



Phillips Lytle LLP

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2007 OCT 29 PM 3:40
REGIONAL HEARING
CLERK

October 26, 2007

Karen Maples
Regional Hearing Clerk.
U.S. Environmental Protection Agency,
Region 2
290 Broadway, 16th Floor
New York, New York 10007-1866

Re: In the Matter of Niagara Ceramics Corporation (Docket No. RCRA-02-2007-7114)
Answer to Administrative Complaint and Request for Hearing

Dear Ms. Maples:

Enclosed for service, please find one original and one copy of the written Answer to Administrative Complaint and Request for Hearing of respondent Niagara Ceramics Corporation. One copy of the Answer to Administrative Complaint and Request for Hearing is also being served upon the Complainant.

Niagara Ceramics Corporation also wishes to request an Informal Settlement Conference regarding this Administrative Complaint. This request for an Informal Settlement Conference does not in any way constitute an admission of any of the matters alleged in the Administrative Complaint.

Please feel free to contact me if you have any questions or concerns. Thank you.

Very truly yours,

Phillips Lytle LLP

By: Michael C. Murphy, Esq.

MCM2

Doc # 01-1698034.1

Enclosures

cc: Dore LaPosta

Lee A. Spielman (without enclosures)

Michael C. Murphy
Direct 716 504 5748 mmurphy@phillipslytle.com

ATTORNEYS AT LAW

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION II

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG.II
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In the Matter of:

Niagara Ceramics Corporation,

Respondent

Proceeding Under Section 3008
of the Solid Waste Disposal Act,
as amended.

**ANSWER TO ADMINISTRATIVE
COMPLAINT AND REQUEST
FOR HEARING**

Docket No. RCRA-02-2007-7114

**Answer to Administrative Complaint
and Request for Hearing**

Respondent Niagara Ceramics Corp. ("Niagara") by its attorneys, Phillips Lytle LLP, answering the Complaint, Compliance Order and Notice of Opportunity for Hearing ("Complaint") upon information and belief, states as follows:

1. Paragraphs 1 through 6, 39, 47, 49, 50 and 58 do not contain allegations, are statements of law, policy or legal conclusions, and thus require no response. To the extent a response is required, Niagara denies each and every allegation or statement set forth in these paragraphs.
2. Respondent admits the allegations in paragraphs 7, 12, 15, 16, 18, 19, 20, 23, and 36.
3. Respondent denies each and every allegation set forth in paragraphs 21, 24, 25, 26, 30, 35, 38, 40, 41, 42, 43, 46, 48, 51, 52, 53, 54, and 57.
4. Respondent lacks information sufficient to draw a conclusion as to the veracity of the allegations set forth in paragraphs 8, 9, 10, 11, 13, 14, 17, 22, 27, 28, 29, 31, 32, 33, 34, 37, 44, 45, 55, and 56, and thereby denies each and every allegation set forth therein.

FIRST AFFIRMATIVE DEFENSE

5. The Complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

6. The proposed penalty is unfair, confiscatory, and not in compliance with relevant and applicable statutes, agency regulations and guidances.

THIRD AFFIRMATIVE DEFENSE

7. Niagara, at all times, made a good faith effort to fully comply with all applicable requirements of the Solid Waste Disposal Act, including the Resource Conservation and Recovery Act and the Hazardous and Solid Waste Amendments of 1984, and did everything reasonably within its power to comply with all applicable requirements of the Solid Waste Disposal Act at its Hayes Place facility.

FOURTH AFFIRMATIVE DEFENSE

8. Petitioner's actions with respect to Respondent are and have been arbitrary and capricious.

FIFTH AFFIRMATIVE DEFENSE

9. Petitioner is guilty of laches.

SIXTH AFFIRMATIVE DEFENSE

10. Petitioner, as a consequence of its efforts to make findings of fact and liability without a hearing, has violated Respondent's due process rights.

x x x

Proposed Civil Penalty

Respondent objects to Petitioner's purported authority to issue a Final Order in these proceedings without a hearing or an opportunity for Respondent to address the factual and legal allegations or proposed penalty set forth in the Complaint.

Further, Respondent denies that Petitioner has properly considered (i) the applicable factors set forth at 42 U.S.C. §6928(a)(3) and relevant Agency regulations and guidances; and (ii) Respondent's particular facts and circumstances, in the context of determining its proposed penalty in this matter.

Lastly, Respondent denies any purported findings of fact or determination of liability set forth in the Complaint, including but not limited to those set forth in the Proposed Civil Penalty.

x x x

Pursuant to applicable statutory and regulatory authority, Respondent hereby requests a hearing in Buffalo, Erie County, New York to contest all matters set forth in the Complaint.

Dated: Buffalo, NY
October 26, 2007

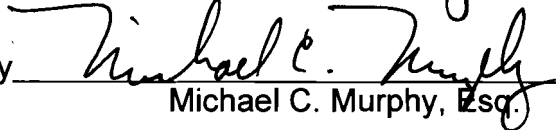
PHILLIPS LYTTLE LLP

By



David P. Flynn, Esq.

By



Michael C. Murphy, Esq.

Attorneys for Niagara Ceramics Corporation
3400 HSBC Center
Buffalo, New York 14203-2887
(716) 847-8400

CERTIFICATE OF SERVICE

Patti J. Schifferle, being duly sworn, deposes and says:

I am not a party to the action, am over 18 years of age, and reside in Tonawanda, New York.

That on the 26th day of October, 2007, I served a Answer to Administrative Complaint and Request for Hearing via Overnight Mail upon the following:

Original and copy to:


Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway - 16th Floor
New York, NY 10007-1866

Copy to:

Dore LaPosta, Director
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency, Region 2
290 Broadway - 16th Floor
New York, NY 10007-1866


Patti J. Schifferle

Sworn to before me this
26th day of October, 2007


Notary Public

DEBORAH A. WEISNER
No. 0105493000
Notary Public, State of New York
Qualified in Erie County
My Commission Expires Oct. 31, 2010

BFLO Doc # 01-1608056