

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

IN THE MATTER OF:

Erie Coke Corporation	:	Solid Waste Management Act
925 E. Bay Dr.	:	Clean Streams Law
Erie, PA 16512	:	

ORDER

NOW this 1st day of April 2019, the Commonwealth of Pennsylvania,

Department of Environmental Protection (“Department”) has made and determined the following Findings and issues this Administrative Order to Erie Coke Corporation:

Findings

A. The Commonwealth of Pennsylvania, Department of Environmental Protection (“Department”) is the agency with the duty and authority to administer and implement the Land Recycling and Environmental Remediation Standards Act, Act of May 19, 1995, P.L. 4, *as amended*, 35 P.S. §§ 6026.101-6026.908 (“Land Recycling Act”), and administer and enforce the Solid Waste Management Act, Act of July 7, 1980, P.L. 380, *as amended*, 35 P.S. §§ 6018.101-6018.1003 (“Solid Waste Management Act”); The Clean Streams Law, Act of June 22, 1937, P.L. 1987, *as amended*, 35 P.S. §§ 691.1-691.1001 (“Clean Streams Law”); Section 1917-A of the Administrative Code of 1929, Act of April 9, 1929, P. L. 177, *as amended*, 71 P.S. § 510-17 (“Administrative Code”); and the rules and regulations promulgated thereunder (“Regulations”).

B. Erie Coke Corporation (“Erie Coke”) is a Pennsylvania corporation that maintains a mailing address of P.O. Box 6180, Erie, PA 16512.

C. Erie Coke owns and operates a foundry coke production facility located at the foot of East Avenue between Presque Isle Bay and the Bayfront Highway in the City of Erie, Erie County, Pennsylvania (“Facility”).

D. At the Facility, Erie Coke owns and operates an industrial wastewater treatment system that processes weak ammonia liquor wastewater from the coke production operation (“Wastewater Plant”).

E. The Wastewater Plant includes, among other things, a large, aboveground storage tank that receives the sulfur slurry tank wastewater and excess weak ammonia liquor identified as “Tank 101” or the “SPR Tank” (“SPR Tank”).

F. The Wastewater Plant also includes two additional large aboveground storage tanks referred to as “Tank 102” and “Tank 103.”

G. On March 18, 2019, a hole developed in the SPR Tank that caused approximately 300 gallons of wastewater to spill onto the ground at the Facility.

H. On March 19, 2019, the Department inspected the Facility and Erie Coke was repairing the SPR Tank by welding a large metal plate to the tank.

I. On March 31, 2019, at approximately 1:30 pm, the SPR Tank failed causing a large volume of wastewater to be released onto the ground and into surrounding structures at the Facility.

J. The wastewater released from the SPR Tank onto the ground and into surrounding structures at the Facility on March 31, 2019 contains, among other regulated substances, benzene and naphthalene, ammonia, and cyanide.

K. On March 31, 2019, Erie Coke personnel spread coke breeze on the released wastewater following the release of wastewater from the SPR Tank.

L. Wastewater released from the SPR Tank ponded in an area Northwest of the SPR Tank bordered by railroad tracks to the North (“Ponded Area”).

M. On April 1, 2019, the Department inspected the Facility, and wastewater in the Ponded Area was acidic with a pH of 2.79.

N. Erie Coke does not have a permit for the disposal of the wastewater onto the ground and into the environment at the Facility.

O. On April 1, 2019, Erie Coke repaired the SPR Tank by welding a plate on the SPR Tank and put the SPR Tank back in service.

P. Erie Coke did not perform tank tightness testing before putting the SPR Tank back into service after repairing the SPR Tank.

Q. Erie Coke is a “person,” as that term is defined in Section 103 of the Solid Waste Management Act, 35 P.S. § 6018.103 and Section 1 of the Clean Streams Law, 35 P.S. § 691.1.

R. The weak ammonia liquor and the wastewater in the SPR Tank is a “solid waste” and a “residual waste,” as those terms are defined in Section 103 of the Solid Waste Management Act, 35 P.S. § 6018.103, and 25 Pa. Code § 287.1.

S. The Wastewater Plant is a “residual waste processing facility” and a “captive processing facility,” as those terms are defined in 25 Pa. Code § 287.1.

T. Pursuant to Section 103 of the Solid Waste Management Act, 35 P.S. § 6018.103, “disposal” is the incineration, deposition, injection, dumping, spilling, leaking, or placing of solid waste into or on the land or water in a manner that the solid waste or a constituent of the solid waste enters the environment, is emitted into the air, or is discharged to the waters of the Commonwealth.

U. Pursuant to Sections 302(a), 501(a), and 610 of the Solid Waste Management Act, 35 P.S. §§ 6018.302(a), 6018.501(a), and 6018.610, it is unlawful for any person to use their land for the disposal or storage of solid waste, or for the operation of a solid waste disposal facility, without a permit from the Department.

V. Erie Coke is authorized to operate the Wastewater Plant in accordance with the provisions of 25 Pa. Code § 287.102, permit-by-rule.

W. Pursuant to 25 Pa. Code § 287.102 (a)(2), Erie Coke is not subject to permit-by-rule under 25 Pa. Code § 287.102 unless it, among other things, complies with Chapter 299 relating to storage of residual waste.

X. Pursuant to 25 Pa. Code § 299.112, a person storing residual waste shall routinely inspect the facility, its equipment, and the surrounding area for evidence of failure and shall immediately take necessary corrective actions.

Y. Pursuant to 25 Pa. Code § 299.114, equipment shall be operated and maintained to prevent solid waste from being unintentionally conveyed out of the storage area.

Z. Pursuant to 25 Pa. Code § 299.116, waste may not be stored to cause groundwater degradation.

AA. Pursuant to 25 Pa. Code § 299.122, repaired tanks shall be tested for tightness in accordance with current codes of practice developed by Nationally recognized associations and manufacturer's specifications and deficiencies shall be remedied prior to tanks being placed into service.

BB. The groundwater at and under the Facility is "waters of the Commonwealth," as that term is defined in Section 1 of the Clean Streams Law, 35 P.S. § 691.1.

CC. The wastewater from the SPR Tank that leaked, spilled, or otherwise discharged to the ground, to the groundwater, or otherwise entered the environment is an "industrial waste," as defined by Section 1 of the Clean Streams Law, 35.P.S. § 691.1.

DD. The benzene, naphthalene, ammonia, and cyanide in the wastewater released from the SPR Tank are "regulated substances," as that term is defined in Section 103 of the Land Recycling Act, 35 P.S. § 6026.103.

EE. Pursuant to Section 106 of the Land Recycling Act, 35 P.S. § 6026.106, the environmental remediation standards of the Land Recycling Act shall be used whenever site

remediation is required under, among other things, the Clean Streams Law or the Solid Waste Management Act.

Violations

FF. Erie Coke's failure to properly operate and maintain the SPR Tank to prevent releases of solid waste from being unintentionally conveyed out of the storage area as described in Paragraphs G, I, and J, above, violates 25 Pa. Code §§ 299.112, 229.114, and 299.116.

GG. Erie Coke's failures to operate and maintain the SPR Tank in accordance with 25 Pa. Code Chapter 299 as described in Paragraphs G, I, J, O and P, above, violate 25 Pa. Code § 287.102 and makes the Wastewater Plant not subject to the permit-by-rule.

HH. Erie Coke's release of wastewater onto the ground as described in Paragraphs G, I, J, L and M, above, without a permit from the Department violates Sections 302(a), 501(a), and 610 of the Solid Waste Management Act, 35 P.S. §§ 6018.302(a), 6018.501(a), and 6018.610.

II. Erie Coke's failure to tightness test the SPR Tank after the repair as described in Paragraphs O and P, above, violates 25 Pa. Code § 299.122.

JJ. The violations described in Paragraphs FF, GG, HH, and II, above, constitute unlawful conduct under Sections 302, 501, 610(1), 610(2), and 610(4) of the Solid Waste Management Act, 35 P.S. § 6018.302, 6018.501, 6018.610(1), 6018.610(2), and 6018.610(4); a public nuisance under Section 601 of the Solid Waste Management Act, 35 P.S. § 6018.601; and subject Erie Coke to civil penalty liability under Section 605 of the Solid Waste Management Act, 35 P.S. § 6018.605.

KK. Erie Coke's release of wastewater onto the ground as described in Paragraphs G, I, and J, above, creates a danger of pollution to the waters of the Commonwealth and violates Section 402 of the Clean Streams Law, 35 P.S. § 691.402, and 25 Pa. Code § 102.4(b)(1) and (4).

LL. The violations described in Paragraph FF, above, constitute unlawful conduct under Sections 402 and 611 of the Clean Streams Law, 35 P.S. §§ 691.402 and 691.611; statutory nuisances

pursuant to Section 307 and 402 of the Clean Streams Law, 35 P.S. §§ 691.307 and 402; and subject Erie Coke to civil penalty liability under Section 605 of the Clean Streams Law, 35 P.S. § 691.605.

ORDER

NOW, THEREFORE, pursuant to Sections 104 and 602 of the Solid Waste Management Act, 35 P.S. §§ 6018.104 and 6018.602; Sections 402 and 610 of the Clean Streams Law, 35 P.S. §§ 691.402 and 691.610; and Section 1917-A of the Administrative Code, 71 P.S. § 510-17, the Department hereby ORDERS:

1. **Out-of-Service Inspection.** **Within 10 days after the date of this Order**, Erie Coke shall take the SPR Tank out-of-service, remove all wastewater from the SPR Tank and have a certified professional perform a tank tightness test on the SPR Tank in accordance with 25 Pa. Code § 299.122(b)(3). and the following:

a. **Within 3 days after the date of this Order**, Erie Coke shall submit to the Department in writing a plan to remove all wastewater from the SPR Tank and have a certified professional perform a tank tightness test on the SPR Tank within 10 days as required by Paragraph 1, above (“Testing Plan”), that includes, at a minimum, the following:

- i. the identification of the certified professional performing the tank tightness testing and his or her applicable credentials;
- ii. the proposed methods of temporary storage and treatment of wastewater while the SPR Tank is out of service; and
- iii. a date by which the certified professional will provide a written report to the Department of the tank tightness testing.

b. Erie Coke shall remove all wastewater from the SPR Tank and properly treat it in the Wastewater Plant or dispose of the wastewater from the SPR Tank at an authorized treatment or disposal facility.

2. **Replacement or Repair.** Erie Coke shall not place the SPR Tank back into service until it meets the requirements of 25 Pa. Code § 299.122 and the Department confirms in writing that it may be placed into service. Upon further repair or replacement of the SPR Tank, Erie Coke shall submit documentation to the Department for written approval using Form 19R prior to placing the tank back into service.

3. **Interim Response.** Erie Coke shall immediately collect spilled wastewater and excavate surface soils or material impacted by the release of wastewater, including, but not limited to water in the Poned Area.

a. The wastewater and impacted soils/material shall be stored in accordance with 25 Pa. Code § 299.121; and

b. Within **60 days after the date of this Order**, the wastewater and impacted soils/material shall be properly characterized and disposed at a permitted disposal facility and copies of disposal receipts shall be provided to the Department.

4. **Chemical Analysis.** Within **30 days after the date of this Order**, Erie Coke shall submit to the Department all documentation of the analysis of the wastewater stored in the SPR Tank done pursuant to 25 Pa. Code § 287.102(b)(4) and all records of sulfuric acid or other chemicals fed into the SPR Tank within the 30 days preceding this Order.

5. **Remediation.** Erie Coke shall remediate the release of wastewater from the SPR Tank to meet one or a combination of cleanup standards under Section 301(a) of the Land Recycling Act, 35 P.S. § 6026.301, as follows:

a. Within **30 days after the date of this Order**, Erie Coke shall submit to the Department a Notice of Intent to Remediate the release of wastewater from the SPR Tank to attain on or a combination of the environmental standards under Sections 302, 303, or 304 of the Land Recycling Act, 35 P.S. §§ 6026.302, 6026.303, or 6026.304, along with all applicable fees, and a

schedule for implementing the cleanup in accordance with the procedures and requirements of the Land Recycling Act and submitting a final report demonstrating attainment of the chosen cleanup standard(s) under Section 301(a) of the Land Recycling Act, 35 P.S. § 6026.301 (“Remediation Schedule”);

b. With regard to the Remediation Schedule that Erie Coke submits pursuant to Paragraph 5.a., above, if the Remediation Schedule or any portion thereof, is disapproved by the Department, Erie Coke shall submit a revised Remediation Schedule to the Department that addresses the Department’s concern within a reasonable time, as specified by the Department. The Department will approve, modify, or disapprove the revised Remediation Schedule in writing; and

c. Upon the Department’s approval of the Remediation Schedule submitted by Erie Coke, Erie Coke shall remediate the release of wastewater from the SPR Tank in accordance with the timeframes and deadlines of the Department-approved Remediation Schedule, the Land Recycling Act, and this Order.

6. **Inspection.** Within **45 days after the date of this Order**, Erie Coke shall inspect all piping, sensors, alarms, and containment structures associated with the SPR Tank, Tank 102 and Tank 103 and inspect Tanks 102 and 103, to determine structural integrity and to determine compliance with 25 Pa. Code § 299.122, and Erie Coke shall submit a written report documenting the results of the inspections.

7. All correspondence with the Department concerning this Order shall be addressed to:

Christina S. Wilhelm- Regional Manager
PADEP-Waste Management
230 Chestnut Street
Meadville, PA 16335
Telephone: 814-332-6153
Fax: 814-332-6411

Any person aggrieved by this action may appeal the action to the Environmental Hearing Board (Board), pursuant to Section 4 of the Environmental Hearing Board Act, 35 P.S. § 7514, and the Administrative Agency Law, 2 Pa.C.S. Chapter 5A. The Board's address is:

Environmental Hearing Board
Rachel Carson State Office Building, Second Floor
400 Market Street
P.O. Box 8457
Harrisburg, PA 17105-8457

TDD users may contact the Environmental Hearing Board through the Pennsylvania Relay Service, 800-654-5984.

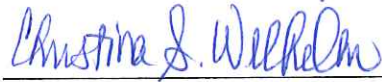
Appeals must be filed with the Board within 30 days of receipt of notice of this action unless the appropriate statute provides a different time. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decisional law.

A Notice of Appeal form and the Board's rules of practice and procedure may be obtained online at <http://ehb.courtapps.com> or by contacting the Secretary to the Board at 717-787-3483. The Notice of Appeal form and the Board's rules are also available in braille and on audiotape from the Secretary to the Board.

IMPORTANT LEGAL RIGHTS ARE AT STAKE. YOU SHOULD SHOW THIS DOCUMENT TO A LAWYER AT ONCE. IF YOU CANNOT AFFORD A LAWYER, YOU MAY QUALIFY FOR FREE PRO BONO REPRESENTATION. CALL THE SECRETARY TO THE BOARD AT 717-787-3483 FOR MORE INFORMATION. YOU DO NOT NEED A LAWYER TO FILE A NOTICE OF APPEAL WITH THE BOARD.

IF YOU WANT TO CHALLENGE THIS ACTION, YOUR APPEAL MUST BE FILED WITH AND RECEIVED BY THE BOARD WITHIN 30 DAYS OF RECEIPT OF NOTICE OF THIS ACTION.

**FOR THE COMMONWEALTH OF
PENNSYLVANIA DEPARTMENT OF
ENVIRONMENTAL PROTECTION**



Christina S. Wilhelm
Regional Manager
Waste Management Program
Northwest Region