

**IN THE COURT OF COMMON PLEAS OF
ERIE COUNTY, PENNSYLVANIA**

COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF ENVIRONMENTAL
PROTECTION,

Plaintiff,

v.

ERIE COKE CORPORATION,

Defendant.

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: No. _____
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NOTICE TO DEFEND

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

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v.

ERIE COKE CORPORATION,

Defendant.

CIVIL ACTION (EQUITY)

No. _____

TYPE CASE:

Civil Action – Complaint

TYPE OF PLEADING:

Complaint in Equity

FILED ON BEHALF OF:

The Commonwealth of Pennsylvania,
Department of Environmental Protection,
Plaintiff

COUNSEL OF RECORD FOR THIS PARTY:

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COUNSEL OF RECORD FOR ADVERSE PARTY:

Unknown

Dated: July 1, 2019

2. The Defendant, Erie Coke Corporation, is a Pennsylvania corporation that maintains a mailing address of P.O. Box 6180, Erie, PA 16512, and is a “person,” as that term is defined in Section 3 of the Air Act, 35 P.S. § 4003 (“Erie Coke”).

Jurisdiction

3. This Court has jurisdiction pursuant to Section 761(b) and 931(b) of the Judicial Code, 42 Pa.C.S. §§ 761(b) and 931(b), and Section 13.6 of the Air Act, 35 P.S. § 4013.6.

Background

4. Erie Coke owns and operates a 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”).

5. The Facility is located adjacent to a densely-populated residential area of the City of Erie in an area where 20% or more individuals live in poverty, and/or 30% or more of the population is minority.

6. The Facility is located less than a quarter mile from the Barber National Institute, which provides services to children and adults with autism, intellectual disabilities, or behavioral health challenges, and their families.

7. The Facility is located less than one mile from East Middle School, which provides education to students from grades 6 through 8.

8. The Facility is located on the shore of Presque Isle Bay and emissions from Erie Coke’s operations at the Facility are visible to visitors using Presque Isle State Park.

9. At the Facility, Erie Coke heats coal at high temperatures in ovens in the absence of oxygen to drive off impurities in the coal and produce coke for use in the steelmaking industry.

10. At the Facility, Erie Coke owns and operates a coke oven battery consisting of 58 coke ovens ("Battery"), a coke oven battery underfiring system ("Underfiring System"), and two boilers fueled by coke oven gas and natural gas ("Boiler No. 1" and "Boiler No. 2," respectively).

11. In 1942, 35 of the 58 coke ovens in the Battery were put into operation at the Facility ("B Coke Ovens").

12. In 1952, 23 of the 58 coke ovens in the Battery were put into operation at the Facility ("A Coke Ovens").

13. As required by a consent decree between the Department and Erie Coke approved by the Commonwealth Court of Pennsylvania on July 6, 2010 ("2010 Consent Decree"), Erie Coke rebuilt all of the A Coke Ovens, rebuilt four of the B Coke Ovens, and completed flue-end repairs on some of the B Coke Ovens. The 2010 Consent Decree terminated on May 1, 2015.

14. At the Facility, Erie Coke owns and operates a control device to reduce concentrations of hydrogen sulfide emitted from its operations referred to as an "H₂S Absorber."

15. At the Facility, Erie Coke owns and operates a control device to capture and control coke pushing emissions from the Battery referred to as the "Coke Side Shed Baghouse."

16. Erie Coke's operation of the Facility produces and emits coke oven gas containing such chemical compounds as benzene, benz(a)pyrene, and benz(a)anthracene, which are known carcinogens.

17. The United States Environmental Protection Agency classifies coke oven gas as a Class A, known human carcinogen and a toxic air pollutant.

18. Erie Coke's operation of the Facility produces and emits particulate matter from, among other sources, the Battery stack, which are observed as part of visible emissions.

19. Particulate matter from Erie Coke's operation of the Facility is deposited on public and private properties in the vicinity of the Facility.
20. Inhalation of particulate matter is linked to increased respiratory and heart-related illness in humans.
21. Particulate matter is a primary component of smog or haze that reduces visibility in the environment and has been linked to acid rain deposition.
22. Visible emissions from Erie Coke's operation of the Facility migrate off Erie Coke's property onto public and private properties in the vicinity of the Facility.
23. Emissions of hydrogen sulfide in the outdoor air can create malodors described as a "rotten-egg" odor.
24. Malodors from Erie Coke's operation of the Facility are detected on public and private properties in the vicinity of the Facility.

Permitting

25. On August 25, 1999, the Department issued Title V Operating Permit No. 25-00029 to Erie Coke authorizing Erie Coke to operate and maintain identified air contamination sources and air cleaning devices at the Facility, including, but not limited to, the Battery, Underfiring System, Boiler No. 1, and Boiler No. 2 ("Permit").
26. The Department renewed the Permit on March 27, 2013 for a five-year term and amended the Permit on October 3, 2016 and August 1, 2017.
27. The Permit expired on February 28, 2018.
28. Pursuant to 25 Pa. Code § 127.446(c), the terms and conditions of an expired permit are automatically continued pending the issuance of a new permit when the permittee has submitted a timely and complete application, paid the required fees, and the Department is

unable, through no fault of the permittee, to issue or deny a new permit before expiration of the previous permit (“Application Shield”).

29. On August 28, 2017, Erie Coke applied to renew the Permit and the Department determined that Erie Coke’s application was administratively complete on September 1, 2017.

30. The Department was unable to issue or deny a new permit for Erie Coke before the expiration of the Permit on February 28, 2018.

Visible Emissions Exceeding 20% Standard

31. In the Second Quarter of 2015, Erie Coke failed to prevent visible emissions exceeding 20% from the Battery stack for periods aggregating more than three minutes in any one hour for a total of 697 minutes.

32. In the Fourth Quarter of 2015, Erie Coke failed to prevent visible emissions exceeding 20% from the Battery stack for periods aggregating more than three minutes in any one hour for a total of 1,226 minutes.

33. In the Third Quarter of 2016, Erie Coke failed to prevent visible emissions exceeding 20% from the Battery stack for periods aggregating more than three minutes in any one hour for a total of 2,005 minutes.

34. In the Third Quarter of 2017, Erie Coke failed to prevent visible emissions exceeding 20% from the Battery stack for periods aggregating more than three minutes in any one hour for a total of 4,612 minutes.

35. In the Fourth Quarter of 2017, Erie Coke failed to prevent visible emissions exceeding 20% from the Battery stack for periods aggregating more than three minutes in any one hour for a total of 3,318 minutes.

36. In the First Quarter of 2018, Erie Coke failed to prevent visible emissions exceeding 20% from the Battery stack for periods aggregating more than three minutes in any one hour for a total of 2,917 minutes.

37. In the Second Quarter of 2018, Erie Coke failed to prevent visible emissions exceeding 20% from the Battery stack for periods aggregating more than three minutes in any one hour for a total of 3,642 minutes.

38. In the Third Quarter of 2018, Erie Coke failed to prevent visible emissions exceeding 20% from the Battery stack for periods aggregating more than three minutes in any one hour for a total of 5,566 minutes.

39. In the Fourth Quarter of 2018, Erie Coke failed to prevent visible emissions exceeding 20% from the Battery stack for periods aggregating more than three minutes in any one hour for a total of 1,232 minutes.

40. In the First Quarter of 2019, Erie Coke failed to prevent visible emissions exceeding 20% from the Battery stack for periods aggregating more than three minutes in any one hour for a total of 8,046 minutes.

Visible Emissions Exceeding 60% Standard

41. In the Second Quarter of 2015, Erie Coke failed to prevent visible emissions exceeding 60% from the Battery stack for a total of 52 minutes.

42. In the Fourth Quarter of 2015, Erie Coke failed to prevent visible emissions exceeding 60% from the Battery stack for a total of 21 minutes.

43. In the Third Quarter of 2016, Erie Coke failed to prevent visible emissions exceeding 60% from the Battery stack for a total of 23 minutes.

44. In the Third Quarter of 2017, Erie Coke failed to prevent visible emissions exceeding 60% from the Battery stack for a total of 202 minutes.

45. In the Fourth Quarter of 2017, Erie Coke failed to prevent visible emissions exceeding 60% from the Battery stack for a total of 132 minutes.

46. In the First Quarter of 2018, Erie Coke failed to prevent visible emissions exceeding 60% from the Battery stack for a total of 39 minutes.

47. In the Second Quarter of 2018, Erie Coke failed to prevent visible emissions exceeding 60% from the Battery stack for a total of 101 minutes.

48. In the Third Quarter of 2018, Erie Coke failed to prevent visible emissions exceeding 60% from the Battery stack for a total of 128 minutes.

49. In the Fourth Quarter of 2018, Erie Coke failed to prevent visible emissions exceeding 60% from the Battery stack for a total of 5 minutes.

50. In the First Quarter of 2019, Erie Coke failed to prevent visible emissions exceeding 60% from the Battery stack for a total of 39 minutes.

Visible Emissions Exceeding the 15% Daily Average Standard

51. In the First Quarter of 2019, Erie Coke failed to prevent visible emissions from the Battery stack from exceeding a 15% daily average for seven days.

Open Charging Emissions of Unburned, Untreated Coke Oven Gas

52. On June 17, 2017, Erie Coke failed to prevent visible open charging emissions of unburned, untreated coke oven gas greater than 75 seconds for four consecutive charges.

53. On August 7, 2017, Erie Coke failed to prevent visible open charging emissions of unburned, untreated coke oven gas greater than 75 seconds for four consecutive charges.

54. On September 4, 2017, Erie Coke failed to prevent visible open charging emissions of unburned, untreated coke oven gas greater than 75 seconds for four consecutive charges.

55. On October 15, 2017, Erie Coke failed to prevent visible open charging emissions of unburned, untreated coke oven gas greater than 75 seconds for four consecutive charges.

56. On February 1, 2019, Erie Coke failed to prevent visible open charging emissions of unburned, untreated coke oven gas greater than 75 seconds for four consecutive charges.

57. On February 2, 2019, Erie Coke failed to prevent visible open charging emissions of unburned, untreated coke oven gas greater than 75 seconds for four consecutive charges.

58. On March 30, 2019, Erie Coke failed to prevent visible open charging emissions of unburned, untreated coke oven gas greater than 75 seconds for four consecutive charges.

Door Area Emissions of Unburned, Untreated Coke Oven Gas

59. On August 11, 2017, Erie Coke failed to prevent visible door area emissions of unburned, untreated coke oven gas from more than 10% of the door area of operating coke ovens.

60. On August 27, 2017, Erie Coke failed to prevent visible door area emissions of unburned, untreated coke oven gas from more than 10% of the door area of operating coke ovens.

61. On October 14, 2017, Erie Coke failed to prevent visible door area emissions of unburned, untreated coke oven gas from more than 10% of the door area of operating coke ovens.

62. On May 29, 2018, Erie Coke failed to prevent visible door area emissions of unburned, untreated coke oven gas from more than 10% of the door area of operating coke ovens.

63. On September 16, 2018, Erie Coke failed to prevent visible door area emissions of unburned, untreated coke oven gas from more than 10% of the door area of operating coke ovens.

64. On December 15, 2018, Erie Coke failed to prevent visible door area emissions of unburned, untreated coke oven gas from more than 10% of the door area of operating coke ovens.

65. On March 30, 2019, Erie Coke failed to prevent visible door area emissions of unburned, untreated coke oven gas from more than 10% of the door area of operating coke ovens.

66. On June 7, 2019, Erie Coke failed to prevent visible door area emissions of unburned, untreated coke oven gas from more than 10% of the door area of operating coke ovens.

Battery Topside Emissions of Unburned, Untreated Coke Oven Gas

67. On June 3, 2017, Erie Coke failed to prevent topside emissions of unburned, untreated coke oven gas from more than 5% of the offtake piping on operating coke ovens.

68. On June 24, 2017, Erie Coke failed to prevent topside emissions of unburned, untreated coke oven gas from more than 5% of the offtake piping on operating coke ovens.

69. On June 26, 2017, Erie Coke failed to prevent topside emissions of unburned, untreated coke oven gas from more than 5% of the offtake piping on operating coke ovens.

70. On July 24, 2017, Erie Coke failed to prevent topside emissions of unburned, untreated coke oven gas from more than 5% of the offtake piping on operating coke ovens.

71. On July 29, 2017, Erie Coke failed to prevent topside emissions of unburned, untreated coke oven gas from more than 5% of the offtake piping on operating coke ovens.

72. On August 11, 2017, Erie Coke failed to prevent topside emissions of unburned, untreated coke oven gas from more than 5% of the offtake piping on operating coke ovens.

73. On August 26, 2017, Erie Coke failed to prevent topside emissions of unburned, untreated coke oven gas from more than 5% of the offtake piping on operating coke ovens.

74. On October 10, 2017, Erie Coke failed to prevent topside emissions of unburned, untreated coke oven gas from more than 5% of the offtake piping on operating coke ovens.

75. On November 26, 2017, Erie Coke failed to prevent topside emissions of unburned, untreated coke oven gas from more than 5% of the offtake piping on operating coke ovens.

76. On December 11, 2017, Erie Coke failed to prevent topside emissions of unburned, untreated coke oven gas from more than 5% of the offtake piping on operating coke ovens.

77. On May 16, 2018, Erie Coke failed to prevent topside emissions of unburned, untreated coke oven gas from more than 5% of the offtake piping on operating coke ovens.

78. On May 17, 2018, Erie Coke failed to prevent topside emissions of unburned, untreated coke oven gas from more than 5% of the offtake piping on operating coke ovens.

79. On June 26, 2018, Erie Coke failed to prevent topside emissions of unburned, untreated coke oven gas from more than 5% of the offtake piping on operating coke ovens.

80. On July 1, 2018, Erie Coke failed to prevent topside emissions of unburned, untreated coke oven gas from more than 5% of the offtake piping on operating coke ovens.

81. On July 27, 2018, Erie Coke failed to prevent topside emissions of unburned, untreated coke oven gas from more than 5% of the offtake piping on operating coke ovens.

82. On July 28, 2018, Erie Coke failed to prevent topside emissions of unburned, untreated coke oven gas from more than 5% of the offtake piping on operating coke ovens.

83. On July 29, 2018, Erie Coke failed to prevent topside emissions of unburned, untreated coke oven gas from more than 5% of the offtake piping on operating coke ovens.

84. On August 1, 2018, Erie Coke failed to prevent topside emissions of unburned, untreated coke oven gas from more than 5% of the offtake piping on operating coke ovens.

85. On August 7, 2018, Erie Coke failed to prevent topside emissions of unburned, untreated coke oven gas from more than 5% of the offtake piping on operating coke ovens.

86. On September 23, 2018, Erie Coke failed to prevent topside emissions of unburned, untreated coke oven gas from more than 5% of the offtake piping on operating coke ovens.

87. On January 10, 2019, Erie Coke failed to prevent topside emissions of unburned, untreated coke oven gas from more than 5% of the offtake piping on operating coke ovens.

88. On May 16, 2018, Erie Coke failed to prevent visible topside emissions of unburned, untreated coke oven gas from more than 2% of the charging port seals on operating coke ovens.

89. On July 1, 2018, Erie Coke failed to prevent visible topside emissions of unburned, untreated coke oven gas from more than 2% of the charging port seals on operating coke ovens.

90. On June 7, 2019, Erie Coke failed to prevent topside emissions of unburned, untreated coke oven gas from more than 5% of the offtake piping on operating coke ovens.

91. On June 12, 2019, Erie Coke failed to prevent topside emissions of unburned, untreated coke oven gas from more than 5% of the offtake piping on operating coke ovens.

Fugitive Emissions of Unburned, Untreated Coke Oven Gas

92. On May 15, 2019, Erie Coke failed to prevent visible emissions of unburned, untreated coke oven gas through a leak in the collector main.

93. On June 3, 2019, Erie Coke failed to prevent visible emissions of unburned, untreated coke oven gas through a leak in the collector main.

94. On May 15, 2019, Erie Coke failed to prevent fugitive emissions of unburned, untreated coke oven gas through a leak in the liquor pot for the A Coke Ovens.

95. On June 7, 2019, Erie Coke failed to prevent fugitive emissions of unburned, untreated coke oven gas through a leak in the liquor pot for the A Coke Ovens.

Hydrogen Sulfide Emissions

96. Between May 1, 2016 and April 4, 2017, Erie Coke modified and operated the H₂S Absorber without approval from the Department.

97. On April 4, 2017, the Department approved Erie Coke's modification and operation of the H₂S Absorber.

98. On May 21, 22, 23, and 24, 2018, Erie Coke did not operate the H₂S Absorber to control hydrogen sulfide emissions and failed to prevent the flaring or combustion of coke oven by-product gas with hydrogen sulfide concentrations greater than 50 grains/100 dry standard cubic feet.

99. On July 25 and 26, 2018, Erie Coke did not operate the H₂S Absorber to control hydrogen sulfide emissions and failed to prevent the flaring or combustion of coke oven by-product gas with hydrogen sulfide concentrations greater than 50 grains/100 dry standard cubic feet.

100. On December 10, 11, 12, 13, 14, 15, and 16, 2018, Erie Coke did not operate the H₂S Absorber to control hydrogen sulfide emissions and failed to prevent the flaring or combustion of coke oven by-product gas with hydrogen sulfide concentrations greater than 50 grains/100 dry standard cubic feet.

101. On January 26, 27, and 28, 2019, Erie Coke did not operate the H₂S Absorber to control hydrogen sulfide emissions and failed to prevent the flaring or combustion of coke oven by-product gas with hydrogen sulfide concentrations greater than 50 grains/100 dry standard cubic feet.

102. On February 17 and 18, 2019, Erie Coke did not operate the H₂S Absorber to control hydrogen sulfide emissions and failed to prevent the flaring or combustion of coke oven by-product gas with hydrogen sulfide concentrations greater than 50 grains/100 dry standard cubic feet.

103. On February 18-19, 2019, Erie Coke vented emissions of hydrogen sulfide directly to the atmosphere when the H₂S Absorber's vent line was blocked.

104. On March 9, 2019, Erie Coke allowed malodors from the Facility outside of Erie Coke's property.

105. On March 27, 2019, Erie Coke allowed malodors from the Facility outside of Erie Coke's property.

106. On May 5, 2019, Erie Coke allowed malodors from the Facility outside of Erie Coke's property.

Coke Pushing Emissions

107. On August 13, 2018, Erie Coke failed to prevent visible fugitive air contaminants in excess of 20% opacity from the Battery during coke pushing.

108. On September 11, 2018, Erie Coke failed to prevent visible fugitive air contaminants in excess of 20% opacity from the Battery during coke pushing.

109. On September 13, 2018, Erie Coke failed to prevent visible fugitive air contaminants in excess of 20% opacity from the Battery during coke pushing.

110. On May 15, 2019, Erie Coke failed to prevent visible fugitive air contaminants in excess of 20% opacity from the Battery during coke pushing.

111. On June 7, 2019, Erie Coke failed to prevent visible fugitive air contaminants in excess of 20% opacity from the Battery during coke pushing.

112. On June 11, 2019, Erie Coke failed to prevent visible fugitive air contaminants in excess of 20% opacity from the Battery during coke pushing.

113. On June 11, 2019, Erie Coke failed to prevent visible fugitive air contaminants in excess of 20% opacity from the Battery during coke pushing.

114. During 2018, Erie Coke failed to conduct an annual stack test of the Coke Side Shed Baghouse for emissions of particulate matter as required by the Permit.

Fugitive Emissions Crossing Property Lines

115. On or before February 15, 2019, Erie Coke allowed particulate coke to exit Erie Coke's property and deposit on the nearby East Avenue public boat launch

116. On June 20, 2018, visible fugitive emissions during coke pushing traveled off of Erie Coke's property.

117. On August 2, 2018, visible fugitive emissions during coke pushing traveled off of Erie Coke's property.

118. On June 13, 2019, visible fugitive emissions from the battery traveled off of Erie Coke's property.

Department Order

119. Since 2015, Erie Coke has failed to conduct proper monitoring and inspection of multiple operating parameters at the Facility.

120. Since 2015, Erie Coke has failed to maintain appropriate recordkeeping to properly demonstrate compliance with Permit conditions.

121. Since 2015, Erie Coke has failed to maintain appropriate recordkeeping to demonstrate efforts to properly correct violations at the Facility.

122. On February 4, 2019, the Department issued an administrative order to Erie Coke requiring Erie Coke to, among other things, within 60 days, submit a corrective action plan with a schedule to correct the ongoing violations at the Facility ("Compliance Schedule").

123. As part of the Compliance Schedule, Erie Coke was required to submit an administratively complete plan approval for the construction and installation of a backup control device to prevent the flaring or combustion of coke oven byproduct gas with hydrogen sulfide concentrations greater than 50 grains/100 dry standard cubic feet to utilize when the H₂S Absorber is out of service.

124. As of the date of this Complaint, Erie Coke has not submitted a Compliance Schedule sufficient to end the ongoing violations at the Facility.

125. As of the date of this Complaint, Erie Coke has not submitted an administratively complete plan approval for the construction and installation of a backup control device to prevent the flaring or combustion of coke oven byproduct gas with hydrogen sulfide concentrations greater than 50 grains/100 dry standard cubic feet to utilize when the H₂S Absorber is out of service.

126. On May 9, 2019, the Department notified Erie Coke that pursuant to 25 Pa. Code §§ 127.412(f)-(g), the Department placed Erie Coke's unresolved violations, along with Erie Coke's lack of intention or ability to comply with the Air Act and Regulations, on the Department's compliance docket ("Notification Letter").

127. In the Notification Letter, the Department notified Erie Coke that the Department would not be able to renew the Permit until Erie Coke's ongoing violations, along with Erie Coke's lack of intention or ability to comply with the Air Act and Regulations, were resolved.

128. On June 19, 2019, the Department notified Erie Coke in writing that it had not provided technical information necessary to review its Permit renewal application and that the Department was unable to process the renewal application because Erie Coke had not supplied the information.

129. On June 21, 2019, the Department notified Erie Coke in writing that its response to the Department's February 4, 2019 administrative order did not meet the requirements of the order for a compliance plan and schedule.

130. On July 1, 2019, the Department denied Erie Coke's application to renew the Permit based upon, among other things, Erie Coke's demonstrated lack of intention or ability to comply with the Air Act and Regulations.

131. As of July 1, 2019, Erie Coke has no authorization to operate sources of air contamination at the Facility and the terms and conditions of the Permit no longer apply.

Count I
Injunctive Relief Restraining Violation of the Air Act
For Operation of Air Contamination Sources Without a Permit from the Department

132. Paragraphs 1 through 131, above, are incorporated herein by reference as if set forth in full.

133. The Battery, Underfiring System, Boiler No. 1 and Boiler No. 2 owned and operated by Erie Coke at the Facility are “air contamination sources,” as that term is defined in Section 3 of the Air Act, 35 P.S. § 4003, and 25 Pa. Code § 121.1.

134. Section 6.1 of the Air Act, 35 P.S. § 4006.1(b)(1), and 25 Pa. Code § 127.402 prohibits a person from operating any stationary air contamination source unless the Department shall have issued to such person a permit to operate such source under the Act.

135. As of May 9, 2019, the date of the Notification Letter, Erie Coke was no longer authorized to operate the air contamination sources at the Facility pursuant to the Application Shield provisions of 25 Pa. Code § 127.446(c).

136. As of July 1, 2019, the Department was unable to process Erie Coke’s application to renew the Permit because Erie Coke had not provided technical information requested by the Department and Erie Coke was not authorized to operate the air contamination sources at the Facility pursuant to the Application Shield provisions of 25 Pa. Code § 127.446(c).

137. Erie Coke’s application to renew the Permit has been denied and the Department has no other pending applications from Erie Coke to authorize the operation of the air contamination sources at the Facility.

138. As of the date of this Complaint, Erie Coke continues to operate the Battery, Underfiring System, Boiler No. 1, and Boiler No. 2 at the Facility without a permit to operate

issued by the Department, and without regulatory authorization to operate pursuant to the Application Shield provisions of 25 Pa. Code § 127.446(c).

139. Erie Coke's continued operation of air contamination sources at the Facility without a permit from the Department violates Section 6.1(b)(1) of the Air Act, 35 P.S. § 4006.1, and 25 Pa. Code § 127.402.

140. Erie Coke's continued operation of the air contamination sources at the Facility without a permit from the Department is unlawful conduct under Section 8 of the Air Act, 35 P.S. § 4008, and a statutory public nuisance under Section 13 of the Air Act, 35 P.S. § 4013.

141. Section 13.6 of the Air Act, 35 P.S. § 4013.6(a), provides that any activity or condition declared by the Act to be a nuisance of which is otherwise in violation of the Act shall be abatable in the manner provided by law or equity for the abatement of public nuisances.

142. The Department lacks an adequate remedy at law to restrain Erie Coke from continuing to operate the air contamination sources at the Facility in violation of the Air Act and the Regulations as referenced herein.

WHEREFORE, pursuant to Section 13.6 of the Air Act, 35 P.S. § 4013.6, the Department requests that this Honorable Court issue an injunction to restrain Erie Coke's maintenance and threat of public nuisance by ordering Erie Coke to cease the operation of all air contamination sources at the Facility, including, without limitation, the Battery, Underfiring System, Boiler No. 1, and Boiler No. 2 in accordance with the attached proposed Order.

Count II
Injunctive Relief Restraining Continuing Visible Emissions Violations

143. Paragraphs 1 through 142, above, are incorporated herein by reference as if set forth in full.

144. Erie Coke's failure to prevent visible emissions from the Battery stack from exceeding a 15% daily average violates 40 CFR § 63.7333(e)(1).

145. Erie Coke's failure to prevent visible emissions from the Battery stack exceeding 20% for periods aggregating more than three minutes in an hour violates 25 Pa. Code § 123.41(1).

146. Erie Coke's failure to prevent visible emissions from the Battery stack exceeding 60% at all times violates 25 Pa. Code § 123.41(2).

147. The violations described in Paragraphs 144, 145, and 146, above, constitute unlawful conduct under Section 8 of the Air Act, 35 P.S. § 4008, and statutory public nuisances under Section 13 of the Air Act, 35 P.S. § 4013.

148. Erie Coke's continued operation of the Facility will result in violations of 40 CFR § 63.7333(e)(1) and 25 Pa. Code §§ 123.41(1) and 123.41(2).

149. Section 13.6 of the Air Act, 35 P.S. § 4013.6(a), provides that any activity or condition declared by the Act to be a nuisance of which is otherwise in violation of the Act shall be abatable in the manner provided by law or equity for the abatement of public nuisances.

150. The Department lacks an adequate remedy at law to restrain Erie Coke from continuing to operate the air contamination sources at the Facility in violation of the Air Act and the Regulations as referenced herein.

WHEREFORE, pursuant to Section 13.6 of the Air Act, 35 P.S. § 4013.6, the Department requests that this Honorable Court issue an injunction to restrain Erie Coke's maintenance and threat of public nuisance by ordering Erie Coke to cease the operation of all air contamination sources at the Facility, including, without limitation, the Battery, Underfiring System, Boiler No. 1, and Boiler No. 2 in accordance with the attached proposed Order.

Count III
Injunctive Relief Restraining Continuing Violations of 25 Pa. Code § 123.44

151. Paragraphs 1 through 150, above, are incorporated herein by reference as if set forth in full.

152. Erie Coke's failure to prevent visible open charging emissions of unburned, untreated coke oven gas of greater than 75 seconds for four consecutive charges violates 25 Pa. Code § 123.44(a)(1)(i).

153. Erie Coke's failure to prevent visible door area emissions of unburned, untreated coke oven gas from more than 10% of the door area of operating coke ovens violates 25 Pa. Code § 123.44(a)(3).

154. Erie Coke's failure to prevent visible topside emissions of unburned, untreated coke oven gas from more than 2% of the charging port seals on operating coke ovens violates 25 Pa. Code § 123.44(a)(4).

155. Erie Coke's failure to prevent topside emissions of unburned, untreated coke oven gas from more than 5% of the offtake piping on operating coke ovens violates 25 Pa. Code § 123.44(a)(5).

156. Erie Coke's failure to prevent visible emissions from the coke oven gas collector main violates 25 Pa. Code § 123.44(a)(7).

157. The violations described in Paragraphs 152, 153, 154, 155, and 156, above, constitute unlawful conduct under Section 8 of the Air Act, 35 P.S. § 4008, and statutory public nuisances under Section 13 of the Air Act, 35 P.S. § 4013.

158. Erie Coke's continued operation of the Facility will result in violations of 25 Pa. Code §§ 123.23(a), 123.44(a)(1)(i), 123.44(a)(3), 123.44 (a)(4), and 123.44 (a)(5).

159. Section 13.6 of the Air Act, 35 P.S. § 4013.6(a), provides that any activity or condition declared by the Act to be a nuisance of which is otherwise in violation of the Act shall be abatable in the manner provided by law or equity for the abatement of public nuisances.

160. The Department lacks an adequate remedy at law to restrain Erie Coke from continuing to operate the air contamination sources at the Facility in violation of the Air Act and the Regulations as referenced herein.

WHEREFORE, pursuant to Section 13.6 of the Air Act, 35 P.S. § 4013.6, the Department requests that this Honorable Court issue an injunction to restrain Erie Coke's maintenance and threat of public nuisance by ordering Erie Coke to cease the operation of all air contamination sources at the Facility, including, without limitation, the Battery, Underfiring System, Boiler No. 1, and Boiler No. 2 in accordance with the attached proposed Order.

Count IV
Injunctive Relief Restraining Continuing Violations of 25 Pa. Code § 123.23

161. Paragraphs 1 through 160, above, are incorporated herein by reference as if set forth in full.

162. Erie Coke's failure to prevent the fugitive emission of unburned, untreated coke oven gas violates 25 Pa. Code § 123.23(a).

163. Erie Coke's failure to prevent the flaring or combustion of coke oven by-product gas with hydrogen sulfide concentrations greater than 50 grains/100 dry standard cubic feet violates 25 Pa. Code § 123.23(b).

164. The violations described in Paragraphs 162 and 163, above, constitutes unlawful conduct under Section 8 of the Air Act, 35 P.S. § 4008, and statutory public nuisances under Section 13 of the Air Act, 35 P.S. § 4013.

165. Erie Coke's continued operation of the Facility will result in violations of 25 Pa. Code § 123.23(b).

166. Section 13.6 of the Air Act, 35 P.S. § 4013.6(a), provides that any activity or condition declared by the Act to be a nuisance of which is otherwise in violation of the Act shall be abatable in the manner provided by law or equity for the abatement of public nuisances.

167. The Department lacks an adequate remedy at law to restrain Erie Coke from continuing to operate the air contamination sources at the Facility in violation of the Air Act and the Regulations as referenced herein.

WHEREFORE, pursuant to Section 13.6 of the Air Act, 35 P.S. § 4013.6, the Department requests that this Honorable Court issue an injunction to restrain Erie Coke's maintenance and threat of public nuisance by ordering Erie Coke to cease the operation of all air contamination sources at the Facility, including, without limitation, the Battery, Underfiring System, Boiler No. 1, and Boiler No. 2 in accordance with the attached proposed Order.

Count V

Injunctive Relief Restraining Continuing Violation of 25 Pa. Code § 129.15

168. Paragraphs 1 through 167, above, are incorporated herein by reference as if set forth in full.

169. Erie Coke's failure to prevent visible fugitive air contaminants in excess of 20% opacity from the Battery during coke pushing operations violates 25 Pa. Code § 129.15(c).

170. The violation described in Paragraph 169, above, constitutes unlawful conduct under Section 8 of the Air Act, 35 P.S. § 4008, and a statutory public nuisance under Section 13 of the Air Act, 35 P.S. § 4013.

171. Erie Coke's continued operation of the Facility will result in violations of 25 Pa. Code § 129.15(c).

172. Section 13.6 of the Air Act, 35 P.S. § 4013.6(a), provides that any activity or condition declared by the Act to be a nuisance of which is otherwise in violation of the Act shall be abatable in the manner provided by law or equity for the abatement of public nuisances.

173. The Department lacks an adequate remedy at law to restrain Erie Coke from continuing to operate the air contamination sources at the Facility in violation of the Air Act and the Regulations as referenced herein.

WHEREFORE, pursuant to Section 13.6 of the Air Act, 35 P.S. § 4013.6, the Department requests that this Honorable Court issue an injunction to restrain Erie Coke's maintenance and threat of public nuisance by ordering Erie Coke to cease the operation of all air contamination sources at the Facility, including, without limitation, the Battery, Underfiring System, Boiler No. 1, and Boiler No. 2 in accordance with the attached proposed Order.

Count VI
Injunctive Relief Restraining Continuing Violations of 25 Pa. Code § 123.1

174. Paragraphs 1 through 173, above, are incorporated herein by reference as if set forth in full.

175. Erie Coke's failure to prevent the emission of fugitive air contaminants from air contamination sources at the Facility that are not addressed by 25 Pa. Code §§ 123.44 and 129.15 violates 25 Pa. Code § 123.1.

176. The violations described in Paragraphs 175, above, constitute unlawful conduct under Section 8 of the Air Act, 35 P.S. § 4008, and statutory public nuisances under Section 13 of the Air Act, 35 P.S. § 4013.

177. Erie Coke's continued operation of the Facility will result in violations of 25 Pa. Code § 123.1.

178. Section 13.6 of the Air Act, 35 P.S. § 4013.6(a), provides that any activity or condition declared by the Act to be a nuisance of which is otherwise in violation of the Act shall be abatable in the manner provided by law or equity for the abatement of public nuisances.

179. The Department lacks an adequate remedy at law to restrain Erie Coke from continuing to operate the air contamination sources at the Facility in violation of the Air Act and the Regulations as referenced herein.

WHEREFORE, pursuant to Section 13.6 of the Air Act, 35 P.S. § 4013.6, the Department requests that this Honorable Court issue an injunction to restrain Erie Coke's maintenance and threat of public nuisance by ordering Erie Coke to cease the operation of all air contamination sources at the Facility, including, without limitation, the Battery, Underfiring System, Boiler No. 1, and Boiler No. 2 in accordance with the attached proposed Order.

Count VII

Injunctive Relief Restraining Continuing Violations of 25 Pa. Code § 123.2

180. Paragraphs 1 through 179, above, are incorporated herein by reference as if set forth in full.

181. Erie Coke's failure to prevent visible fugitive particulate matter from crossing outside of Erie Coke's property violates 25 Pa. Code § 123.2.

182. The violations described in Paragraphs 181, above, constitute unlawful conduct under Section 8 of the Air Act, 35 P.S. § 4008, and statutory public nuisances under Section 13 of the Air Act, 35 P.S. § 4013.

183. Erie Coke's continued operation of the Facility will result in violations of 25 Pa. Code § 123.2.

184. Section 13.6 of the Air Act, 35 P.S. § 4013.6(a), provides that any activity or condition declared by the Act to be a nuisance of which is otherwise in violation of the Act shall be abatable in the manner provided by law or equity for the abatement of public nuisances.

185. The Department lacks an adequate remedy at law to restrain Erie Coke from continuing to operate the air contamination sources at the Facility in violation of the Air Act and the Regulations as referenced herein.

WHEREFORE, pursuant to Section 13.6 of the Air Act, 35 P.S. § 4013.6, the Department requests that this Honorable Court issue an injunction to restrain Erie Coke's maintenance and threat of public nuisance by ordering Erie Coke to cease the operation of all air contamination sources at the Facility, including, without limitation, the Battery, Underfiring System, Boiler No. 1, and Boiler No. 2 in accordance with the attached proposed Order.

Count VIII

Injunctive Relief Restraining Continuing Violation of 25 Pa. Code § 123.31

186. Paragraphs 1 through 185, above, are incorporated herein by reference as if set forth in full.

187. Erie Coke's failure to prevent malodorous air emissions from being detectable outside Erie Coke's property violates 25 Pa. Code § 123.31.

188. The violation described in Paragraph 187, above, constitutes unlawful conduct under Section 8 of the Air Act, 35 P.S. § 4008, and a statutory public nuisance under Section 13 of the Air Act, 35 P.S. § 4013.

189. Erie Coke's continued operation of the Facility will result in violations of 25 Pa. Code § 123.31.

190. Section 13.6 of the Air Act, 35 P.S. § 4013.6(a), provides that any activity or condition declared by the Act to be a nuisance of which is otherwise in violation of the Act shall be abatable in the manner provided by law or equity for the abatement of public nuisances.

191. The Department lacks an adequate remedy at law to restrain Erie Coke from continuing to operate the air contamination sources at the Facility in violation of the Air Act and the Regulations as referenced herein.

WHEREFORE, pursuant to Section 13.6 of the Air Act, 35 P.S. § 4013.6, the Department requests that this Honorable Court issue an injunction to restrain Erie Coke's maintenance and threat of public nuisance by ordering Erie Coke to cease the operation of all air contamination sources at the Facility, including, without limitation, the Battery, Underfiring System, Boiler No. 1, and Boiler No. 2 in accordance with the attached proposed Order.

Count IX
Injunctive Relief Restraining Continuing Violation of
Section 10.1 of the Air Act, 35 P.S. § 4010.1

192. Paragraphs 1 through 191, above, are incorporated herein by reference as if set forth in full.

193. Erie Coke's failure to comply with an order of the Department violates Section 10.1 of the Air Act, 35 P.S. § 4010.1.

194. The violation described in Paragraph 193, above, constitutes unlawful conduct under Section 8 of the Air Act, 35 P.S. § 4008, and a statutory public nuisance under Section 13 of the Air Act, 35 P.S. § 4013.

195. Section 13.6 of the Air Act, 35 P.S. § 4013.6(a), provides that any activity or condition declared by the Act to be a nuisance of which is otherwise in violation of the Act shall be abatable in the manner provided by law or equity for the abatement of public nuisances.

196. The Department lacks an adequate remedy at law to restrain Erie Coke from continuing to operate the air contamination sources at the Facility in violation of the Air Act and the Regulations as referenced herein.

WHEREFORE, pursuant to Section 13.6 of the Air Act, 35 P.S. § 4013.6, the Department requests that this Honorable Court issue an injunction to restrain Erie Coke's maintenance and threat of public nuisance by ordering Erie Coke to cease the operation of all air contamination sources at the Facility, including, without limitation, the Battery, Underfiring System, Boiler No. 1, and Boiler No. 2 in accordance with the attached proposed Order.

Count X
Injunctive Relief Restraining Common Law Public Nuisance

197. Paragraphs 1 through 196, above, are incorporated herein by reference as if set forth in full.

198. Pursuant to Article I, Section 27 of the Constitution of the Commonwealth of Pennsylvania, "[t]he people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment." Pa. Const. art. I, § 27.

199. Erie Coke's historic and continuing operation of the Facility are proscribed by and repeatedly violate the Air Act and the Regulations.

200. Erie Coke's historic and continuing operations at the Facility unreasonably interfere with the public's right to clean air established by Article 1, Section 27 of the Pennsylvania Constitution.

201. Erie Coke's historic and continuing operations at the Facility unreasonably interfere with the public's right to the natural, scenic, and esthetic value of the environment of Presque Isle Bay and Presque Isle State Park.

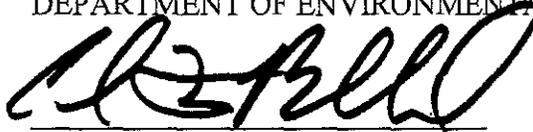
202. Erie Coke's historic and continuing operations at the Facility unreasonably interfere with the public's right to the use and enjoyment of Presque Isle Bay and Presque Isle State Park.

203. The Department lacks an adequate remedy at law to restrain Erie Coke from continuing to operate the air contamination sources at the Facility in a way that causes a public nuisance.

WHEREFORE, pursuant to Section 13.6 of the Air Act, 35 P.S. § 4013.6, the Department requests that this Honorable Court issue an injunction to restrain Erie Coke's maintenance and threat of public nuisance by ordering Erie Coke to cease the operation of all air contamination sources at the Facility, including, without limitation, the Battery, Underfiring System, Boiler No. 1, and Boiler No. 2 in accordance with the attached proposed Order.

Respectfully submitted,

COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF ENVIRONMENTAL PROTECTION



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purging of combustible gases from all processes and systems, final cleaning of all process piping and systems, and shut down of the coke oven battery, boilers and support system.

b. The Closure Plan shall be designed to prevent the emission of coke oven gas and other pollutants to the maximum extent practical.

c. The Closure Plan shall provide for the proper and lawful disposal of all solid waste generated during the shutdown; and

d. The Closure Plan shall be signed and stamped by a Pennsylvania-licensed professional engineer.

3. **Approval of Closure Plan.** On or before _____, the Department and Erie Coke Corporation shall file a joint motion requesting the Court enter an Order adopting the Closure Plan, as may be amended by the parties, or requesting a hearing before the Court on any issues with the Closure Plan that cannot be resolved by the parties. Upon the joint motion or after hearing, the Closure Plan shall be approved and incorporated as an Order of the Court.

4. **Implementation.** Erie Coke Corporation shall implement the Closure Plan approved by the Court in accordance with the schedule contained therein.

5. **Compliance with the Air Pollution Control Act.** During the shutdown of the air contamination sources at the Facility, Erie Coke's operation shall, unless approved otherwise in the Closure Plan, comply with the terms and conditions of the expired Title V Permits 25-00029, the Pennsylvania Air Pollution Control Act, and the regulations adopted under the Air Pollution Control Act.

6. **Compliance with the Law.** In complying with their obligations under this Order, Erie Coke shall also comply in full with its obligations under all applicable Pennsylvania,

Federal, and local laws, regulations, permits, and/or approvals regarding the Facility and the operations therein, and nothing in this Order relieves Erie Coke of such obligations.

7. **Access.** On and after the date of this Order, Erie Coke Corporation shall provide the Department and its representatives access to the Facility for the purposes of determining compliance with this Order and applicable environmental laws.

8. This Court shall retain jurisdiction over this matter.

SO ORDERED,

J.