a crime under RCRA.

COUNT 1
(Violation of the Clean Air Act)

The Grand Jury Charges That:

26. The Introductory Allegations set forth in paragraphs 1 through 25 are incorporated by reference and re-alleged as if fully set forth herein.

27. From on or about July 29, 2005, to on or about December 31, 2005, in the Western District of New York, the defendants, TONAWANDA COKE CORPORATION and MARK L. KAMHOLZ, did knowingly operate and cause to be operated, a stationary source, to wit, the TONAWANDA COKE CORPORATION, in violation of its Title V permit requirements by emitting coke oven gas from a pressure relief valve in the by-products department, an unpermitted emission source (Condition 4 of the TONAWANDA COKE CORPORATION'S Title V permit).

All in violation of Title 42, United States Code, Section 7413(c) (1) and Title 18, United States Code, Section 2.

COUNT 2
(Violation of the Clean Air Act)

The Grand Jury Further Charges That:

28. The Introductory Allegations set forth in paragraphs 1 through 25 are incorporated by reference and re-alleged as if fully

set forth herein.

29. From on or about January 1, 2006, to on or about December 31, 2006, in the Western District of New York, the defendants, TONAWANDA COKE CORPORATION and MARK L. KAMHOLZ, did knowingly operate and cause to be operated, a stationary source, to wit, the TONAWANDA COKE CORPORATION, in violation of its Title V permit requirements by emitting coke oven gas from a pressure relief valve in the by-products department, an unpermitted emission source (Condition 4 of the TONAWANDA COKE CORPORATION'S Title V permit).

All in violation of Title 42, United States Code, Section 7413(c) (1) and Title 18, United States Code, Section 2.

COUNT 3
(Violation of the Clean Air Act)

The Grand Jury Further Charges That:

30. The Introductory Allegations set forth in paragraphs 1 through 25 are incorporated by reference and re-alleged as if fully set forth herein.

31. From on or about January 1, 2007, to on or about December 31, 2007, in the Western District of New York, the defendants, TONAWANDA COKE CORPORATION and MARK L. KAMHOLZ, did knowingly

operate and cause to be operated, a stationary source, to wit, the TONAWANDA COKE CORPORATION, in violation of its Title V permit requirements by emitting coke oven gas from a pressure relief valve in the by-products department, an unpermitted emission source (Condition 4 of the TONAWANDA COKE CORPORATION'S Title V permit).

All in violation of Title 42, United States Code, Section 7413(c) (1) and Title 18, United States Code, Section 2.

COUNT 4
(Violation of the Clean Air Act)

The Grand Jury Further Charges That:

32. The Introductory Allegations set forth in paragraphs 1 through 25 are incorporated by reference and re-alleged as if fully set forth herein.

33. From on or about January 1, 2008, to on or about December 31, 2008, in the Western District of New York, the defendants, TONAWANDA COKE CORPORATION and MARK L. KAMHOLZ, did knowingly operate and cause to be operated, a stationary source, to wit, the TONAWANDA COKE CORPORATION, in violation of its Title V permit requirements by emitting coke oven gas from a pressure relief valve in the by-products department, an unpermitted emission source (Condition 4 of the TONAWANDA COKE CORPORATION'S Title V permit).

All in violation of Title 42, United States Code, Section 7413(c) (1) and Title 18, United States Code, Section 2.

COUNT 5
(Violation of the Clean Air Act)

The Grand Jury Further Charges That:

34. The Introductory Allegations set forth in paragraphs 1 through 25 are incorporated by reference and re-alleged as if fully set forth herein.

35. From on or about January 1, 2009, to on or about December 31, 2009, in the Western District of New York, the defendants, TONAWANDA COKE CORPORATION and MARK L. KAMHOLZ, did knowingly operate and cause to be operated, a stationary source, to wit, the TONAWANDA COKE CORPORATION, in violation of its Title V permit requirements by emitting coke oven gas from a pressure relief valve in the by-products department, an unpermitted emission source (Condition 4 of the TONAWANDA COKE CORPORATION'S Title V permit).

All in violation of Title 42, United States Code, Section 7413(c) (1) and Title 18, United States Code, Section 2.

COUNT 6
(Violation of the Clean Air Act)

The Grand Jury Further Charges That:

36. The Introductory Allegations set forth in paragraphs 1 through 25 are incorporated by reference and re-alleged as if fully set forth herein.

37. From on or about July 29, 2005, to on or about December 31, 2005, in the Western District of New York, the defendants, TONAWANDA COKE CORPORATION and MARK L. KAMHOLZ, did knowingly operate and cause to be operated, a stationary source, to wit, the TONAWANDA COKE CORPORATION, in violation of its Title V permit requirements by operating the western quench tower (quench tower #1) at the TONAWANDA COKE CORPORATION without a baffle system installed in such quench tower (Condition 96 of the TONAWANDA COKE CORPORATION'S Title V permit).

All in violation of Title 42, United States Code, Section 7413(c) (1) and Title 18, United States Code, Section 2.

COUNT 7
(Violation of the Clean Air Act)

The Grand Jury Further Charges That:

38. The Introductory Allegations set forth in paragraphs 1 through 25 are incorporated by reference and re-alleged as if fully set forth herein.

39. From on or about January 1, 2006, to on or about December 31, 2006, in the Western District of New York, the defendants, TONAWANDA COKE CORPORATION and MARK L. KAMHOLZ, did knowingly operate and cause to be operated, a stationary source, to wit, the TONAWANDA COKE CORPORATION, in violation of its Title V permit requirements by operating the western quench tower (quench tower #1) at the TONAWANDA COKE CORPORATION without a baffle system installed in such quench tower (Condition 96 of the TONAWANDA COKE CORPORATION'S Title V permit).

All in violation of Title 42, United States Code, Section 7413(c) (1) and Title 18, United States Code, Section 2.

COUNT 8
(Violation of the Clean Air Act)

The Grand Jury Further Charges That:

40. The Introductory Allegations set forth in paragraphs 1 through 25 are incorporated by reference and re-alleged as if fully set forth herein.

41. From on or about January 1, 2007, to on or about December 31, 2007, in the Western District of New York, the defendants, TONAWANDA COKE CORPORATION and MARK L. KAMHOLZ, did knowingly operate and cause to be operated, a stationary source, to wit, the TONAWANDA COKE CORPORATION, in violation of its Title V permit requirements by operating the western quench (quench tower #1) tower at the TONAWANDA COKE CORPORATION without a baffle system installed in such quench tower (Condition 96 of the TONAWANDA COKE CORPORATION'S Title V permit).

All in violation of Title 42, United States Code, Section 7413(c) (1) and Title 18, United States Code, Section 2.

COUNT 9
(Violation of the Clean Air Act)

The Grand Jury Further Charges That:

42. The Introductory Allegations set forth in paragraphs 1 through 25 are incorporated by reference and re-alleged as if fully set forth herein.

43. From on or about January 1, 2008, to on or about December 31, 2008, in the Western District of New York, the defendants, TONAWANDA COKE CORPORATION and MARK L. KAMHOLZ, did knowingly operate and cause to be operated, a stationary source, to wit, the TONAWANDA COKE CORPORATION, in violation of its Title V permit requirements by operating the western quench tower (quench tower #1) at the TONAWANDA COKE CORPORATION without a baffle system installed in such quench tower (Condition 96 of the TONAWANDA COKE CORPORATION'S Title V permit).

All in violation of Title 42, United States Code, Section 7413(c) (1) and Title 18, United States Code, Section 2.

COUNT 10
(Violation of the Clean Air Act)

The Grand Jury Further Charges That:

44. The Introductory Allegations set forth in paragraphs 1 through 25 are incorporated by reference and re-alleged as if fully set forth herein.

45. From on or about January 1, 2009, to on or about December 31, 2009, in the Western District of New York, the defendants, TONAWANDA COKE CORPORATION and MARK L. KAMHOLZ, did knowingly operate and cause to be operated, a stationary source, to wit, the TONAWANDA COKE CORPORATION, in violation of its Title V permit requirements by operating the western quench tower (quench tower #1) at the TONAWANDA COKE CORPORATION without a baffle system installed in such quench tower (Condition 96 of the TONAWANDA COKE CORPORATION'S Title V permit).

All in violation of Title 42, United States Code, Section 7413(c) (1) and Title 18, United States Code, Section 2.

COUNT 11
(Violation of the Clean Air Act)

The Grand Jury Further Charges That:

46. The Introductory Allegations set forth in paragraphs 1 through 25 are incorporated by reference and re-alleged as if fully set forth herein.

47. From on or about July 29, 2005, to on or about December 31, 2005, in the Western District of New York, the defendants, TONAWANDA COKE CORPORATION and MARK L. KAMHOLZ, did knowingly operate and cause to be operated, a stationary source, to wit, the TONAWANDA COKE CORPORATION, in violation of its Title V permit requirements by operating the eastern quench tower (quench tower #2) at the TONAWANDA COKE CORPORATION without a baffle system installed in such quench tower (Condition 97 of the TONAWANDA COKE CORPORATION'S Title V permit).

All in violation of Title 42, United States Code, Section 7413(c) (1) and Title 18, United States Code, Section 2.

COUNT 12
(Violation of the Clean Air Act)

The Grand Jury Further Charges That:

48. The Introductory Allegations set forth in paragraphs 1 through 25 are incorporated by reference and re-alleged as if fully set forth herein.

49. From on or about January 1, 2006, to on or about December 31, 2006, in the Western District of New York, the defendants, TONAWANDA COKE CORPORATION and MARK L. KAMHOLZ, did knowingly operate and cause to be operated, a stationary source, to wit, the TONAWANDA COKE CORPORATION, in violation of its Title V permit requirements by operating the eastern quench tower (quench tower #2) at the TONAWANDA COKE CORPORATION without a baffle system installed in such quench tower (Condition 97 of the TONAWANDA COKE CORPORATION'S Title V permit).

All in violation of Title 42, United States Code, Section 7413(c) (1) and Title 18, United States Code, Section 2.

COUNT 13
(Violation of the Clean Air Act)

The Grand Jury Further Charges That:

50. The Introductory Allegations set forth in paragraphs 1 through 25 are incorporated by reference and re-alleged as if fully set forth herein.

51. From on or about January 1, 2007, to on or about December 31, 2007, in the Western District of New York, the defendants, TONAWANDA COKE CORPORATION and MARK L. KAMHOLZ, did knowingly operate and cause to be operated, a stationary source, to wit, the TONAWANDA COKE CORPORATION, in violation of its Title V permit requirements by operating the eastern quench tower (quench tower #2) at the TONAWANDA COKE CORPORATION without a baffle system installed in such quench tower (Condition 97 of the TONAWANDA COKE CORPORATION'S Title V permit).

All in violation of Title 42, United States Code, Section 7413(c) (1) and Title 18, United States Code, Section 2.

COUNT 14
(Violation of the Clean Air Act)

The Grand Jury Further Charges That:

52. The Introductory Allegations set forth in paragraphs 1 through 25 are incorporated by reference and re-alleged as if fully set forth herein.

53. From on or about January 1, 2008, to on or about December 31, 2008, in the Western District of New York, the defendants, TONAWANDA COKE CORPORATION and MARK L. KAMHOLZ, did knowingly operate and cause to be operated, a stationary source, to wit, the TONAWANDA COKE CORPORATION, in violation of its Title V permit requirements by operating the eastern quench tower (quench tower #2) at the TONAWANDA COKE CORPORATION without a baffle system installed in such quench tower (Condition 97 of the TONAWANDA COKE CORPORATION'S Title V permit).

All in violation of Title 42, United States Code, Section 7413(c) (1) and Title 18, United States Code, Section 2.

COUNT 15
(Violation of the Clean Air Act)

The Grand Jury Further Charges That:

54. The Introductory Allegations set forth in paragraphs 1 through 25 are incorporated by reference and re-alleged as if fully set forth herein.

55. From on or about January 1, 2009, to on or about November 15, 2009, in the Western District of New York, the defendants, TONAWANDA COKE CORPORATION and MARK L. KAMHOLZ, did knowingly operate and cause to be operated, a stationary source, to wit, the TONAWANDA COKE CORPORATION, in violation of its Title V permit requirements by operating the eastern quench tower (quench tower #2) at the TONAWANDA COKE CORPORATION without a baffle system installed in such quench tower (Condition 97 of the TONAWANDA COKE CORPORATION'S Title V permit).

All in violation of Title 42, United States Code, Section 7413(c) (1) and Title 18, United States Code, Section 2.

COUNT 16
(Obstruction of Justice)

The Grand Jury Further Charges That:

56. The Introductory Allegations set forth in paragraphs 1 through 25 are incorporated by reference and re-alleged as if fully set forth herein.

57. From on or about April 14, 2009, to on or about April 21, 2009, in the Western District of New York, the defendants, TONAWANDA COKE CORPORATION and MARK L. KAMHOLZ, did corruptly influence, obstruct, and impede, and endeavor to influence, obstruct, and impede, the due and proper administration of the law under which a pending proceeding was being had before the United States Environmental Protection Agency (EPA), an agency of the United States government, by instructing a TONAWANDA COKE CORPORATION employee to conceal, during an EPA inspection, the fact that a pressure relief valve in the by-products department, during normal operations, emitted coke oven gas to the atmosphere, in violation of the TONAWANDA COKE CORPORATION'S Title V operating permit.

All in violation of Title 18, United States Code, Sections 1505 and 2.

COUNT 17

(Violation of the Resource Conservation and Recovery Act)

The Grand Jury Further Charges That:

58. The Introductory Allegations set forth in paragraphs 1 through 25 are incorporated by reference and re-alleged as if fully set forth herein.

59. From at least in or about May of 1998, to on or about December 17, 2009, the exact dates unknown, in the Western District of New York, the defendants, TONAWANDA COKE CORPORATION and MARK L. KAMHOLZ, did knowingly store and cause to be stored, on the ground adjacent to two large deteriorating tanks at the TONAWANDA COKE CORPORATION, a waste exhibiting the toxicity characteristic for benzene, a hazardous waste identified under the Resource Conservation and Recovery Act (RCRA), without a permit to store such hazardous waste as required under RCRA.

All in violation of Title 42, United States Code, Section 6928(d)(2)(A) and Title 18, United States Code, Section 2.

COUNT 18

(Violation of the Resource Conservation and Recovery Act)

The Grand Jury Further Charges That:

60. The Introductory Allegations set forth in paragraphs 1 through 25 are incorporated by reference and re-alleged as if fully set forth herein.

61. From in or about June of 2009, to on or about September 17, 2009, the exact dates unknown, in the Western District of New York, the defendants, TONAWANDA COKE CORPORATION and MARK L. KAMHOLZ, did knowingly dispose, and cause to be disposed, a waste exhibiting the toxicity characteristic for benzene, a hazardous waste identified under the Resource Conservation and Recovery Act (RCRA), originating from in and around the two large deteriorating tanks at the TONAWANDA COKE CORPORATION, without a permit to dispose of such hazardous waste as required under RCRA.

All in violation of Title 42, United States Code, Section 6928(d)(2)(A) and Title 18, United States Code, Section 2.

COUNT 19

(Violation of the Resource Conservation and Recovery Act)

The Grand Jury Further Charges That:

62. The Introductory Allegations set forth in paragraphs 1 through 25 are incorporated by reference and re-alleged as if fully set forth herein.

63. From on or about August 2, 2005, to on or about December 17, 2009, in the Western District of New York, the defendants, TONAWANDA COKE CORPORATION and MARK L. KAMHOLZ, did knowingly dispose and cause to be disposed, decanter tank tar sludge from coking operations (K087), a hazardous waste identified and listed under the Resource Conservation and Recovery Act (RCRA), originating from the by-products department at the TONAWANDA COKE CORPORATION and spread onto the coal field, without a permit to dispose of such hazardous waste as required under RCRA.

All in violation of Title 42, United States Code, Section 6928(d)(2)(A) and Title 18, United States Code, Section 2.

DATED: Buffalo, New York, July 29, 2010.

WILLIAM J. HOCHUL, JR.
United States Attorney

S/ AARON J. MANGO

BY:

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A TRUE BILL:

S/ FOREPERSON

FOREPERSON