

**FILED**

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

NOV 15 2022

UNITED STATES OF AMERICA )  
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ERIE COKE CORPORATION )  
ANTHONY NEARHOOF )

Clerk U.S. District Court  
West. Dist. of Pennsylvania  
Criminal No. 1:22-CV-23  
(18 U.S.C. §§ 371, 2,  
42 U.S.C. §§ 7413(c)(1), 7413(c)(2)(C))

**INDICTMENT**

The grand jury charges:

The Defendants and the Coke Production Process

At all times material to this Indictment:

1. Defendant ERIE COKE CORPORATION (ECC) was a privately held corporation organized under the laws of the Commonwealth of Pennsylvania. Defendant ECC owned a coke manufacturing plant in Erie, Pennsylvania, which was operational from in and around April 1987 until its closure on or about December 19, 2019. The facility was located along Lake Erie, adjacent to the inlet to Presque Isle Bay. Numerous private residences and public facilities were located within close proximity to ECC, including the Pennsylvania Soldiers' and Sailors' Home (a residence for veterans), the Erie Main Campus of the Barber National Institute for adults and children with disabilities, an elementary and a middle school, and a marina.

2. Industrial operations at the ECC site began in and around 1833, and coke operations began there in 1925. ECC was situated on a 183-acre site, 68 acres of which was devoted to the manufacture of coke.

3. From in and around 2001 until in and around December 2019, ECC employed defendant ANTHONY NEARHOOF. He began at ECC as an hourly worker in and around August 2001, became a foreman in and around 2003, and moved his way up until he served

as assistant plant superintendent from in and around 2010 until approximately in and around October 2015. ECC then promoted defendant ANTHONY NEARHOOF to plant superintendent in and around October 2015, and he served in that role until ECC closed the plant in and around December 2019. As plant superintendent, defendant ANTHONY NEARHOOF was the highest ranking ECC employee on site on a daily basis.

4. Co-Conspirator A was an employee of ECC from in and around 2004 until in and around September 2018. At all times relevant to this Indictment, Co-Conspirator A occupied a supervisory position at the facility and reported to defendant ANTHONY NEARHOOF.

5. As relevant to this Indictment, coke is a coal byproduct used in steel mills, foundries, and other industrial processes. Coke is produced through the prolonged heating of coal in sealed ovens at temperatures of up to 2,000 degrees. The heating of the coal takes place in groups of ovens called batteries. Defendant ECC operated two coke oven batteries: Battery A comprised 23 ovens and Battery B comprised 35 ovens. Defendant ECC operated its batteries 24 hours a day, 365 days a year.

6. Each coke oven was approximately 15 feet tall, 3 feet wide, and 42 feet long. The ovens were constructed adjacent to one another, sharing a common side wall made of brick. There were multiple vertical spaces, called flues, between the walls of each oven, in which natural gas or recycled coke oven gas (COG) was combusted to heat the ovens and “cook” the coal. The flues extended to the top of the ovens, and each flue was covered with a four-inch diameter cap. There were also five “charging” or loading ports on top of each oven. Each charging port had a 19-inch diameter lid through which defendant ECC added pulverized coal to the ovens via mechanized equipment in a process referred to as “charging” the oven to aid the coking process.

7. Leaks from coke ovens into flues through cracks and holes in the oven walls were a constant problem at ECC. After coke was removed following the coking process and in order to seal leaks, battery workers sometimes “dusted” ovens using a fine grit material that was put into an oven via a charging port at the top of the battery. Dusting could take up to three hours before an oven would be charged with a new load of coal.

8. Co-Conspirator A supervised workers, known as “heatermen,” who were responsible for removing flue caps to take temperature measurements and to perform maintenance on the heating system. Otherwise, the flue caps were required to remain in place to prevent the unmonitored and uncontrolled emission of pollutants into the air.

9. When defendant ECC cooked coal in the ovens, volatile matter in the coal was vaporized into gaseous form and driven off as COG. COG was emitted from the top of coke oven chambers through an offtake pipe. The raw COG was then cooled to produce a liquid condensate stream and a gas stream. ECC then further processed these materials to recover by-product coal chemicals for sale and to condition the remaining burned COG as fuel to heat the ovens. Reusing COG was a cost-saving measure for ECC, which reduced ECC’s natural gas bill and further combusted pollutants contained in the gas prior to final emission into the air.

10. Turning coal into coke generates a variety of pollutants, including volatile gases such as benzene, toluene, and xylene, and particulate matter that may affect human health and the environment. As a result, the ECC plant was regulated by federal and state statutes and regulations, including the Clean Air Act (CAA), administered in Pennsylvania by the United States Environmental Protection Agency (EPA) and the Pennsylvania Department of Environmental Protection (PADEP).

The Federal Clean Air Act and ECC's Title V Permit

11. The CAA, 42 U.S.C. 7401 et seq., was enacted by Congress to protect and enhance the quality of the Nation's air resources to promote the public health and welfare. The EPA is generally responsible for administering and enforcing the CAA.

12. 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. The Title V permit program regulated the emission of air pollution from sources such as coke plants. Title V also required such sources, known as "stationary sources," to meet certain emission limits, adhere to specific work standards, monitor air emissions, and report air emissions to federal and state regulators to determine whether such sources were operating in compliance with their permits.

13. Pursuant to 42 U.S.C. § 7661c and 40 C.F.R. § 70.6(a), each Title V permit was required to 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 required monitoring data.

14. Pursuant to 40 C.F.R. § 70, Appendix A, state operating permit programs under Title V were required to be approved by EPA. The Title V program administered by the Commonwealth of Pennsylvania was approved by EPA on August 29, 1996, 61 Fed. Reg. 39597, and the federal government retained jurisdiction to enforce Title V permits. 42 U.S.C. §§ 7412(l)(7), 7413(a)(3), 7661a(c).

15. Title V permits were issued by EPA or an approved state program for a period of five years with the opportunity for renewal. Defendant ECC was issued a Title V permit by PADEP, which was most recently renewed on March 27, 2013, with an expiration date of February 28, 2018.

16. Defendant ANTHONY NEARHOOF was a “responsible corporate officer” and an “operator” of defendant ECC and its coke facility, as those terms are defined by the CAA. 42 U.S.C. §§ 7413(c)(6), (h).

17. Defendant ANTHOY NEARHOOF was the highest-ranking employee on site at ECC each day, and in that role dealt regularly with employees, including Co-Conspirator A, about coke oven battery issues, including increases in opacity levels related to the coking process.

18. Under the CAA, particulate matter was a specified air pollutant or contaminant generated by, among other things, the combustion of fossil fuels such as coal, and was further regulated based on the size of such particulates. Particulate matter 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.

19. When it amended the CAA in 1990, Congress specifically designated 186 chemicals and compounds as “hazardous air pollutants.” Hazardous air pollutants, also known as toxic air pollutants or air toxics, are pollutants that are known or suspected to cause cancer or other serious health effects, such as reproductive effects or birth defects, or adverse environmental effects. Congress listed COG as a hazardous air pollutant. 40 C.F.R. § 61.01(a). COG also contains light oil vapors consisting mainly of benzene, toluene, and xylene (commonly referred to as “BTX”), which are also individually listed as hazardous air pollutants under the CAA. 42 U.S.C. § 7412(b)(1).

20. Defendant ECC's Title V permit prohibited the company from emitting byproduct COG into the outdoor air unless the gas was first burned. Title V Permit, Section D-002, Source ID 805.

21. As detailed below, defendant ECC's Title V permit set forth limits for "opacity" of emissions into the air, and ECC used a Continuous Opacity Monitor (COM) to measure its opacity levels. A COM is an instrument that continuously provides readings of opacity, which is a measure of the amount of visible light blocked by particulate matter in emissions. Transparent stack emissions that do not block any light will have an opacity of zero percent, while opaque stack emissions that block all visible light will have an opacity of 100 percent. In Pennsylvania, opacity is also used as an indicator of the level of emission of air contaminants, such as particulate matter, being emitted into the air (i.e., darker smoke indicates a higher level of hazardous air pollutants being emitted), and opacity limits are designed to limit such emissions.

22. Defendant ECC installed the COM as part of a July 2010 resolution of enforcement actions brought by PADEP for violations of defendant ECC's Title V permit and state air pollution laws, including violations for excessive opacity emissions from the coke oven battery stack. As part of the 2010 resolution, defendant ECC agreed to rebuild all 23 ovens in Battery A and four ovens in Battery B to reduce opacity emissions. In and around September of 2011, defendant ECC also agreed to implement additional remedial measures to reduce emissions as part of a resolution of a civil enforcement action brought separately by EPA under the CAA.

23. Defendant ECC's COM was located near the top of the plant's smokestack, also referred to as the battery stack. ECC's Title V permit identified the battery as air emissions source S-805A. The COM used a beam of light and other equipment to measure opacity every 10

seconds. The COM's software averaged the six readings taken over a minute to obtain an opacity reading for each minute.

24. The COM readings were sent electronically to a mechanical recording device located in a room in the battery complex known as the "heater" room. The device recorded the opacity level minute by minute for every 24 hours, starting at midnight each day. The opacity levels and time were recorded on a circular paper chart placed into the measuring device every 24 hours. The instantaneous COM readings were also displayed on a large "scoreboard"-like electronic screen visible from the top of the coke oven batteries. Defendant ECC also stored the minute-by-minute readings in electronic form.

25. The Title V permit required defendant ECC to maintain opacity at certain levels as measured by the COM. The Title V permit was violated when the opacity levels exceeded 20% for more than three minutes in any one hour, or more than 60% at any time (Title V Permit, Section C-004). Such violations exposed ECC to potential civil and/or criminal liability.

26. Defendant ECC's Title V permit required the entity to submit a "Quarterly Compliance Report" to PADEP each calendar quarter that stated, in part, that ECC was in compliance with federal regulations for COMs, including the requirement that the COM "be installed such that representative measures of emissions or process parameters from the affected source are obtained." 40 C.F.R. § 63.8(c)(2)(i); Title V Permit, Section E, Group 7, #026. Each report contained the following language: "I certify that the information provided in this Quarterly Compliance Report, is, to the best of my knowledge and belief, true and complete." Defendant ANTHONY NEARHOOF signed multiple quarterly compliance reports submitted by ECC to PADEP between in and around October 2015 and in and around January 2020.

27. Defendant ECC was also required to submit a “Semi-annual Compliance Certification” on which ECC reported the dates and number of minutes it was in violation of the 20% opacity limit and the 60% opacity limit. Title V Permit, Section E, Group 7, #026. Defendant ANTHONY NEARHOOF signed multiple semi-annual compliance certifications submitted by ECC to PADEP between in and around October 2015 and in and around January 2020.

28. The Title V permit prohibited any “technique” which concealed the “emission of air contaminants which would otherwise be in violation” of the permit. Title V Permit, Section B-021(b).

29. The COM could only measure emissions that were routed via piping from the batteries to the battery stack for emission into the air. Routing emissions directly into the air from uncapped coke oven flues caused the COM to be bypassed entirely. Bypassing the COM prevented it from fully measuring the opacity (and the particulates) of coke oven emissions and minimized the likelihood that defendant ECC would be detected violating its Title V permit limits. This “technique” to minimize opacity was prohibited by defendant ECC’s Title V permit.

30. Between in and around October 2015 and in and around December 2019, recorded opacity levels at ECC frequently spiked upward near or above the 20% limit on many days; spikes above 60% were not uncommon. As measured by the COM and recorded on the data recorder, spikes were often followed by sudden sharp decreases in opacity levels in just a few minutes time. These reductions often would take opacity levels down to 5 or 10% or near zero. Opacity levels often would then increase to near or above 20% and then fall again quickly in the span of a few minutes.



31. On or about July 1, 2019, PADEP denied defendant ECC's application for renewal of its Title V permit based upon ECC's history of noncompliance, among other factors, and defendant ECC subsequently closed the facility on its accord on or about December 19, 2019.

**COUNT ONE**

32. The allegations set forth in paragraphs 1-31 are incorporated by reference herein.

**The Conspiracy**

33. From no later than in and around October 2015, and continuing until in and around December 2019, in the Western District of Pennsylvania and elsewhere, defendants ECC and ANTHONY NEARHOOF, and others known and unknown to the grand jury, including Co-Conspirator A, did willfully, that is, with the intent to further the objects of the conspiracy, and knowingly combine, conspire, confederate, and agree to commit offenses against the United States, that is:

- a. to violate the Clean Air Act, 42 U.S.C. §7413(c)(2)(C), by knowingly falsifying, tampering with, and rendering inaccurate a monitoring device and method required to be maintained under the Clean Air Act; and
- b. to violate the Clean Air Act, 42 U.S.C. § 7413(c)(1), by knowingly violating the following requirements of defendant ECC's CAA Title V permit: Section B-021(b) (prohibiting any "technique" that concealed the "emission of air contaminants which would otherwise be in violation" of the permit); Section C-004 (prohibiting exceeding stated opacity levels); Section D-002, Source ID 805 (prohibiting emission of byproduct COG into the outdoor air unless the gas was first burned); and Section E, Group 7, #026 (requiring the submission of true and complete Quarterly Compliance Reports

and Semi-Annual Compliance Certifications).

Purpose of the Conspiracy

34. The purpose of the conspiracy was for the co-conspirators to improperly bypass defendant ECC's COM in order to minimize the detection of opacity limit violations; reduce the likelihood of enforcement actions by federal and state regulators; maximize defendant ECC's revenues and profits by running the plant as much as possible; avoid the costs of repairs, including repairs to the battery ovens; and avoid or reduce civil penalties.

Manner and Means of the Conspiracy

35. It was a manner and means of the conspiracy that defendant ECC, defendant ANTHONY NEARHOOF, and Co-Conspirator A, among others known and unknown to the grand jury, were aware of and closely tracked increases and drops in opacity levels measured by the COM. In particular, the co-conspirators tracked and were concerned by spikes in the minute-by-minute opacity readings, which often reflected recurring exceedances of defendant ECC's Title V permit.

36. It was a further manner and means of the conspiracy that defendant ANTHONY NEARHOOF directed, instructed, and pressured employees, including Co-Conspirator A, to open coke oven flues to vent emissions in a manner that bypassed the COM. Such directives occurred via personal directives, by radio to workers on the batteries, and sometimes in writing in a log book used by battery foremen to convey information from shift to shift. Defendant ANTHONY NEARHOOF and Co-Conspirator A personally removed flue caps, and directed others to do so, in order to vent COG directly into the atmosphere to reduce opacity levels being read by the COM through the smokestack.

37. It was a further manner and means of the conspiracy that, during defendant ANTHONY NEARHOOF's tenure as plant superintendent and at his direction, removing coke oven flue caps to reduce opacity measured by the COM at the battery smokestack (source S-805A) became a standard procedure when the COM began detecting opacity levels near or above the 20% limit.

38. It was a further manner and means of the conspiracy that the practice of removing flue caps to reduce COM readings resulted in fewer exceedances of the Title V permit limits and, in turn, fewer permit violations reported to PADEP.

39. It was a further manner and means of the conspiracy that defendants ECC and ANTHONY NEARHOOF, and Co-Conspirator A, caused PADEP to rely upon inaccurate COM measurements in its evaluation of defendant ECC's compliance with the opacity limits in its Title V permit.

40. It was a further manner and means of the conspiracy that the improper venting of COG to bypass the COM and minimize opacity readings resulted in the spread of air pollutants outside the facility's boundaries to adjoining residential and commercial areas, which presented potential dangers to the public health and safety.

Overt Acts

41. In furtherance of the conspiracy, and to accomplish its objects and purpose, at least one co-conspirator committed and caused to be committed, in the Western District of Pennsylvania, at least one of the following overt acts, among others:

42. On or about the dates listed, defendant ANTHONY NEARHOOF directed and otherwise caused ECC employees to remove flue caps to reduce the opacity levels measured by the COM:

- a. November 16-17, 2015;
- c. November 25-26, 2015; and
- d. July 25, 2018.

43. On or about November 22, 2015, defendant ANTHONY NEARHOOF wrote the following directive for battery foremen in the foremen logbook: "If stack acts up might have to open some up a little."

44. On or about May 6, 2016, defendant ANTHONY NEARHOOF directed other ECC supervisors and foremen to suspend their typical practice of opening coke oven flue caps to bypass the COM because he believed that the ECC operations were being observed by regulators.

45. On or after April 18, 2017, defendant ANTHONY NEARHOOF directed other ECC supervisors and foreman to once again suspend their typical practice of removing coke oven flue caps to reduce opacity level readings.

46. From on or about October 1, 2015, through in and around December 2019, defendants ECC and ANTHONY NEARHOOF submitted quarterly compliance reports to PADEP, including reports signed by defendant ANTHONY NEARHOOF, on which they verified compliance with federal regulations that the opacity levels measured by the COM reflected "representative measures of emissions" from the coke battery, even though they knew the COM was not capturing the particulates emitted when coke oven flues were opened. Title V Permit, Section E-013(j); 40 C.F.R. §§ 63.8(e), 63.7331(j), 63.7333(e).

47. From on or about October 1, 2015, through in and around December 2019, defendants ECC and ANTHONY NEARHOOF submitted semi-annual compliance certifications to PADEP, including reports signed by defendant ANTHONY NEARHOOF, on which they

verified the opacity emission exceedances reported by the COM were a “true, accurate and complete” accounting of the opacity emissions in violation of the Title V permit. Title V Permit, Section E-013(j); 40 C.F.R. § 63.8(e).

In violation of Title 18, United States Code, Section 371.

**COUNT TWO**

48. The allegations set forth in paragraphs 1-47 are incorporated by reference herein.

49. From on or about November 15, 2017, and continuing until on or about December 19, 2019, in the Western District of Pennsylvania, the defendants, ECC and ANTHONY NEARHOOF, did knowingly tamper with and render inaccurate a monitoring device, to wit, the COM, which was required to be maintained and operated by defendant ECC's Title V permit Section C-006, by venting air pollutants, including particulate matter and raw coke oven gas and other hazardous air pollutants, from open flues on the coke oven batteries in such a manner as to prevent the accurate reporting of actual opacity emissions to PADEP.

In violation of Title 42, United States Code, Section 7413(c)(2)(C), and Title 18, United States Code, Section 2.

**COUNT THREE**

50. The allegations set forth in paragraphs 1-47 are incorporated by reference herein.

51. From on or about November 15, 2017, and continuing until on or about December 19, 2019, in the Western District of Pennsylvania, the defendants, ECC and ANTHONY NEARHOOF, did knowingly operate and cause to be operated, a stationary source, to wit, the ECC coke facility, in violation of its Title V permit requirements by directing the removal of flue caps on the oven batteries thereby emitting COG into the outdoor atmosphere before the gas had been burned, a violation of permit Section D-002, Source ID 805.

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



**COUNTS FOUR - EIGHT**

52. The allegations set forth in paragraphs 1-47 are incorporated by reference herein.

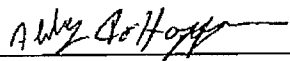
53. On or about the following dates, in the Western District of Pennsylvania, the defendants, ECC and ANTHONY NEARHOOF, did knowingly operate and cause to be operated, a stationary source, to wit, the ECC coke facility, in violation of its Title V permit, Section C-004, through exceeding of the applicable opacity limits:

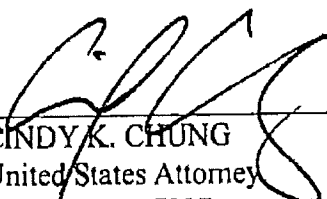
Count	Date	Minutes in violation of limits between 20% and 60%	Minutes in violation of 60% limit
Four	January 1, 2018	412	11
Five	January 7, 2018	584	5
Six	May 30, 2018	517	5
Seven	July 4, 2018	352	5
Eight	July 25, 2018	144	4

In violation of Title 42, United States Code, Section 7413(c)(1), and Title 18,

United States Code, Section 2.

A True Bill,

  
 FOREPERSON

  
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