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CUNNINGHAM** LLC  
ATTORNEYS

1600 Liberty Building, 424 Main Street, Buffalo, NY 14202  
716.854.3400 • ruppbaase.com

EC LEG OCT04'19 ANNE K. BOWLING  
bowling@ruppbaase.com

September 24, 2019

**VIA REGULAR AND ELECTRONIC MAIL**

Laurie Dubriel  
Trial Attorney  
United States Department of Justice  
Environmental and Natural Resources Division  
Law and Policy Section  
P.O. Box 7415  
Washington, DC 20044  
laurie.dubriel@usdoj.com

EC LEG OCT04'19 10:11

Dear Ms. Dubriel

Re: *United States v. Tonawanda Coke Corp.*, Case No: 10-CR-219S (W.D.N.Y.)  
Community Service Projects Funded by Tonawanda Coke Pursuant to  
Judgment Issued on March 24, 2014  
Our File No.: 0680.25479

My firm represents Citizen Science Community Resources (“CSCR”) in connection with CSCR’s efforts to guarantee that the local communities will benefit from the community service projects funded pursuant to the judgment in the above-referenced matter. The purpose of these projects was to educate the communities on the extent of the effects caused by Tonawanda Coke Corporation’s (“Tonawanda Coke”) flagrant violations of environmental laws and regulations. But to date, the only entity benefitting from these projects is the State University of New York at Buffalo (“UB”) and the UB Research Foundation. We, therefore, are writing to implore the Department of Justice to intervene and exercise its court-ordered oversight role to verify that UB’s research can be translated into a community benefit.

As you are aware, in sentencing Tonawanda Coke for violations of the Clean Air Act and the Resources Conservation and Recovery Act, the Honorable William M. Skretny of the United States District Court for the Western District of New York ordered Tonawanda Coke to pay \$12.2 million to fund two community service projects: the “Tonawanda Health Study: an Epidemiologic Study of Health Effects and Coke Oven Emissions from Tonawanda Coke” proposed by Drs. Bonner and Olson of the State of New York University at Buffalo (“UB”) (the “Health Study”) and “Determining the Environmental Impact of Coke Oven Emissions Origination from the Tonawanda Coke Corporation on the Surrounding Communities (Soil Sample)” proposed by

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Jackie James-Creedon of CSCR (the “Soil Study”). *See* ECF No. 281 (Case No. 10-cr-00219) (March 26, 2014).<sup>1</sup>

Judge Skretny chose these two specific projects after reviewing proposals submitted by UB, Ms. James-Creedon, and other community groups. Judge Skretny concluded that these two specific projects would benefit the health and well-being of Tonawanda and Grand Island, New York residents who were victimized by Tonawanda Coke’s flagrant violations of environmental laws. He explained:

[U]nderlying all of Defendants’ convictions is a breach of the public’s trust that Tonawanda Coke would be operated in compliance with the laws and regulations designed to protect the surrounding communities from contamination and actual harm, whether that harm stems directly from Tonawanda Coke’s action or from Tonawanda Coke’s contributions to the overall level of pollution in the area . . . the Court therefore finds that . . . a term of probation obligating Tonawanda Coke **to help community members understand the effects – or lack thereof – of the pollutants to which they have been exposed in also appropriate.**

Decision and Order, ECF No. 271 (March 14, 2014).

In order to “ensure that the funds are directed only toward the fulfillment of this defendant’s community service obligation,” Judge Skretny ordered the University at Buffalo “to submit progress reports every six months with a precise schedule to be determined by probation.” This is because “[a]ccountability of money and activity is of essence in the execution of this term of probation.” *Tr. of Sentencing Proceedings* at 55:5-9, 19-25 (March 19, 2014). To ensure proper oversight, Judge Skretny “specifically direct[ed] the government to assist in [these] matters.” *Id.* at 55:25-56:1.<sup>2</sup>

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<sup>1</sup> Judge Skretny further ordered that all funds be paid to a registered 501(c)(3) non-profit corporation. *Id.* Because Ms. James-Creedon had not yet established a non-profit entity, she agreed that the UB Research Foundation would receive and allocate all funding for both projects. On March 19, 2019, Judge Skretny issued an order regarding contractual dispute between CSCR and UB related to the Soil Study. *See* ECF No. 463 (March 19, 2019). That dispute is not yet resolved but is not directly relevant to CSCR’s intention in writing this letter. To be clear, CSCR is writing today regarding its concern is that UB is not performing the Health Study in line with UB’s proposal.

<sup>2</sup> At this juncture, Tonawanda Coke’s term of probation has ended, and the Probation Department no longer has jurisdiction over Tonawanda Coke. In turn, the government apparently has taken the position that it also no longer has a duty to oversee the ongoing community service projects. This position is unsupported. We contend that the government does, in fact, have an ongoing obligation to

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The government has failed to do so, and UB has been allowed to run roughshod over the community. UB has ignore the community outreach and education aspects of its proposal, failed to use the funds allocated for these aspects as promised, and re-victimized the Tonawanda and Grand Island communities suffering from the environmental harms created by Tonawanda Coke. In other words, the government's abdication of its oversight role has resulted in these community service obligations no longer complying with federal law and guidelines related to sentencing in criminal matters.

It has been settled that a court may impose a community service obligation as a condition to a defendant's probation. *See* 18 U.S.C. § 3563(b)(12). Such community service obligation must be "reasonably designed to repair the harm caused by the offense." *See id.* §§ 3553(a); 3563(b); *see also* U.S.S.G. §§ 8B1.3 (2013). Due to a concern that "[i]n the past, some forms of community service imposed on organizations have not been related to the purposes of sentencing," the commentary to the Guidelines underscores that the community service must be used for "preventive or corrective action directly related to the offense." *Id.* at cmt. (citing 18 U.S.C. § 3553(a)).

The Department of Justice's complete lack of oversight has allowed UB's implementation of the Health Study to lose its intended focus on addressing the harm Tonawanda Coke caused to the community. Instead, the Health Study is being used solely to further the personal research agenda of academics. For example, in its proposal, UB stated that it would establish and fund a Tonawanda Environmental Health Education Center, which would "assist the community to translate" the findings of the Health Study "into action to reduce the disease burden going forward." *See* the Health Study at 2, Sentencing Memorandum at Ex. 49, ECF No. 232 (Sept. 16, 2013). "A critical role for the team of Health Educators will be to help explain the findings of the Health Study, provide strategies for improving the health of the individual and the health of the community, and address the wide range of questions that are expected to be raised by individual community members." *Id.* at 12. UB proposed creating this center because, "[t]he sustained success of this project will be highly dependent upon the community's participation." *Id.* at 13. Approximately \$3 million was allocated to the cost of this center. *Id.* at 20.

It is now year four of UB's ten year Health Study. UB has yet to create such a health center, and, as far as we are aware, this \$3 million either remains unspent or spent elsewhere. The UB Research Foundation has failed to provide any financial data to the Probation Department or Department of Justice to date, so there is and has been no "[a]ccountability of money and activity" or

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ensure that the projects are undertaken in a manner to redress the wrong done to the local communities.

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any outside knowledge of how funds are being spent. Without a public accounting, no one can know for what purpose these funds—allocated for the sole purpose of benefitting the community victimized by Tonawanda Coke—are being used.

Further, it should be noted that UB could use the funds to benefit the community without needing to handle the logistics of creating and staffing a health center. CSCR proposed creating a similar health education center as part of the Soil Study, and, in line with that proposal, did, in fact, open an Environmental Health Community Center (“Center”) on Elmwood Avenue in Tonawanda, New York. The Center is currently operating on a shoestring budget funded by a \$5,000 grant from Erie County and staffed by community volunteers. All UB need do here is fund the existing Center, which CSCR could run. This would alleviate UB and its researchers of any administrative and community outreach burdens so they could focus on their research.<sup>3</sup>

Judge Skretny imposed the community service obligation on Tonawanda Coke specifically to rectify Tonawanda Coke’s breach of the public’s trust. The government, however, is standing idly by as that trust is once again breached, but this time by UB and its Research Foundation. UB has forced out community members who wished to participate in the studies, alienated the executives of the area municipalities,<sup>4</sup> and failed to fund the one community facility that promised to turn UB’s research into action. The Tonawanda and Grand Island communities suffered and will continue to suffer with significant health issues and degradation of their surrounding environment caused by Tonawanda Coke’s flagrant violations of federal and state law. The purpose of the Health and Soil Studies was not simply to fund researchers’ own academic pursuits. It was to collect and analyze data that would be synthesized and put into action vis a vis a health education center. By failing to create or fund such center, UB has stolen residents’ one last final hope to heal.

The Department of Justice must now intervene to salvage the projects it helped create and is supposed to oversee. As part of its court-ordered oversight role, the Department of Justice should require UB and the UB Research Foundation to submit progress reports, including financial information, signed under penalty of perjury, every six months during the life of the studies. These progress reports should include details of how the project goals detailed in the proposals are being met. The Department of Justice should further require a detailed accounting of how the funds the UB Research Foundation received from Tonawanda Coke are being spent. This accounting must include sufficient information so the Department of Justice can verify that the money allocated to community support (i.e., creation of the Tonawanda Environmental Health Education Center) is being

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<sup>3</sup> CSCR has proposed this approach to UB in the past. UB, and specifically Dr. Bonner, refused to respond to CSCR’s proposal.


<sup>4</sup> See attached Statement from Grand Island, Town and City of Tonawanda and Citizen Science Community Resource regarding the Tonawanda Coke Community Projects and Future Action (March 6, 2019).

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spent on the community. Simply because the Probation Department no longer has jurisdiction over Tonawanda Coke does not mean that the government as a whole can abdicate its responsibility to impose "[a]ccountability of money and activity" and verify that the \$12.2 million is used to benefit the community.

We appreciate your assistance and look forward to receiving your further support in this matter.

Very truly yours,



Anne K. Bowling

Enclosures

Cc (via electronic mail only):

Jackie James-Creedon, Founder and Board Member, CSCR  
Phillip Haberstro, Board President, CSCR  
Aaron Mango, Assistant United States Attorney, U.S. Attorney's Office for the Western District of New York  
Hon. Joseph H. Emminger, Town Supervisor, Town of Tonawanda  
Hon. Rick Davis, Mayor, City of Tonawanda  
Hon. Nathan McMurray, Supervisor, Town of Grand Island  
Hon. Charles Schumer, United States Senator  
Hon. Kirsten Gillibrand, United States Senator  
Hon. Brian Higgins, United States Representative  
Hon. Christopher Jacobs, New York State Senator  
Hon. Robin Schimminger, New York State Assembly  
Hon. Lisa Chimera, Erie County Legislator District 3  
Hon. Kevin Hardwick, Erie County Legislator District 4  
Basil Seggos, Commissioner, New York State Department of Environmental Conservation  
Lemuel Srolovic, Bureau Chief, Environmental Protection Bureau, Office of the Attorney General of the State of New York  
Tom Berkman, Deputy Commissioner and General Counsel, New York State Department of Environmental Conservation  
Terri Mucha, Region 9 Associate Attorney, New York State Department of Environmental Conservation



### **Statement from Grand Island, Town and City of Tonawanda and Citizen Science Community Resource regarding Tonawanda Coke Community Projects and Future Action**

March 6, 2019 - The Supervisor of the Town of Grand Island, Nathan McMurray, the Supervisor of the Town of Tonawanda, Joseph Emminger and the Mayor of the City of Tonawanda, Rick Davis along with Phil Haberstro and other members from Citizen Science Community Resources are raising public awareness regarding the management of the Tonawanda Coke community service projects and monies today.

Sixteen years ago, several citizens now calling themselves Citizen Science Community Resources with the support of a grass roots effort, started a movement that led to ground-breaking criminal actions and community service projects totaling \$12.2 million against Tonawanda Coke. Those projects (funds), however, have not gone back to Citizen Science Community Resources or directly to the community. To this point, nearly all of the funds have been used for University at Buffalo led studies, leaving out all other stakeholders.

Mayor Davis says, "For years, before sentencing, this was a community collaboration. Since the judge has ruled, we seem to have lost the community collaboration with this project. That needs to change ASAP."

Supervisor McMurray says, "We can't leave out the folks that started this. When no one else was paying attention, Citizens Science Community Resources was out there with buckets measuring air quality. They were first line of defense. We can't leave them out. This is important. Last year Erie County ranked near the bottom among all counties according to the Robert Wood Johnson study on health. We need more.

Phil Haberstro adds, "This is not a new news story, in fact it is about the oldest civic story in American history. **We the people are requesting Judge Skretny to return control of the community service projects and fine money to the communities that fought this fight for 16 years.**"

We are asking residents to write to Judge Skretny and make their voices heard regarding this injustice.

Hon. William M. Skretny  
United States District Judge for the Western District of New York  
c/o Andrew W. Moeller, Esq.  
2 Niagara Square  
Buffalo, New York 14202