

Judge allows Tonawanda Coke to stay open despite environmental violations

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Tonawanda Coke won the right to stay open Friday but with the understanding that its smokestack emissions will now be tested for pollutants.

The company will also have an independent, third-party monitor looking over its shoulder.

Despite calls for a shutdown, U.S. District Judge William M. Skretny stopped short of that Friday and instead ordered the company to expedite improvements at the River Road plant.

Skretny, expressing frustration at the lack of data on emissions, ordered new testing of the smokestack, the first new tests in eight years.

"I no longer want this community to wonder what is coming out of that stack," he said Friday.

Skretny, in making his ruling, criticized the government for not providing concrete proof that emissions from the plant pose a public health risk.

The judge noted the government's request for a shutdown of the plant, a request echoed by members of the community, but made it clear its evidence fell far short of what he felt was necessary to prove a risk to the community.

In short, he found the prosecution failed to make its case.

Despite his findings, Skretny called Tonawanda Coke President Michael Durkin to the front of the courtroom Friday and ordered him to comply with his new ruling.

"You cannot continue to shirk your environmental responsibilities," he told Durkin. "You cannot continue to fail."

And then Skretny warned him about the consequences of doing nothing, namely another court appearance before the judge.

"Believe me, this is the last place you'll want to be," he told Durkin.

Earlier in the day, during sentencing statements, prosecutors compared the company's compliance to an "environmental Ponzi scheme" targeting nearby residents.

"It's a fraud on the court and the community," said Assistant U.S. Attorney Aaron J. Mango.

Tonawanda Coke, in its statement, accused the government of exaggerating the health risks behind emissions at the River Road plant.

"They've speculated about harm and generated fear," said Jeffery Stravino, a lawyer for the company. "They just want to shut down Tonawanda Coke, pure and simple."

Jackie Creedon of Citizen Science, who had advocated for shutting down the company, expressed frustration after the judge issued his ruling.

"We live in fear every single day when we see that smoke," Creedon said outside the courtroom. "We want that smoke gone."

The judge's sentence followed a daylong hearing into emissions at the operation and a subsequent decision by Skretny that Tonawanda Coke was in violation of its probation.

Convicted by a jury of violating the Clean Air Act in 2013, the company was fined \$25 million, placed on probation and ordered not to violate any more local, state or federal laws.

A few weeks ago, federal probation officials sent Skretny notice of the smokestack emissions problem at Tonawanda Coke and said it was in violation of its probation.

That allegation is what led to Skretny's final ruling Friday.

Over the past week, lawyers on both sides made recommendations regarding the fate of Tonawanda Coke and, not surprisingly, they differed.

Prosecutors, in court papers, described Tonawanda Coke as a "rogue environmental actor" and suggested the judge shut it down until it complies with the federal Clean Air Act.

They also believe anything short of a shutdown will result in more benzene and other pollutants making their way into the community around the plant.

The government's case is based in large part on state Department of Environmental Conservation data on opacity rates at the company. During a four-day period last month, they climbed as high as 66 percent, more than three times the 20 percent threshold set by the federal Clean Air Act.

Opacity is defined as the percentage of background that can be obscured by a smokestack plume.

Tonawanda Coke's lawyers countered with allegations that prosecutors are purposely misleading the public about emissions at Tonawanda Coke in an effort to stir discontent.

In their recommendations, they urged Skretny to keep the plant open and said the prosecution failed to provide any evidence of a health risk.

Unlike the prosecution and some citizen activists who have called for a plant closing, Skretny indicated from the start that he wanted to hear alternatives to a shutdown.

While detailing his reasoning for finding the company in violation of its probation, Skretny at one point referred to a recommendation from a federal Environmental Protection Agency official.

He said the EPA official suggested a process that would allow the company to "hot idle" its coke ovens in order to make repairs. He said the process involved heating the ovens with natural gas, not coke oven gas, a process that would eliminate the risks of pollution.

In the past, company officials have argued that a shutdown, even a temporary one, would cause Tonawanda Coke to close for good. Shutting down the plant, they said, would cause coke oven walls to deteriorate rapidly and make repairs economically unrealistic.