UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 2

In the Matter of:	
Niagara Ceramics Corporation,	Docket No. **RCRA-02-2007-7114**
Respondent.	Honorable William B. Moran, Presiding Officer
Proceeding Under Section 3008 of the Solid Waste Disposal Act, as amended.	

COMPLAINANT'S INITIAL PREHEARING EXCHANGE

Complainant, the Director of the Division of Enforcement and Compliance Assistance ("DECA") of the United States Environmental Protection Agency ("EPA" or "Agency"), Region 2, herewith submits the following initial prehearing exchange pursuant to the "Prehearing Order," dated November 16, 2007, as amended pursuant to this Court's "Order Granting, *In Part*, Motion For Extension," dated January 7, 2008, and pursuant to 40 C.F.R. § 22.19(a).

I. Preliminary Statement

Complainant commenced this civil administrative action pursuant to Section 3008 of the Solid Waste Disposal Act, as amended by, *inter alia*, the Resource Conservation and Recovery Act and the Hazardous and Solid Waste Amendments of 1984 ("HSWA"), 42 U.S.C. §§ 6908 (referred to collectively as the "Act" or "RCRA"). The Complaint, Compliance Order and Notice of Opportunity for Hearing (the "complaint"), served on October 2, 2005, alleges two counts against Respondent Niagara Ceramics Corporation. Respondent operates a facility in Buffalo, New York, where it manufactures commercial grade ceramic dinnerware products and china. The complaint alleges Respondent unlawfully stored approximately 40,000 pounds of lead/cadmium cake waste and paint solvent waste, each such waste further alleged to constitute a hazardous waste. In two counts the complaint more specifically alleges:

a) Count 1, Respondent's unpermitted storage of hazardous waste in and at its Buffalo facility for greater than 90 days, without having obtained a RCRA permit or having qualified for interim status; and

b) Count 2 (alternative to count 1), Respondent's unpermitted storage of hazardous waste in and at its Buffalo facility for less than 90 days, without having obtained a RCRA permit or having qualified for interim status.

For counts 1 and 2, a total penalty of sought $131,350 is sought. Each count seeks this amount, with either count standing as an alternative to the other. The complaint includes as an attachment a detailed penalty calculation/explanation sheet for the penalty sought. The two-page compliance order is included with the complaint.

Respondent filed its answer on or about October 26, 2007. The answer admits some of the underlying predicate allegations and denies the allegations pertinent to liability (either outrightly or based upon lack of information). The answer asserts several affirmative defenses, raises objections to the proposed penalty and requests a hearing.

The parties held an informal settlement conference in early December 2007 and have been engaged in ongoing settlement negotiations since. To date, no settlement has been reached, but efforts to seek a settlement continue.

II. Complainant's Witnesses

EPA anticipates that it will call all (or some of) the following witnesses:

1. Ronald Voelkel, environmental scientist in the RCRA Compliance Branch of DECA, EPA, Region 2, on the 21st floor at 290 Broadway in New York City. The expected testimony of Mr. Voelkel should include the following matters, specifically embracing his personal involvement and participation in each of the following: the April 2007 inspection of Respondent's Buffalo facility (including efforts and events leading up to the inspection, what he observed during the inspection and what he was told during the inspection); the RCRA compliance evaluation inspection report Mr. Voelkel prepared for EPA detailing his inspection of the facility; the Notice of Violation ("NOV") and RCRA Section 3007 information request

letter EPA sent to Respondent; Mr. Voelkel's review and analysis of documents Respondent provided to EPA pursuant to the NOV/Section 3007 information request letter; his review of any other documents pertaining to Respondent, its operations, its predecessor (Buffalo China) and/or such predecessor's operations; his background knowledge of Respondent's manufacturing operations; the factual allegations of the complaint and its accompanying compliance order; his knowledge of the history and background behind Respondent's operations and its facility, the calculation of the penalty amounts set forth in the complaint (including the use of the 2003 RCRA civil penalty policy in developing the penalty amounts sought); and his overall role and responsibilities in EPA's investigation of Respondent's hazardous waste activities, the development of the case, the issuance of the complaint and the determination of the penalty set forth in it.

2. Leonard Voo, section chief within the RCRA Compliance Branch of DECA, EPA, Region 2, at 290 Broadway, 21st floor, New York City. Mr. Voo is expected to testify as to the 2003 RCRA penalty policy and its provisions, and how EPA utilizes those provisions as guidance in generally determining an appropriate penalty for violations of RCRA and the regulations implementing it. He is also expected to testify as to the appropriateness of the penalty EPA seeks in this proceeding, such appropriateness weighed and evaluated pursuant to the requirements of the RCRA statute and pursuant to the guidance provided by the 2003 RCRA penalty policy.

3. Leonard Grossman, environmental scientist, within the RCRA Compliance Branch of DECA, EPA, Region 2, at 290 Broadway, 21st floor, New York City. Mr. Grossman is expected to testify as to the 2003 RCRA penalty policy and its provisions, and how EPA utilizes those provisions as guidance in generally determining an appropriate penalty for violations of RCRA and the regulations implementing it. He is also expected to testify as to the appropriateness of

the penalty EPA seeks in this proceeding, such appropriateness weighed and evaluated pursuant to the requirements of the RCRA statute and pursuant to the guidance provided by the 2003 RCRA penalty policy.

EPA reserves the right to call or not to call any of the aforementioned potential witnesses The listing of the expected scope of the testimony of each witness is not intended to limit EPA's right to modify or otherwise expand upon the scope and extent of the testimony of each such witness, where appropriate. EPA might list additional witnesses in any rebuttal prehearing exchange(s) the Agency might file

III. Complainant's Exhibits

EPA incorporates by reference into this initial prehearing exchange both the complaint (together with its attachments) and the answer (copies of both documents having already been filed with the Court and which all parties presently possess). In addition to these items, EPA anticipates offering into evidence the following documents and records, copies of which are annexed hereto (unless otherwise specifically noted below) and will be identified as "Complainant's Exhibit," with each exhibit numbered with the following Arabic numerals:

1. "RCRA CIVIL PENALTY POLICY," dated June 2003 (42 pages, with an appendix of 58 pages, a cover sheet and three-page table of contents). This document is publicly available on the Internet at "www.epa.gov/compliance/resources/policies/civil/rcra/rcpp2003-fnl.pdf".[1]

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[1] In order to save required to make multiple copies of a document in excess of 100 pages, copies of the 2003 RCRA civil penalty policy will not be physically included as part of EPA's initial prehearing exchange. This document will be provided if so ordered by the Court or if Respondent requests a copy. At the time of hearing, Complainant will provide copies of this document (unless instructed [or requested by Respondent] to do so sooner). EPA wishes to note that this penalty policy is publicly available on the Internet and thus is readily accessible. Further, pursuant to 40 C.F.R. § 22.27(b), this Court is required to "consider any civil penalty guidelines issued under [RCRA]." The 2003 RCRA civil penalty policy constitutes a "civil penalty guideline[] issued under [RCRA]."

2. Memorandum, "Revised Penalty Matrices for the RCRA Civil Penalty Policy," dated January 11, 2005, from Rosemarie Kelley, Director of the RCRA Enforcement Division of the Office of Regulatory Enforcement, to "Addressees List" (five pages), which document references a memorandum, "Modifications to EPA Penalty Policies to Implement the Civil Monetary Penalty Inflation Adjustment Rule (Pursuant to the Debt Collection Improvement Act of 1996, Effective October 1, 2004)," dated September 21, 2004, from Thomas V. Skinner, Acting Assistant Administrator, to Regional Administrators (eight pages).

3. "RCRA Compliance Evaluation Inspection (CEI)" report, dated April 11, 2007 for the Buffalo, New York, facility of Niagara Ceramics Corporation (formerly Buffalo China), 11 pages.

4. Letter of April 25, 2007 from George C. Meyer, Chief of the RCRA Compliance Branch, Division of Enforcement and Compliance Assistance, United States Environmental Protection Agency, Region 2, to Karl H. Franz, Vice-President of Engineering, Niagara Ceramics Corp. (three pages), with Attachment I ("Notice of Violation: Niagara Ceramics Corp."; two pages); Attachment II ("RCRA § 3007 Information Request: Niagara Ceramics Corp.";two pages); Attachment III ("Instructions & Definitions"; two pages); and Attachment IV ("Certification of Answers to Responses to Requests for Information"; one page).

5. Letter of May 25, 2007, to Ronald Voelkel, Environmental Scientist, EPA, Region 2, entitled "Response to Notice of Violation/Niagara Ceramics Corporation, Buffalo, NY/USEPA ID #: NYD 980 653 109" (four pages), with the following attachments:

a. Attachment 1, "Hazardous Waste Generation Information and Waste Manifests (five pages);

b. Attachment 2, "Photographs" (13 pages);

c. Attachment 3, "Inspection Forms" (four pages);

d. Attachment 4, "Emergency Response Postings" (three pages);

e. Attachment 5, "Release Prevention, Control & Countermeasure Plan" (including 5 appendices; 44 pages);

f. Attachment 6, "Job Descriptions" (18 pages); and

g. Attachment 7, "Certification" (two pages).[2]

6. Letter of May 31, 2007, to Ronald Voelkel, Environmental Scientist, EPA, Region 2 (total three pages; first page on Niagara Ceramics stationery, second page noted as "Attachment 1" and third page "Certification of Answers to Responses to Request for Information, executed by Karl H. Franz).

7. Letter dated December 3, 1982, to EPA Region II from Harold Corser, Director of Engineering of Buffalo China, Inc., together with two-page completed attachment, "[EPA] Notification of Hazardous Waste Activity," dated December 2, 1982 and stamped "Environmental Protection Agency/New York, N.Y. 10007," such stamp bearing the date December 9, 1982 (three pages).

8. Letter dated March 3, 1983, to United States Environmental Protection Agency, Region II, from Harold Corser, Director of Engineering, Buffalo China, Inc. (one page).

9. Letter dated February 9, 1984, to Harold Corser, Director of Engineering, Buffalo China Company, from Ernest A. Regna, Chief, Solid Waste Branch [of the United States Environmental Protection Agency, Region II] (three pages).

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[2] The page numbers indicated included those pages identifying a specific attachment.

10. Letter dated March 28, 1984, to Ernest A. Regna, Chief, Solid Waste Branch, U.S. Environmental Protection Agency, Region II, from Harold Corser, Director of Engineering, Buffalo China, Inc. (one page).

11. One-page taken off the Internet, at the following World Wide Web address: "http://www.niagaraceramics.com/company/index.htm" and bearing date 8/23/07, title "Niagara China."

12. Dun & Bradstreet Business report for Niagara Ceramics Corporation, printed August 9, 2007 (10 pages).

13. Photocopies in black & white of photocopies of the Niagara Ceramics facility taken during the April 2007 EPA inspection (if a hearing were to be held, color photographs would be provided) (seven pages).

Complainant may request this Court to take judicial notice of appropriate matters in accordance with 40 C.F.R. § 22.22(f).

IV. Proposed Penalty Amount Determination

A copy of EPA's 2003 RCRA Civil Penalty Policy has been listed above as part of Complainant's exhibits; as noted above, it is readily available off the Internet and EPA will provide it to all parties once a hearing date has been established or if otherwise directed prior to any such date. Attachments I ("Narrative Explanation to Support Complaint Amount") and Attachment II ("Narrative Explanation to Support Complaint Amount") to the complaint detail how the proposed penalty for counts 1 and 2 (as previously noted, only one penalty is sought for the combined counts, count 2 set forth as an alternative to count 1) was calculated. For these two

combined (for penalty purposes) counts, the narrative and penalty computation worksheet explains how EPA developed the penalty, specifically the methodology of developing the penalty and how various adjustment factors and circumstances were evaluated in determining an appropriate amount consistent with the provisions of Section 3008 of RCRA, 42 U.S.C. § 6928. As previously noted, EPA incorporates by reference into this initial prehearing exchange the complaint, and thus incorporates by reference Attachments I and II thereto.

Section 3008(a) of RCRA, 42 U.S.C. § 6928(a)(3), provides that in assessing a penalty for any RCRA violation EPA must "take into account the seriousness of the violation and any good faith efforts to comply with the applicable requirements." That provision authorizes a penalty of up to $25,000 per day for each such violation (noted in paragraph 5 of the complaint). Congress has subsequently authorized EPA to increase the amount of any such penalty to $27,500, and subsequently to $32,500. EPA has promulgated regulations doing so (noted in paragraph 6 of the complaint).

In determining how much to assess for a RCRA violation, EPA relies upon the guidance set forth in the 2003 RCRA Civil Penalty Policy (the "RCPP"). The RCPP provides a method, consistent with the statute, for EPA to calculate penalties in a rational and equitable manner; the RCPP provides a consistent framework for calculating penalties in individual cases. The guidance set forth in the RCPP was relied upon in determining the penalty assessments sought for the combined two counts of this case.

The RCPP breaks down the seriousness of the violation into two factors: the potential for harm resulting from the violation and the violation's extent of deviation from the applicable requirements. "[T]he assessment of the potential for harm resulting from a violation should be based on two factors: the risk of human or environmental exposure to hazardous waste and/or hazardous waste constituents that may be posed by noncompliance, and the adverse effect noncompliance may have on statutory or regulatory purposes or procedures for implementing the RCRA program." Page 12. As for extent of deviation, this factor "relates to the degree to which

the violation renders inoperative the requirement violated." Page 16. For potential for harm, see pages 12 through 16; for extent of deviation, pages 16 through 18. The level of each of the potential for harm and extent of deviation can be classified as minor, moderate or major. These two factors are then used in a penalty matrix to derive a gravity-based penalty; another penalty matrix is used for multi-day violations. The applicable penalty matrices are included as attachments to the complaint. The penalty matrix is discussed at pages 18 through 19 of the RCPP; the multi-day matrix (and its use) on pages 25 through 27. Once an appropriate amount of penalty for a violation has been determined based upon its seriousness, that amount may (or may not) be adjusted depending upon the second statutory factor, the violator's good faith efforts to comply with the requirements. Consistent with this, the RCPP lists a number of potential adjustment factors, including the degree of willfulness and/or negligence of the violator, the history of noncompliance, the violator's ability to pay a penalty, any environmental projects undertaken by the violator and any other unique factors. The RCPP discusses these adjustment factors at pages 33 through 41. In addition, the RCPP discusses economic benefit (pages 28 through 33), noting that under Agency policy any significant economic benefit of noncompliance (EBN) that accrues to a violator from noncompliance with the law should be recaptured (page 28). The Court is respectfully directed to the RCPP.

The parameters for the matrices used to determine the penalty amounts in this complaint are as follows: Counts 1 and 2: MODERATE potential for harm, MAJOR extent of deviation. As for potential for harm, EPA based its decision to assign the MODERATE level on the following:

> Operation without a permit is a serious violation and has a substantial adverse effect on the RCRA program. Respondent stored hazardous waste for approximately 210 days, in unlabeled, undated, and open containers, did not provide for aisle space to inspect for possible releases of hazardous waste, and failed to conduct weekly inspections to look for leaks. In addition, Respondent did not make arrangements with emergency response teams and the local hospital to familiarize them with the facility and the properties of the hazardous waste managed by the facility, did not update its contingency plant [sic] to reflect current facility operations, and did not provide training to its personnel to ensure they are familiar with managing hazardous waste.

Because Respondent stored its most of its hazardous waste in boxes giving some warning of the presence of hazardous substances and because the waste had been stored in containers that would lessen the probability of non-containment of undetected leaks, and because Respondent had provided training in the dangers of lead, EPA assigned the MODERATE category to potential for harm.

As for EPA assigning the category MAJOR for extent of deviation, Respondent stored hazardous waste for over 90 days; to the extent it stored such waste under this level, Respondent nonetheless failed to comply with numerous conditions that must have been met for Respondent to have been exempted from permitting requirements for under 90-day storage. A multi-day penalty was deemed appropriate because Respondent's unpermitted storage of hazardous waste spanned a period of 210 days.

The Court is respectfully referred to Attachment I of the complaint.

V. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, as amended, 44 U.S.C. § 3501 *et seq.* (the "PRA"), does not bar EPA's prosecution of this action. Each of counts 1 and 2 allege storage of hazardous waste without having obtained a RCRA permit or without having qualified for interim status. The necessity of obtaining a RCRA permit is a mandate of the RCRA statute, Section 3005 of RCRA, 42 U.S.C. § 6925. Because this is so, the PRA is not a bar to EPA's seeking a penalty for these counts as the public protection provision of 44 U.S.C. § 3512 does not apply to a requirement Congress has directly imposed. 5 C.F.R. § 1320.6(e).

VI. Time and Place for Hearing

Complainant requests that the hearing be held in New York City (New York County), where EPA, Region 2, is located and where the EPA's witnesses are based. As to availability, Complainant believes it should be available sometime after mid-May (this is subject to change,

depending on when another Presiding Officer re-schedules a hearing originally set to begin March 4th). Complainant anticipates that EPA should be able to present its direct case in approximately two to three days.

Dated: February 14, 2008
New York, New York

Respectfully submitted,

Lee A. Spielmann
Assistant Regional Counsel
Waste and Toxic Substances Branch
Environmental Protection Agency
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New York, New York 10007-1866
212-637-3222
fax: 212-637-3199

TO:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2

Honorable William B. Moran
Presiding Officer

Michael C. Murphy, Esq.
Phillips Lytle LLP

In re Niagara Ceramics Corporation
Docket No. RCRA-02-2007-7114

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing Complainant's Initial Prehearing Exchange (including the attachments included therein), dated February 14, 2008, in the following manner to the respective addressees listed below:

Original and One Copy
By Inter-Office Mail:

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

Copy by Federal Express Overnight:

Honorable William B. Moran
Administrative Law Judge
U.S. Environmental Protection Agency
1099 14th Street, N.W.
Suite 350
Washington, DC 20460

Copy by Federal Express Overnight:

Michael C. Murphy, Esq.
Phillips Lytle LLP
3400 HSBC Center
Buffalo, New York 14203-2887

Dated: February 15, 2008
New York, New York

Lee A. Spielmann

Complainant's Exhibit 1

Complainant's Exhibit 1

"RCRA CIVIL PENALTY POLICY," dated June 2003, publicly available on the Internet at "www.epa.gov/compliance/resources/policies/civil/rcra/rcpp2003-fnl.pdf"

Complainant's Exhibit 2

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

JAN 11 2005

MEMORANDUM

SUBJECT: Revised Penalty Matrices for the RCRA Civil Penalty Policy

FROM: Rosemarie Kelley, Director
RCRA Enforcement Division
Office of Regulatory Enforcement

TO: Addressees List

This memorandum transmits updated penalty matrices for the 2003 RCRA Civil Penalty Policy ("RCRA Policy"). The matrices were updated to reflect the change to the RCRA Policy made by the Memorandum from Thomas Skinner, dated September 21, 2004, implementing the Civil Monetary Penalty Inflation Adjustment Rule which was effective on March 15, 2004.

The rule adjusted the maximum civil penalties that can be imposed by the Agency by 17.23%. The Skinner Memorandum adjusted all the Agency's penalty policies by that same amount, effective October 1, 2004. The attached matrices reflect that adjustment. It is important to remember that the attached matrices apply to penalties calculated for violations that occur after March 15, 2004. For violations that occurred before that date, the Regions should use the matrices that were provided in the RCRA Policy issued on June 23, 2003.

Any questions concerning this matter can be directed to Pete Raack of the RCRA Enforcement Division at (202) 564-4075 or by email at raack.pete@epa.gov.

Addressees List:

Region I:	Andrea Simpson
	Ken Rota
Region II:	George Meyer
	William Sawyer
	Joel Golumbek
Region III:	Carol Amend
	Mary Coe
	Wayne Naylor
	Diane Ajl
Region IV:	Jeff Pallas
	Narindar Kumar
	Anne Heard
	Frank Ney
	Doug McCurry
Region V:	Joe Boyle
	Leverett Nelson
	Lorna Jereza
	Paul Little
Region VI:	Carol Peters
	Mark Potts
	Terry Sykes
	Samuel Tates
Region VII:	Jody Hudson
	Leslie Humphrey
	Donald Toensing
Region VIII:	David Janik
	Marvin Frye
	Sharon Kercher
Region IX:	Loren Henning
	Michael Hingerty
	Rich Vaille
Region X:	Andrew Boyd
	Betty Wiese

CC:	Region I:	Ken Moraff
	Region II:	Barbara McGarry
	Region III:	Samantha Fairchild
	Region IV:	Becky Allenbach
		Larry Lamberth
	Region V:	Tinka Hyde
	Region VI:	Connie Overbay
	Region VII:	Mark Hague
	Region VIII:	Eddie Sierra

	Chuck Figur
Region IX:	Jim Grove
Region X:	Deborah Flood

Office of Compliance:	Emily Chow
	Walter Derieux
	Tom Ripp
	James Edward

Office of Site Remediation Enforcement: Peter Neves

Office of General Counsel: Mary Beth Gleaves

GRAVITY MATRIX

Extent of Deviation from Requirement

Potential for Harm	MAJOR	MODERATE	MINOR
MAJOR	$32,500 to 25,791	$25,790 to 19,343	$19,342 to 14,185
MODERATE	$14,184 to 10,316	$10,315 to 6,448	$6,447 to 3,869
MINOR	$3,868 to 1,934	$1,933 to 645	$644 to 129

Note: The total applicable gravity-based penalty should be rounded to the nearest unit of 100 as required by the Memorandum from Thomas Skinner, dated September 21, 2004, implementing the Civil Monetary Penalty Inflation Adjustment Rule.

MULTI-DAY MATRIX OF MINIMUM DAILY PENALTIES

Extent of Deviation from Requirement

Potential for Harm

	MAJOR	MODERATE	MINOR
MAJOR	$6,448 to 1,290	$5,158 to 967	$3,869 to 709
MODERATE	$2,837 to 516	$2,063 to 322	$1,290 to 193
MINOR	$774 to 129	$387 to 129	$129

Note: The total applicable gravity-based penalty should be rounded to the nearest unit of 100 as required by the Memorandum from Thomas Skinner, dated September 21, 2004, implementing the Civil Monetary Penalty Inflation Adjustment Rule.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SEP 21 2004

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Modifications to EPA Penalty Policies to Implement the Civil Monetary Penalty Inflation Adjustment Rule (Pursuant to the Debt Collection Improvement Act of 1996, Effective October 1, 2004)

FROM: Thomas V. Skinner TVS
Acting Assistant Administrator

TO: Regional Administrators

This memorandum modifies all existing civil penalty policies to conform to a final rule that increased statutory penalties. This amendment to our civil penalty policies will take effect on October 1, 2004. This memorandum also provides guidance on how to plead penalties and determine the new maximum penalty amounts that may be sought in administrative enforcement actions. On February 13, 2004, the United States Environmental Protection Agency (EPA) promulgated a final rule in the *Federal Register*, codified at 40 C.F.R. Part 19, Adjustment of Civil Penalties for Inflation and implementing the Debt Collection Improvement Act of 1996 (DCIA). At the same time, EPA also published minor conforming amendments to 40 C.F.R. Part 27, Program Fraud Civil Remedies. The rule took effect on March 15, 2004. Consequently, all violations occurring after March 15, 2004, are subject to statutory penalties that have been adjusted for inflation. We have attached a copy of the published rule for your convenience.

OVERVIEW

The primary purpose of the DCIA is to preserve the deterrent effect of civil statutory penalty provisions by adjusting them for inflation. In particular, the DCIA directed each federal agency to review its respective civil monetary penalty (CMP) provisions and to issue a regulation adjusting them for inflation. The DCIA also requires periodic review and adjustment of the CMPs at least once every four years.

The DCIA limited the first penalty inflation adjustment, effective on January 30, 1997, to 10% above the existing statutory provision's maximum amount. For EPA, this meant all the penalty provision maximums, with the exception of a few new penalty provisions added by the 1996 Safe Drinking Water Act (SDWA) amendments, which did not require any adjustment, were adjusted upward by 10%. By memorandum dated May 9, 1997 (1997 Memorandum), EPA modified all penalty policies to conform to the DCIA and the 1997 penalty inflation adjustment.

The second penalty inflation adjustment, pursuant to 40 C.F.R. Part 19, Adjustment of Civil Penalties for Inflation, became effective March 15, 2004. The statutory penalty provisions and the new maximum penalty amounts are found in the attached Table 1 of 40 C.F.R. 19.4. These increases in the penalty provisions apply only to violations that occur after the date the increases take effect; that is, violations after March 15, 2004. For example, Clean Water Act (CWA) Section 309 previously authorized judicial penalties of up to $27,500 per day per violation; since the new rule became effective, the new maximum penalty amount is $32,500. Therefore, if a violation subject to CWA section 309(d) started on March 1, 2004, and lasted through March 16, 2004, the maximum statutory penalty liability would consist of 15 days of violations at $27,500 per day, plus 1 day of violation at $32,500.

PENALTY POLICY CALCULATION CHANGES

By this memorandum, the Office of Enforcement and Compliance Assurance (OECA) modifies all existing penalty policies to increase the initial gravity component of the penalty calculation by 17.23 percent for those violations subject to the new rule. The inflation adjustment for the penalty provisions set forth in the rule was calculated by comparing the Consumer Price Index-Urban (CPI-U) for June 1996 with the CPI-U for June 2003. While not required by the DCIA, we believe this is consistent with the congressional intent in passing the DCIA and is necessary to effectively implement the mandated penalty increases set forth in 40 C.F.R. Part 19. Accordingly, each penalty policy is now modified to apply the appropriate guidelines set forth below. These new guidelines apply to all penalty policies, regardless of whether the policy is used for determining a specific amount to plead in a complaint or a bottom-line settlement amount. A complete list of all of our existing penalty policies is provided at the end of this memorandum.

A. If all of the violations in a particular case occurred on or before the effective date of the new rule, penalty policy calculations should be consistent with the 1997 Memorandum.

B. For those judicial and administrative cases in which some, but not all, of the violations occurred after the effective date of the new rule, the penalty policy calculations are modified by following these five steps:

1. Perform the economic benefit calculation for the entire period of the violation. Do not apply any mitigation or adjustment factors (such as good faith, ability to pay, or litigation considerations) at this point.

2. Apply the gravity component of the penalty policy in the standard way for all violations as follows. Do not apply any mitigation or adjustment factors at this point.

3. (a) <u>For those penalty policies that were issued prior to January 31, 1997</u>: Calculate the gravity component according to the penalty policy. For violations

that occurred on or after January 31, 1997, through March 15, 2004, multiply the gravity component by 1.1, reflecting the 10% increase. For violations that occurred after March 15, 2004, multiply the gravity component by 1.2895, reflecting both the 10% increase and the 17.23% increases [1.10 x 1.1723 = 1.2895]. For example, if 40% of the violations occurred on or after January 31, 1997, through March 15, 2004, the gravity adjustment factor for those violations would be calculated as follows: [1.1 x .40 = .44]. If 40% of the violations occurred after March 15, 2004, the gravity adjustment factor for those violations would be as follows: [1.2895 x .40 = .52].

(b) For those penalty policies that were issued or revised on or after January 31, 1997, through March 15, 2004: Calculate the gravity component according to the penalty policy. For violations that occurred on or after January 31, 1997, through March 15, 2004, use the gravity component set forth in the penalty policy, as the 10% increase is reflected in those policies. For violations that occurred after March 15, 2004, multiply the gravity component by 1.1723, reflecting the 17.23% increase. For example, if 40% of the violations occurred on or after January 31, 1997, through March 15, 2004, the gravity adjustment factor for those violations would be .40. If 40% of the violations occurred after March 15, 2004, the gravity adjustment factor for those violations would be as follows: [1.1723 x .40 = .47].

(c) Where all the violations in a particular case occurred after March 15, 2004: As discussed in subparagraphs (a) and (b) above, apply the penalty policy in the standard way to calculate the gravity component. Do not apply any mitigation or adjustment factors at this point. For those penalty policies that were issued to prior to January 31, 1997, multiply the gravity component by 1.2895, reflecting both the 10% increase and the 17.23% increase. For those penalty policies that were issued or revised after January 31, 1997, through March 15, 2004, multiply the gravity component by 1.1723, reflecting the 17.23% increase.

4. Add the economic benefit calculation and the total applicable gravity (the gravity-based penalty should be rounded to the nearest unit of 100) from above and adjust the total, as appropriate, pursuant to the mitigation factors in the applicable policy.

PENALTY PLEADING

If all of the violations in a particular case occurred on or before the effective date of the new rule, the pleading practices set forth in the 1997 Memorandum should be applied. If some of the violations in a particular case occurred after the effective date, then any penalty amount pled should use the newly adjusted maximum amounts. For example, in a civil judicial complaint alleging violations of Section 301 of the Clean Water Act, the prayer for relief would be written as follows:

Pursuant to Section 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d), and 40 C.F.R. Part 19, assess civil penalties against [name] not to exceed $27,500 per day for each violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a), that occurred on or after January 31, 1997 through March 15, 2004; and $32,500 per day for each violation of Section 301 of the Act, 33 U.S.C. § 1311, that occurred after March 15, 2004, up to the date of judgment herein.

If all of the violations in a particular case occurred after the effective date of the new rule, then any penalty amount pled should use the newly adjusted maximum amounts. For example, in a civil judicial complaint alleging violations of Section 301 of the Clean Water Act, the prayer for relief would be written as follows:

Pursuant to Section 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d), and 40 C.F.R. Part 19, assess civil penalties against [name] not to exceed $32,500 per day for each violation of Section 301 of the Act, 33 U.S.C. § 1311, up to the date of judgment herein.

ADMINISTRATIVE PENALTY CAPS FOR CWA, SDWA, AND CAA

The Debt Collection Improvement Act and 40 C.F.R. Part 19 raised the maximum penalty amounts that may be sought for individual violations in administrative enforcement actions, as well as the total amounts that may be sought in one administrative enforcement action. This increase is particularly relevant for administrative enforcement actions under the CWA, SDWA, and CAA, which are limited by penalty maximums that may be sought in a single action (commonly called "caps")[1]. For example, prior to the DCIA and 40 C.F.R. Part 19, CWA Class II administrative penalties were authorized up to $11,000 per violation and not to exceed $137,500 in one administrative action; since the effective date of the new rule, the new penalty maximums are now $11,000 and $157,500, respectively. Similarly, Part 19 also raised the total penalty amounts that may be sought in a single administrative enforcement action under the CAA from $220,000 to $270,000 (although higher amounts may still be pursued with the joint approval of the Administrator and Attorney General). Note that the adjusted penalty caps apply if an action is filed or a complaint is amended after March 15, 2004, even if some or all of the violations occurred on or before March 15, 2004.

CHALLENGES IN THE COURSE OF ENFORCEMENT PROCEEDINGS

If a defendant challenges the validity of applying the adjusted penalty provisions on the grounds that EPA did not have the authority to promulgate the rule that adjusted the penalty maximums, please notify the Special Litigation and Projects Division of the challenge, so that OECA and the Region can coordinate our response before a response is filed.

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[1] *See* CWA 33 U.S.C. § 309(g)(2)(A)-(B); CWA 33 U.S.C. § 311(b)(6)(B)(i)-(ii); SDWA 42 U.S.C. § 300g-3(g)(3)(B); SDWA 42 U.S.C. § 300h-2(c)(1)(B), (2)(B); CAA 42 U.S.C. § 113(d)(1); CAA 42 U.S.C. § 205(c).

FURTHER INFORMATION

Any questions concerning the new rule and implementation can be directed to David Abdalla of ORE's Special Litigation and Projects Division at (202) 564-2413 or by email at abdalla.david@epa.gov.

LIST OF EXISTING EPA CIVIL PENALTY POLICIES MODIFIED BY THIS MEMORANDUM

General

Policy on Civil Penalties (2/14/84)
A Framework for Statute-Specific Approaches to Penalty Assessments (2/14/84)
Guidance on Use of Penalty Policies in Administrative Litigation (12/15/95)

Clean Air Act - Stationary Sources

Clean Air Act Stationary Source Civil Penalty Policy (7/23/95) (This is a generic policy for stationary sources).
Clarifications to the October 25, 1991 Clean Air Act Stationary Source Civil Penalty Policy (1/17/92)
Combined Enforcement Policy for Section 112(r)Risk of the Clean Air Act [Risk Management Plan] (8/15/01)

There are a series of appendices that address certain specific subprograms within the stationary source program.

Appendix I - Permit Requirements for the Construction or Modification of Major Stationary Sources of Air Pollution (Not Dated)
Clarification of the Use of Appendix I of the Clean Air Act Stationary Source Civil Penalty Policy (7/13/95)
Appendix II - Vinyl Chloride Civil Penalty Policy (Not Dated)
Appendix III - Asbestos Demolition and Renovation Civil Penalty Policy (Revised 5/5/92)
Appendix IV - Volatile Organic Compounds Where Reformulation of Low Solvent Technology is the Applicable Method of Compliance (Not Dated)
Appendix V - Air Civil Penalty Worksheet
Appendix VI - Volatile Hazardous Air Pollutant Civil Penalty Policy (Revised 3/2/88)
Appendix VII - Residential Wood Heaters (Not Dated)
Appendix VIII - Manufacture or Import of Controlled Substances in Amounts Exceeding Allowances Properly Held Under Protection of Stratospheric Ozone (11/24/89)
Appendix IX - Clean Air Act Civil Penalty Policy Applicable to Persons Who Perform Service for Consideration on a Motor Vehicle Air Conditioner Involving the Refrigerant

or Who Sell Small Containers of Refrigerant in Violation of 40 C.F.R. Part 82, Protection of Stratospheric Ozone, Subpart B (Not Dated)
Appendix X - Clean Air Act Civil Penalty Policy for Violations of 40 C.F.R. Part 82, Subpart F: Maintenance, Service, Repair, and Disposal of Appliances Containing Refrigerant (6/1/94)
Appendix XI - Clean Air Act Civil Penalty Policy for Violations of 40 C.F.R. Part 82, Subpart C: Ban on Nonessential Products Containing Class I Substances and Ban on Nonessential Products Containing or Manufactured with Class II Substances (Not Dated)

Clean Air Act - Mobile Sources

Volatility Civil Penalty Policy (12/1/89)
Civil Penalty Policy for Administrative Hearings (1/14/93)
Manufacturers Programs Branch Interim Penalty Policy (3/31/93)
Interim Diesel Civil Penalty Policy (2/8/94)
Tampering and Defeat Device Civil Penalty Policy for Notices of Violation (2/28/94)
Draft Reformulated Gasoline and Anti-Dumping Settlement Policy (6/3/96)

TSCA

Guidelines for the Assessment of Civil Penalties Under Section 16 of TSCA (7/7/80) (Published in *Federal Register* on 9/10/80. Note that the first PCB penalty policy was published along with it, but the PCB policy is now obsolete). This is a generic policy for TSCA sources. There are a series of policies that address certain specific subprograms within TSCA. They are as follows:

Record keeping and Reporting Rules TSCA Sections 8, 12, and 13 (3/31/99)
PCB Penalty Policy (4/9/90)
TSCA Section 5 Enforcement Response Policy (6/8/89), amended (7/1/93)
TSCA Good Laboratory Practices Regulations Enforcement Policy (4/9/85)
TSCA Section 4 Test Rules (5/28/86)
TSCA Title II - Asbestos Hazard Emergency Response Act (AHERA)
Interim Final ERP for the Asbestos Hazard Emergency Response Act (1/31/89)
ERP for Asbestos Abatement Projects; Worker Protection Rule (11/14/89)
Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act - Disclosure Rule Enforcement Response Policy (2/2000)

Safe Drinking Water Act - UIC

Interim Final UIC Program Judicial and Administrative Order Settlement Penalty Policy -- Underground Injection Control Guidance No. 79 (9/27/93)

Safe Drinking Water Act - PWS

New Public Water System Supervision Program Settlement Penalty Policy (5/25/94)

EPCRA

Enforcement Response Policy for Sections 304, 311, and 312 of the Emergency Planning and Community Right to Know Act/Enforcement Response Policy for Section 103 of the Comprehensive Enforcement Response, Compensation, and Liability Act (9/30/99)

Enforcement Response Policy for Section 313 of the Emergency Planning and Community Right-to-Know Act (1986) and Section 6607 of the Pollution Prevention Act (1990) (Amended)(4/12/01)

Clean Water Act

Revised Interim Clean Water Act Settlement Penalty Policy (3/1/95) (3/3/98)
Clean Water Act Section 404 Civil Administrative Penalty Actions Guidance on Calculating Settlement Amounts (12/21/01)
Civil Penalty Policy for Section 311(b)(3) and Section 311 (j) of the Clean Water Act (8/98)
Pilot Enforcement Approach for MOM [Management, Operation and Maintenance] Cases in Region IV (1/23/03)

RCRA

RCRA Civil Penalty Policy (6/23/03)
Guidance on the Use of Section 7003 of RCRA (10/97)

UST

U.S. EPA Penalty Guidance for Violations of UST Regulations (November 1990)
Guidance for Federal Field Citation Enforcement (OSWER Directive- No. 9610-16) (October 1993)

CERCLA

Interim Policy on Settlement of CERCLA Section 106 (b)(1) and Section 107 (c)(3) Punitive Damage Claims for Noncompliance with Administrative Orders (9/30/97)

FIFRA

General FIFRA Enforcement Response Policy (7/2/90)
FIFRA Section 7(c) ERP (2/10/86)
Enforcement Response Policy for the Federal Insecticide, Fungicide and Rodenticide Act:
Good Laboratory Practice (GLP) Regulations (9/30/91)
FIFRA Worker Protection Standard Penalty Policy, Interim Final (9/97)

Attachment

cc: (w/attachment)
Regional Counsel, Regions I - X
Director, Office of Environmental Stewardship, Region I
Director, Division of Enforcement and Compliance Assurance, Region II
Director, Office of Enforcement, Compliance, and Environmental Justice, Region III
Director, Office of Enforcement and Compliance Assurance, Region V
Director, Compliance Assurance and Enforcement Division, Region VI
Director, Office of Enforcement, Compliance and Environmental Justice, Region VIII
Director, Office of Civil Rights, Enforcement and Environmental Justice, Region X
Regional Media Division Directors
Regional Enforcement Coordinators, Regions I - X
Dana Ott, OGC-CCID
OECA Office Directors
ORE Division Directors
OSRE Division Directors
Bruce Gelber, Chief, EES, DOJ
Deputy and Assistant Chiefs, EES, DOJ

Complainant's Exhibit 3

April 11, 2007

RCRA Compliance Evaluation Inspections (CEI)

Niagara Ceramics Corp. (formerly Buffalo China) - EPA ID Number NYD 980 653 109
75 Hayes Place
Buffalo, NY 14210

http://www.niagaraceramics.com/

Inspector: Ronald Voelkel (DECA-RCB), voelkel.ronald@epa.gov

A RCRA compliance evaluation inspection (CEI) was conducted on April 4, 2007 of Niagara Ceramics Corp. in Buffalo, NY. Representing the facility was Mr. Karl H. Franz, V.P. Engineering (716 821-5600 Ext. 205). The RCRA CEI consisted of an opening interview, a site tour, a review of facility documents, and a closing interview.

The CEI was conducted as part of the Priority Chemical pilot program.

A pre-inspection review of the RCRAInfo database indicated that the facility last underwent a RCRA CEI on August 14, 2003 by the NYSDEC; no violations were denoted as a result of that inspection. A review of the NYSDEC for the period March 2004 through March 2007 showed that the facility manifested about 45,000 lbs of "D006" (for the toxic characteristics of Cadmium) hazardous waste every two to four months; the facility also regularly manifested D001 (ignitable) hazardous waste. The database also indicated that the facility did not manifest any hazardous waste at least for the period August 2006 to March 2007. In addition, during the CEI, the facility representative stated that the D006 waste should have been manifested as D008 hazardous waste since the primary toxic component of this waste is lead.

FACILITY OPERATIONS

Niagara Ceramics manufactures commercial ceramic dinnerware products using various plastic forming, dry pressing, slip casting, glazing, and decorating operations. The facility was established at this site in 1902 as Buffalo China and was purchased as a management buyout from Oneida Ltd. in March 2004. The site encompasses one large building 360,000 square-foot in area (see attached facility schematic). The facility presently employs about 200 people and operates on two 12-hour shifts, seven days per week. According to facility representatives, there are no underground storage tanks on site; however, it was stated that there are various concrete "pits" which collect wastewater from floor trenches throughout the facility as part of their wastewater treatment system (see below). The facility also manages three "bisque" (mould) furnaces, two glazing kilns, and three decorating furnaces which are gas and electrically operated.

Niagara Ceramics' operations includes the following: (1) Plastic Forming, whereby clay is shaped by molding and are filter-pressed before being fired in a kiln or furnace; (2) Slip Casting which involves a slurry being poured into a porous mold made of Plaster of Paris; the liquid is filtered out through the mould leaving a solid porcelain body; the facility fabricates its own "moulds" for its forming, casting and pressing operations (3) Dry Pressing (dry forming) which is used to shape less plastic bodies; the body is forced through a steel die to produce a column of uniform girth which is either cut into the desired length or used as a blank for other forming operations..

These operations include the crushing, mixing, and physical and magnetic filtering and sieving (to remove impurities and for consistent particle sizing) of raw materials to generated slurries (clay liquid), filter-pressed clay slurries to produce clay "cakes", and "flash dried" slurries to produce raw material powders that have a low "angle of repose" that would allow this powder to flow through pipes. Raw materials used by Niagara Ceramics in the manufacturing of ceramic products includes: Kaolin (three dedicated silos), Ball Clay, Flint, Alumina, and Naphthalene Cyanide. These materials are received in bulk by tanker truck and, primarily, by rail car. Other raw materials, including powders containing hazardous constituents (e.g. lead) used in glazing operations, are received in 25 kg bags. Glazing, decorating, and firing operations vary according the type of body forming method used and the type of ware being produced.

Niagara Ceramics also conducts printing operations to imprint and decorate dinnerware. This operation includes silk screening and decal printing; these operations generate spent solvent wastes.

In addition, the facility manages a wastewater collection system which processes wastewater originating from multiple sources throughout the facility, including from floor drains. Some wastewater is deposited directly into the Buffalo Sewer Authority municipal sewer system; other wastewater is directed to a "clarifier" wastewater treatment system whereby water undergoes flocculation (clumping) and settling in a settling tank; water which does not settle is either re-used or is directed to the municipal sewer system; the settled (bottom) solid waste is directed to a filter press. According to facility representatives, the facility samples wastewater destined for the municipal sewer system twice per year; the Buffalo Sewer Authority conducts sampling once per year. Copies of documents from the Buffalo Sewer Authority were reviewed during the inspection (see Record Keeping section).

HAZARDOUS AND SOLID WASTE GENERATION

The primary hazardous waste generated by Niagara Ceramics is filtercakes which have the toxic characteristic for lead (**D008**); this waste is generated by a filter press which processes "clay water" wastewater from glazing operations. Wastewater from the filterpress is directed to a "clarifier" waste water treatment system; water from this system is deposited in the municipal waste water treatment system under a permit from the Buffalo Sewer Authority. Cadmium is also a constituent of some glaze powders, and all manifest reviewed denoted the manifested hazardous waste as **D006**. During calendar year 2005, the facility manifested an monthly average of 24,525 lbs of this hazardous waste on a regular basis. However, during 2006, only two shipments, totaling 88,700 lbs of this waste, were manifested on April 12, 2006 and August 18, 2006 (an average of 5,530 lbs per month); it was determined during the inspection that no shipments were made subsequent to August 18, 2006.

In addition to D008 hazardous waste, the facility generates waste solvents from ceramic decoration operations; these operations include offset printing, silk screening, and decalling. Spent solvent is primarily generated from the use of parts washers to clean mixing bowls and other decoration equipment. At the time of the inspection, several cans of solvent-soaked soiled

rags were observed; these were stated to be send to a service for cleaning. The solvent stated to be used is "Solvent 100"; the MSDS for this solvent indicates a flash point of 113° F (a copy of the MSDS is attached). However, one drum of spent solvent was labeled "Toluene, Xylene, D008", while Solvent 100 does not include lead or Toluene as a constituent. This waste is manifested as **D001** hazardous waste.

It was stated that waste paints and waste inks generated in the decoration area are deposited in the waste solvent container. No longer used silk screens are "scraped" and discarded as regular trash. No photo-chemical wastes were observed to be generated as part of the ceramic decoration operations.

The following three waste materials were given a Beneficial Use Determinations (BUD) by the New York State Department of Conservation: (1) Bisque by -product (non-glazed clay ceramics); (2) Plaster of Paris by-product; (3) Bisque/Glost by-product; and (4) Refractory by-product. BUDs are determinations by the NYSDEC that waste material can serve a use, without modification, that serves a useful purpose; their determinations are based on data submitted by the facility.

Spent fluorescent tubes were stated to be shipped to a recycler; certificates of recycling and disposal were submitted subsequent to the CEI.

SITE TOUR

The following areas were observed during the site tour; the descriptions given below may facilitate an understanding of facility operations; however, given the large number of areas and operations, descriptions of processes may contain some errors:

1. Receiving Area: loading dock where bulk raw material is received by rail or by truck; raw material in the form of dry particles are conveyed from the loading area to seven (7) 130 to 300 ton tanks (each tank is about 100 feet in height) using dedicated pipes for Kaolin (three pipes), Ball Clay, Flint, Alumina, and Naphthalene Cyanide raw material. At the time of the CEI, a rail tanker was in the loading area; it was observed that the floor of this entire area was covered with about a one-inch deep layer of a yellow raw material which was identified by the facility

representative as Kaolin (see photograph).

2. Tank Room: location at the base of the seven large tanks where some raw materials are placed in load cells, moistened with water, and transferred to blenders which uses a "blunger" (paddle) to create clay slurries;

3. Spray Dry Area: location where some liquid clay slurries are "flash dried" for use in dry forming; this process gives the clay powders a low "angle of repose" and allows it to flow through pipes as a dry raw material media;.

4. Screening Processing Area: location where clay slurries are filtered to remove impurities; the process includes electromagnetic filtering;

5. Holding Area: location of three flocculation/settling tanks for wastewater originating from non-glaze operations; effluent is deposited into the municipal sewer system; settling bottoms (solids) are directed to a filter press.

6. Filter Press Area: location where claywater (slurry) is squeezed to reduce its water content (from about 30 percent to about 20 percent) to create a clay "cake" used in making some ceramic products; it was stated that about 13 tons of claywater is processed every two days..

7. Forming Process Area; location of cup forming machines whereby moulds of handle-less cups are filled and placed in ovens; manual finishing (using a buffer) and the attachment of handles is followed by placing the cups into a kiln; "ram pressing" is also conducted by the facility and involves more intricate flatware shapes.

8. Dry Press Area: manufacturing area;

9. Kiln: formed/pressed bodies are placed in this kiln via rail; the kiln is heated to 2,300° F;

10. Polishing Area: location of a large vibrating finisher machine which polishes formed/pressed bodies using shale stones as the polishing media; this is also the area where defective bodies are removed for disposal; waste discarded bodies was given a Beneficial Use designation by the NYSDEC; broken ceramics are shipped off-site for use as aggregate for road bed and other types of construction sites.

11. Stamping Area: manual hand-stamping of Niagara Ceramic trademark of bottom of bodies is conducted here..

12. "Old Slip House"; location where plates are manufactured using the Slip Forming process; the clay slurry used is mixed at the other end of the facility (near the Tank Room); wastewater generated here is pumped back to two holding tank (Holding Area) where the effluent is either reused as virgin water or is directed to the clarifier wastewater treatment system.

13. Receiving Area: for Plaster of Paris

14. Round Plate Making Area: location of five round plate "jiggering" machines; each machine is dedicated to a different size plate; from here, plate bodies go through drying and finishing processes prior to being fired in a kiln.

15. Mould Making Area: location where Plaster of Paris "moulds" are manufactured using metal molds ("working case"); includes a small mixer; moulds require two to three weeks to cure; each mould can be used for about 100 impressions.

16. Mould Storage Area:

17. Hazardous Waste Storage Area: one of the hazardous waste storage areas for the facility; at the time of the inspection, nine (9) drums of "oil rags" and "non-hazardous" waste oil, and one (1) drum of D001 hazardous waste, were being stored; the hazardous waste drum was dated July 25, 2006.

18. Outdoors: location of separate, dedicated bins for the storage of various BUD waste materials, including "Glostware" and "Cordenite", "Moulds", and "Silicon Carbide" (see photographs).

19. Decoration Department: these include (a) location where color polymers are manually applied to pieces for "underglaze" decoration prior to undergoing glazing operations; a machine to apply decorations was located here but was not in use at the time of the inspection; (b) decalling area; (c) off-set printing decoration area; involves use of an off-set silk screening machine; (d) parts washer; this is the primary source of the spent solvent hazardous waste generated by the facility; adjacent to this was a cabinet containing a 55-gallon drum of spent

solvent wastes and a container of fresh solvent ("Solvent 100"); the hazardous waste container in this satellite accumulation area was open and not labeled as hazardous waste.

20. Color Lab: location where colors are mixed; one drum of spent solvent hazardous waste was located in a cabinet next to a parts washer (used to clean paint mixing bowls); the drum was marked with an accumulation start date of July 20, 2006, and was labeled as hazardous waste (a label indicated the contents as "Toluene, Xylene, D008"); the drum had a funnel and was open; also located in this area was a red container for rags soiled with waste paint and spent solvent; the container was not labeled or marked; when asked how these rags are disposed of, the facility representative stated that they are sent to "a service" for cleaning.

21. Silk Screen Making Area: a photo-sensitive emulsion are coated onto blank silk screens; a stencil is placed over the emulsion and "flashed" with light to imprint the stencil image onto the silk screen; the silk screen is then pressure washer; the rinseate is placed into the sewer;

22. Decal Printing Area ("Press Room"): climate-controlled room; the location of a printing press to produce decals; two soiled rag containers were located here; neither was labeled as hazardous waste; the solvent used is "Solvent 100" (flashpoint of 113° F); waste paint was stated to be placed into it's original container; this is also the location for decal storage;

23. Glazing Area: two machines used to heat (a third machine is located in another area of the facility) and spray glaze ceramic bodies; wastewater undergoes scrubbing and is deposited into the wastewater treatment system directed at the filterpress that generates hazardous waste filter cakes; as noted above, the facility operates two "well" systems to direct waste water; one system originates from forming areas; the other directs wastewater generated from glazing areas; glaze is composed of ground-up glaze powder (containing lead), water, and clay.

24. Glaze Storage Area: located of large bags of glaze powder raw material; the label included the image of a skull and crossbones.

25. Glaze Room (clear glaze): location where glaze powder is mixed with ground minerals ("frit") in water, binder is added and placed into tanks; the mixture undergoes magnetic filtering, placed into another tank from where glaze material is pumped to the glazing machines in the Glazing Area.

26. Filterpress Area: location of two filter presses (one was not in operation at the time of the CEI) which filter-press clay/water waste from the glazing machines; water from this process is piped to the water clarifier; cake is deposited into a tan ???

27. Main Hazardous Waste Storage Area: location of the lead-contaminated filtercakes are stored in large boxes (see photographs); at the time of the inspection, about sixteen (16) closed boxes of filter cakes were being stored in this area; two additional boxes (one located next to the filterpress) were open and waste was not being added or removed; these boxes were preprinted as "HazPack"; however, none of the containers were labeled with the words "hazardous waste" or with accumulation start dates; in addition, the boxes were placed so that there was no isle space between rows of boxes and the boxes were located in a corner area which made the boxes inaccessible to personnel or emergency equipment from any side; it was stated that the last manifesting of this waste occurred in August 2006.

28. Tool Storage Area:

29. Corridor/Hallway: location used to store spent fluorescent lamps; at the time of the inspection 15 boxes (approximately 500 spent lamp tubes) were being stored in this area; five of these boxes were open; none were labeled as hazardous waste or as Universal Waste; the boxes used for storage were the original boxes new bulbs ("GE Lighting BG836DC3CSA") were shipped in and indicated that the "Lamps contain mercury". In addition to these 15 boxes, a trash can was used to hold approximately 60 waste fluorescent lamps (see photograph).

RCRA RECORDS REVIEW

The following records were requested:

1. *Manifests and LDR Notification Forms*: all manifests for the shipment of filtercake wastes, which are TC for lead (D008), were denoted on manifests as D006 (cadmium); the last off-site shipment of hazardous waste was for 44,411 lbs of "D006" (manifest no. NYD982792814 shipped to CWM Chemical Services, Inc) which occurred on August 16, 2006, i.e. about 240 days prior to the CEI; the last shipment of waste solvents occurred on December 12, 2005 (manifest no. NYG4437036) for 900 lbs (2 drums) of D001 hazardous waste.

2. *Beneficial Use Determinations* (BUD) from the NYSDEC: as noted above, four waste materials (Bisque by -product (non-glazed clay ceramics), Plaster of Paris by-product, Bisuq/Glost by-product, and Refractory by-product are shipped off site for beneficial use, primarily as road construction material; copies of BUD documents were reviewed.

3. *Contingency Plan*: was not available for review; the facility representative stated that he "may not be able to find it"; correspondence indicating that copies of the Contingency Plan were submitted to emergency responders were also not available for review.

4. *Personnel Training*: the facility conducted classroom Hazard Communication Training and Lead Awareness Training for its employees on March, 2006 (see attached memorandum dated April 21, 2006); no personnel or training records regarding hazardous waste management were available for review at the time of the inspection.

5. *Preparedness and Prevention*: copies of correspondence addressed to emergency response personnel were not available for review; there were no postings of emergency responders or equipment near the communications device (telephone) closest to the hazardous waste storage and generation areas.

6. *NYSDEC Annual Report*: dated February 22, 2006; indicates that the facility generates D001, D006, D007 (Chromium), and D008 hazardous wastes in LQG quantities;

7. *Sewer Permit* (Buffalo Sewer Authority): expires May 2007; monitoring reports: last report was dated December 27, 2006

8. *Weekly Inspections*: were stated not to be conducted; no logs are kept;

9. *Air Permits*: the facility has 15 emission points; the permits are dated September 13, 2005

CONCLUSIONS AND RECOMMENDATIONS

Niagara Ceramics manufactures commercial ceramic dinnerware products using various plastic forming, dry pressing, slip casting, glazing, and decorating operations, and generates Large

Quantity Generator quantities of primarily TC lead (D008) hazardous waste, waste solvents, and spent fluorescent tubes; four waste materials were given Beneficial Use Determinations.

At the time of the inspection, the following violations were observed:

1. Failure to ship hazardous waste off-site to an authorized treatment, storage or disposal facility in 90 days or less in violation of 6 NYCRR § 372(a)(8)(ii).

2. Failure to prepare hazardous waste manifests in accordance with instructions included in Appendix 30 of 6 NYCRR § 372.2(b)(1) by not listing the appropriate waste type.

These violations refer to the approximately 240 days prior to the inspection when hazardous waste was last shipped off-site, and to the mis-designation of the D008 hazardous waste as D006.

3. Failure to mark containers holding hazardous waste with the words "Hazardous Waste" and with other words identifying their contents, in violation of 6 NYCRR § 373-2.9(d)(3).

4. Failure to clearly mark on each container the date upon which each period of accumulation began, in violation of 6 NYCRR § 372.2(a)(8)(iii)(d), § 373-1.1(d)(1)(iii)(c)(2).

5. Failure to keep containers holding hazardous waste closed except when necessary to add or remove waste, in violation of 6 NYCRR §372.2 (a)(8)(iii) and 6 NYCRR §373-3.9 (d)(1).

6. Failure to maintain aisle space between rows of hazardous waste containers to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency, in violation of 6 NYCRR § 373-3.3(e).

7. Failure to inspect, at least weekly, areas where containers are stored, looking for leaking containers and for deterioration of containers and the containment system caused by corrosion and other factors, in violation of 6 NYCRR § 373-3.9(e).

8. Failure to post the names and telephone numbers of the emergency coordinators next to

the telephone in violation of 6 NYCRR § 372.2(a)(8)(iii)(e)(2)(I).

9. Failure to post the location of fire extinguishers and spill control material and, if present, fire alarm, next to the telephone in violation of 6 NYCRR § 372.2(a)(8)(iii)(e)(2)(ii).

These violations refer to the approximate 19 boxes (about 40,000 lbs) of D008 hazardous waste that were being stored; none of these containers were labeled as hazardous waste or with accumulation start dates; two were open; and no isle space was available to inspect these large containers. A 55-gallon drum of waste solvents was also not labeled as hazardous waste or with an accumulation start date; this container was also open.. These violations also apply to approximately 16 containers of spent fluorescent lamps (a total of about 900 spent lamps) which were being stored without being labeled as hazardous or universal waste; at least six of these containers were open.

In addition to these violations, the facility could not produce a copy of its Contingency Plan or copies of correspondence indicating that copies of the Contingency Plan were submitted to local police departments, fire department, hospitals, and State and local emergency response teams in violation of 6 NYCRR § 373-3.4(b)(1) and 6 NYCRR § 373-3.4(d)(2), respectively. The facility was also not able to produce documents that show that it maintains records denoting job titles and job descriptions for each position at the facility related to hazardous waste management, in violation of 6 NYCRR § 373-3.2(g).

It is recommended that Niagara Ceramics be issued a Notice of Violation and § 3007 Information Request Letter citing the manifest and storage violations, and to obtain information regarding their Contingency Plan and personnel training records. In addition, the letter should inquire on the significant decrease in the quantity of hazardous waste manifested during calendar year 2005 to the period subsequent to that time period, including the approximately 19 boxes (40,000 lbs) of TC lead filter cakes observed during the CEI and which represents about eight months of accumulated hazardous waste. Their response will indicate if any additional enforcement action should be taken.

Complainant's Exhibit 4

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

APR 25 2007

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
Article # 7003 2260 0000 3244 2335

Karl H. Franz
V.P. Engineering
Niagara Ceramics Corp.
75 Hayes Place
Buffalo, NY 14210

RCB I.D. # 07-3007-0000-47

Re: **NOTICE OF VIOLATION**
RCRA § 3007 Information Request
Niagara Ceramics Corp. - EPA ID Number NYD 980 653 109

Dear Mr. Franz:

The U.S. Environmental Protection Agency (EPA) is charged with the protection of human health and the environment under the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§ 6901 et seq.

Pursuant to RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), the EPA promulgated rules, regulations, and standards governing the handling and management of hazardous waste as set forth in 40 C.F.R. Parts 260-272. For the purposes of this Information Request and Notice of Violation, the hazardous waste regulations governing the generation of hazardous waste were promulgated in 1980 and amended by HSWA in 1984.

The State of New York is authorized by the EPA to conduct a hazardous waste program under Section 3006 of RCRA, 42 U.S.C. § 6926 and is authorized to enforce RCRA. The EPA has retained its authority to enforce the hazardous waste rules and regulations in the State of New York.

The Notice of Violation (NOV) portion of this letter (see Attachment I) is issued pursuant to Section 3008 of the Solid Waste Disposal Act, as amended by RCRA and HSWA, 42 U.S.C. §§ 6901, 6928. Issuance of this NOV and compliance with its terms does not preclude EPA from taking formal enforcement action against you and/or your company, including a monetary penalty, under § 3008 of RCRA, 42 U.S.C. § 6928, or any other applicable regulation or statute.

Pursuant to the provisions of Section 3007 of RCRA, 42 U.S.C. § 6927, EPA may require parties who handle or have handled hazardous waste to provide information relating to such wastes. Pursuant to the statutory provisions cited above, EPA hereby requires that you provide the information requested in Attachment II, using the instructions and definitions included in Attachment III. This information is necessary to determine the compliance status of the Niagara Ceramics Corp.

Please provide the information requested no later than thirty (30) calendar days from receipt of this letter. Requests for additional time must be justified. Requests for additional time must be made within ten (10) calendar days of receipt of this letter. The response must be signed by a responsible official or agent of your company, using the form in Attachment IV to this letter.

The response to the request in the attachment must be mailed to the following address:

Mr. Ronald Voelkel
Environmental Scientist
RCRA Compliance Branch
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency- Region 2
290 Broadway, 22nd Floor
New York, NY 10007-1866

You may, if you so desire, assert a business confidentiality claim covering all or part of the information herein requested. The claim may be asserted by placing on (or attaching to) the information at the time it is submitted, a cover sheet, stamped or typed with the legend, or other suitable form of notice, such as "trade secret," "proprietary," or "company confidential". The claim should set forth the information requested in 40 Code of Federal Regulations (40 C.F.R.) Section 2.204(e)(4). Information covered by such a claim will be disclosed by EPA only to the extent permitted by, and by means of procedures set forth in, 40 C.F.R. Part 2. EPA will review the information to determine the extent of confidentiality of the information, and may, at its discretion, challenge the confidentiality claim pursuant to the procedures set forth at 40 C.F.R. Part 2. If no such claim accompanies the information when it is received by EPA, it may be made available to the public by EPA without further notice to you.

This information request is not subject to the requirements of the Paperwork Reduction Act (PRA), as amended, 44 U.S.C. Part 3501 et seq.

Failure to respond in full to this requirement is a violation of RCRA and will result in federal enforcement action pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, including the assessment of a monetary penalty. Such penalties may be up to $ 32,500 per day per violation.

For consistency, please provide your answers in a format which is keyed to the sections as outlined in Attachment III to this letter.

If you have any questions regarding this matter, please contact Mr. Ronald Voelkel at (212) 637-3156 or *voelkel.ronald@epamail.epa.gov*.

Sincerely yours,

George C. Meyer, P.E.
Chief, RCRA Compliance Branch
Division of Enforcement and Compliance Assistance

Enclosures: Attachment I –Notice of Violation
Attachment II – Information Request
Attachment III – Instructions & Definitions
Attachment IV – Certification of Answers

cc: Thomas Killeen, Chief
Hazardous Waste Compliance Section
New York State Department of Environmental Conservation

bcc: Ronald Voelkel, DECA-RCB
Joel Golumbek, DECA-RCB
RCRA file

ATTACHMENT I

Notice of Violation
Niagara Ceramics Corp.
EPA ID Number NYD 980 653 109

On or about April 4, 2007, a duly authorized representative of EPA conducted a compliance evaluation inspection of Niagara Ceramics Corp. located at 75 Hayes Place, Buffalo, NY 14210, pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927. At the time of the inspection, the following specific violations applicable to Large Quantity Generators were recorded:

1. Operating an existing hazardous waste management facility without having obtained a permit, pursuant to 6 NYCRR § 373-1.2(a) by storing hazardous waste for more than 90 days, in violation of 6 NYCRR § 372.2(a)(8)(ii), and by not complying with other requirements, listed below, necessary for an exemption from permitting.

2. Failure to prepare hazardous waste manifests in accordance with instructions included in Appendix 30 of 6 NYCRR § 372.2(b)(1) by not listing the appropriate waste code.

At the time of the inspection, approximately 19 boxes of filter cakes which were stated to have the toxicity characteristic (TC) for lead (D008), and one 55-gallon container of spent solvents, were being stored for greater than 90 days; the last shipment of hazardous waste was on August 16, 2006 for 44,411 lbs of TC lead hazardous waste. In addition, manifest records indicate that this waste was given the waste code D006 (TC for Cadmium) rather than D008, although D006 and other toxic constituents can be denoted as additional materials on manifests.

3. 6 NYCRR § 373.9(d)(3) require the generator to clearly mark on each container in storage areas with the words "Hazardous Waste" and with other words that identify the contents of the containers.

4. 6 NYCRR § 372.2(a)(8)(iii)(d), § 373-1.1(d)(1)(iii)(c)(2) require the generator to clearly mark on each container the date upon which each period of accumulation began.

5. 6 NYCRR § 373-3.9(d)(1) requires containers holding hazardous waste to always be closed during storage, except when it is necessary to add or remove waste.

6. 6 NYCRR § 373-3.3(e) requires facilities to maintain aisle space between rows of hazardous waste containers to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency.

7. 6NYCRR 6 NYCRR § 373-3.9(e) requires a generator to inspect, at least weekly, areas where containers are stored, looking for leaking containers and for deterioration of containers and the containment system caused by corrosion and other factors.

At the time of the inspection, none of the containers of filter cake hazardous waste being stored at your facility were labeled with the words "hazardous waste" or were marked with accumulation start dates; two of these containers were open, and there was no aisle space between rows of these containers. In addition, one 55- gallon container of spent solvents, located in the decoration department, was not labeled as hazardous waste, was not marked with accumulation start date, and was open. Two red cans, containing solvent-soiled rags, and located in the decoration area, were not labeled as hazardous waste (Satellite accumulation). Also, approximately 15 boxes and one open drum containing spent fluorescent lamps were not labeled as either hazardous waste or as Universal Waste or were marked with accumulation start dates; the drum and at least five of these boxes were open. It was also stated by you that regular weekly inspections of the hazardous waste storage areas were not conducted.

8. 6 NYCRR § 372.2(a)(8)(iii)(e)(2)(i) requires the posting of the names and telephone numbers of the emergency coordinators next to the telephone.

9. 6 NYCRR § 372.2(a)(8)(iii)(e)(2)(ii) requires the posting of the location of fire extinguishers and spill control material and, if present, fire alarm, next to the telephone

At the time of the inspection, there were no posting of the names and telephone numbers of emergency responders or with the location of fire extinguishers and of other emergency response equipment.

If you have any questions regarding these or related matters, please contact Mr. Ronald Voelkel at (212) 637-4137 or at voelkel.ronald@epa.gov.

Issuance of this Notice of Violation and compliance or non-compliance with the terms of the attached Information Request does not preclude EPA from taking formal enforcement action against you, including the assessment of a monetary fine, under § 3008 of RCRA, 42 U.S.C. § 6928, and under any other applicable Federal statute.

ATTACHMENT II

RCRA § 3007 Information Request
Niagara Ceramics Corp.
EPA ID Number NYD 980 653 109

Question 1:

In regards to the violations cited in items 1 through 9 of the above Notice of Violation (Attachment I), please provide a description of the actions taken to correct these violations, and provide documentation verifying that each violation has been corrected, including the following:

a. copies of manifests showing that the19 boxes of lead filter cake hazardous waste, and all other hazardous wastes that are stored for greater than 90 days, have been manifested off-site;

b. copies of manifests which show that the lead filter cake waste is appropriated listed on hazardous waste manifests as D008 (TC for lead) hazardous waste, as well as any other applicable secondary waste codes;

c. photographs showing that all containers of hazardous wastes (including the red cans containing spent solvent-soiled wipes located in the decoration area) are being labeled as hazardous waste, are marked with accumulation start dates, as appropriate, and are closed;

d. photographs showing that containers of hazardous waste have isle space to allow access of these hazardous waste containers by facility personnel and equipment;

e. photographs showing that all spent fluorescent lamps have been placed in an enclosure and that these containers are labeled as either hazardous waste or as Universal waste;

f. copies of postings, near the telephone, denoting the telephone numbers of emergency responders and the location of fire extinguishers, and

g. a written account of changes in your facility's waste management practices sufficient to prevent a recurrence of these violations.

Question 2

Quantities of hazardous waste generated by your facility designates Niagara Ceramics as a large quantity generator (LQG) of hazardous waste. At the time of the April 4, 2007 inspection, the following documents pertaining to facilities that are defined as LQGs were not available for review: (1) Contingency Plan, designed to minimize hazards to human health or the environment

from fires, explosions or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water; and (2) files of job titles and description for each position at the Niagara Ceramics' facility related to hazardous waste management, including the name of employees filling each job, and the type and amount of training that were given to each person filling a position related to hazardous waste management.

a. Please submit a copy of Niagara Ceramics' Contingency Plan; if a Contingency Plan has not been written, indicate when it will be prepared.

b. Please submit copies of personnel training records indicating the name, job title and description, and the type and amount of training that has been given to each employee filling a position related to hazardous waste management at the Niagara Ceramics' facility. If training records were not developed as described above and/or if training has not been provided, indicate when the training records will be prepared and when training will be provided; if training has been provided, please describe what training was provided and indicate when these records will be submitted.

Question 3

A review of the NYSDEC manifest database indicated that, during calendar year 2005, Niagara Ceramics manifested a monthly average of about 24,525 lbs of "D006" hazardous waste. However, during calendar year 2006, only two shipments, totaling 88,700 lbs, of this waste were manifested, the first shipment on April 13, 2006 and the second shipment on August 16, 2006 (an average of 5,530 lbs per month); about 40,000 lbs of this waste were being stored at the time of the April 2007 inspection representing about eight months of accumulated waste (an average of about 5,000 lbs per month).

a. Please submit a detailed narrative which would account for the significant decrease in the quantities of "D006" hazardous waste manifested during calendar year 2005 and subsequent to 2005.

ATTACHMENT III
Instructions and Definitions

In responding to this Request for Information, apply the following instructions and definitions:

1. The signatory should be an officer or agent who is authorized to respond on behalf of the company or facility.

2. A complete response must be made to each individual question in this request for information. Identify each answer with the number of the question to which it is addressed.

3. In preparing your response to each question, consult with all present and former employees and agents of the company or facility who you have reason to believe may be familiar with the matter to which the question pertains.

4. In answering each question, identify all contributing sources of information.

5. If you are unable to answer a question in a detailed and complete manner or if you are unable to provide any of the information or documents requested, indicate the reason for your inability to do so. If you have reason to believe that there is an individual who may be able to provide more detail or documentation in response to any question, state that person's name and last known address and phone number and the reasons for your belief.

6. If you cannot provide a precise answer to any question, please approximate and state the reason for your inability to be specific.

7. For each document produced in response to this Request for Information, indicate on the document or in some other reasonable manner, the number of the question to which it applies.

8. If anything is deleted from a document produced in response to this Request for Information, state the reason for and the subject matter of the deletion.

9. If a document is requested but is not available, state the reason for its unavailability. In addition, identify any such document by author, date, subject matter, number of pages, and all recipients and their addresses.

10. The company and/or facility for the purposes of this Request for Information is Niagara Ceramics Corp., located at 75 Hayes Place, Buffalo, NY 14210.

11. Hazardous waste shall be defined for the purposes of this Request for Information as that term is defined in Section 1004(5) of RCRA, as amended, 42 U.S.C. Part 6903(5) and in 40 C.F.R., Section 261.3.

12. Manage shall be defined for the purposes of this Request for Information as a market, generate, treat, store, dispose or otherwise handle.

13. Standards applicable to transporters of hazardous waste shall be those as established in 40 C.F.R. Part 263.

14. Hazardous constituents shall be defined as those substances listed in 40 C.F.R. Part 261, Appendix VIII.

ATTACHMENT IV

Certification of Answers to Responses to Request for Information

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document (response to EPA Request for Information) and all documents submitted herewith, that the submitted information is true, accurate and complete, and that all documents submitted herewith are complete and authentic, unless otherwise indicated. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

_____

NAME (print or type)

_____

TITLE (print or type)

_____

SIGNATURE

_____

DATE

Complainant's Exhibit 5

NIAGARA CERAMICS CORP.
75 Hayes Place Buffalo, New York 14210
Phone: (716) 821-5600 Fax: (716) 821-5608

May 25, 2007

Ronald Voelkel, Environmental Scientist
RCRA Compliance Branch
Div. Enforcement & Compliance Assistance
USEPA - Region 2
290 Broadway, 22 Floor
New York, New York 10007-1866

Re: **Response to Notice of Violation**
Niagara Ceramics Corporation, Buffalo, NY
USEPA ID #: NYD 980 653 109

Dear Mr. Voelkel:

On April 4, 2007, you conducted an inspection at the Niagara Ceramics Corporation (NCC) facility located at 75 Hayes Place, Buffalo, New York for the USEPA to determine the facility's compliance with applicable federal RCRA regulations (the "inspection"). Subsequently, I received the agency's April 25, 2007 Notice of Violation (the "Notice') as prepared for Mr. George C. Meyer, PE, Chief, Div. Enforcement & Compliance Assistance. This Notice mandates the submittal of various information related to NCC's management of its hazardous wastes, as described in Attachment II to the Notice. This letter represents NCC's formal response to the USEPA's requested information.

I would like to indicate that this review process has been an enlightening experience for NCC personnel. NCC has retained the services of a consultant, Hazard Evaluations, Inc. (HEI), to assist the facility with the development of its Release Prevention, Countermeasure and Control Plan, as well as to provide guidance with various aspects of hazardous waste management. NCC hopes to take this opportunity to significantly improve its RCRA program to ensure we remain a good corporate citizen in the greater Buffalo community. Please note that wherever possible, NCC has corrected deficiencies before this response was prepared. NCC's compliance response activities are described below for your review and consideration.

Question 1: Notice Items 1 - 9 Action Descriptions

Item 1 - Exceeding 90 Day Hazardous Waste Storage Rule

As indicated to Mr. Voelkel during the inspection, NCC is a large quantity hazardous waste generator only. There has never been any intent by NCC to become a Hazardous Waste Storage Facility as defined in the 6 NYCRR Part 370s regulations. It is also significant to note that NCC's hazardous waste glaze and filter cake generation rates vary significantly with production levels

(Attachment 1). The exceedance of the 90 day limit that was identified during the inspection was related to a significant slowdown in production, which delayed NCC's request for transport off-site, as a full truckload was not ready and the time limit was simply overlooked. NCC has implemented a computer based tracking system (Microsoft Outlook Calendar), managed by myself, to ensure that the 90 day limit for all of the facility's wastes to which it applies will not be exceeded in the future. Copies of manifests for the disposal of 22 boxes of hazardous waste glaze, 3 drums of hazardous waste solvent, and universal waste fluorescent bulbs are also presented in Attachment 1.

Item 2 - Improper Waste Codes on Manifests

During the inspection, the primary waste code entered on NCC's manifests for waste glaze was noted to be for the Characteristic of Toxicity (Cadmium - D006) rather than the Characteristic of Toxicity (Lead - D008). It should be noted that the waste disposal firm, Chemical Waste Management, routinely completes the manifests prior to waste pick-up, and used its own computer system as a basis for selecting these codes. NCC has contacted Chemical Waste Management to ensure that the code change will be made so that future manifests will present the waste codes in the proper order. In this regard, this issue with the new manifesting system should be permanently resolved. Other codes that were included on the various manifests were appropriate for additionally noted materials and/or constituents.

Items 3 & 4 - Improper Waste Container Labeling

During the inspection, various containers in the existing hazardous waste storage area did not have the appropriate "Hazardous Waste" and content labeling visible, nor were the container accumulation start dates applied. NCC has implernented an employee training program (to be completed annually) to ensure all affected employees understand the appropriate container labeling requirements. Photographs of various containers of hazardous and universal wastes indicating the appropriate labeling are presented in Attachment 2.

With respect to the two red cans full of solvent-soiled rags located in the Decorating Departrnent identified as being Satellite Accumulation containers, it is NCC's understanding that these rags are subject to NYSDEC Policy DSH-HW-03-09 "Regulatory Status of Laundered Industrial Rags & Soiled Clothing", dated September 24, 2003. In that regard, these rags are subject to all hazardous waste management regulations until they are loaded on the vehicle for delivery to the laundry. NCC will ensure that the requirements of this policy are fully implemented. Photographs of various containers of hazardous and universal wastes indicating the appropriate labeling are presented in Attachment 2.

Items 5, 6 & 7 - Improper Container Management

During the inspection, various containers in the existing hazardous waste storage area were not appropriately closed, adequate aisle space was not provided around the containers, and the container storage areas were not being inspected weekly. NCC has implemented an employee training program (to be completed annually) to ensure all affected employees understand the appropriate container management requirements. The Universal Waste storage area is now properly designated and equipped with signs, USDOT-approved containers and proper labels. Photographs of various containers indicating the appropriate closure and aisle spacing are presented in Attachment 2. NCC has also initiated a weekly hazardous waste accumulation and storage area inspection program to be conducted by the VP, Engineering, who will also maintain the inspection records (Attachment 3).

Items 8 & 9 - Improper Emergency Response Postings

During the inspection, emergency response information was not appropriately posted next to the facility telephones. NCC has inspected the entire facility to verify the locations of fire extinguishers, telephones, eye wash stations, and spill response equipment. The posting of the required information on laminated sheets has been completed at each facility telephone location. Copies of these postings are presented in Attachment 4.

Question 2: Missing Documents

2a - Contingency Plan

During the inspection, the facility's Contingency Plan could not be located. As a result, an outdated document has been updated to properly reflect current operations at the NCC facility (Attachment 5).

2b - Employee Job Descriptions and Related Information

During the inspection, job descriptions for all individuals involved with the management of hazardous wastes were not available, nor were any affected employee training records. Job descriptions have been prepared for the various employee classifications (Attachment 6) which describe all relevant hazardous waste-related activities. With respect to employee training, NCC is currently refining its list of employees with respect to the various levels of training required. Some delay in this regard has occurred related to changes in various job responsibilities such that the group of employees required to be involved with the management of hazardous wastes is better controlled. NCC anticipates providing a list of employees, their applicable job titles and descriptions, and the specific training required (both NYSDEC-mandated and OSHA-mandated) by June 1, 2007. NCC anticipates that all training can be completed by June 30, 2007, if classes can be scheduled in-house or obtained off-site by trainers with appropriate knowledge, training and experience.

Question 3: D006 Generation Rates

3 - D006 Generation Rates

As described above, NCC's hazardous waste glaze and filter cake generation rates vary significantly with production levels. A narrative addressing this situation is presented in Attachment 1.

The information presented above provides a concise technical response to the various deficiencies identified in your agency's Notice. We sincerely hope that this submittal is adequate for your agency to complete its assessment of NCC's response actions. However, if you feel that a submittal of additional selected documents will further serve your needs, please contact me directly to discuss and arrange a submittal. Thank you for your cooperation in this matter.

VTY

KF
NCC

Attachment 1

Hazardous Waste Generation Information and Waste Manifests

NCC Interoffice Memo

To: File

From: K. Franz

Date: 5/9/2007

RE: **Colored Glaze Production vs. Waste Overview for EPA Response**

The following is summary of waste glaze verses production shipments for 2004, 2005 and 2006.

Since inception (March 2004), Niagara Ceramics Corporation has produced, and still does produce colored glazed products for its customers. This process by nature increases this particular Hazardous Waste stream as production, and the number of color changeovers increase, due to the machine wash down function mixing different unique color formulations.

From March of 2004 through June of 2006 we as a company shipped from 2,480, to as high as 10,060 dozens of colored glazed products to our customers each month, with an average of 6243 dozens per month. During the same period we had shipments of the waste stream associated with this process averaging one full truckload (approximately 22 tons) every 75 days.

Subsequent to June of 2006 to present (4/30/07) this business has essentially gone away, with average product shipments per month for this period of 220 dozens with a high of 1175 for July 2006. Over the same period we have only shipped two truckloads, one happening subsequent to the EPA inspection.

Another point to note for calendar year 2005 is that timing of shipments played a major role in the apparent high generation for that year as seven shipments took place that year with one each in the first and last weeks of the year.

End of report.

CWM
BA

Please print or type. (Form designed for use on elite 12-pitch typewriter.) Form Approved. OMB No. 2050-00

UNIFORM HAZARDOUS WASTE MANIFEST	1. Generator ID Number	2. Page 1 of	3. Emergency Response Phone	4. Manifest Tracking Number
	N Y D 9 8 0 6 5 3 1 0 9	1	(800) 424-9300	00254613 JJK

5. Generator's Name and Mailing Address
NIAGARA CERAMICS CORP
51 HAYES PL
BUFFALO NY 14210-1613
Generator's Phone: (716) 821-5600

Generator's Site Address (if different than mailing address)

6. Transporter 1 Company Name: Franks Vacuum Truck Service Inc — U.S. EPA ID Number: NYD 982742414

7. Transporter 2 Company Name — U.S. EPA ID Number

8. Designated Facility Name and Site Address
CWM CHEMICAL SERVICES, L.L.C.
1550 BALMER RD.
MODEL CITY NY 14107
Facility's Phone: (716) 754-8231

U.S. EPA ID Number: NYD049836679

9a. HM	9b. U.S. DOT Description (including Proper Shipping Name, Hazard Class, ID Number, and Packing Group (if any))	10. Containers No.	10. Containers Type	11. Total Quantity	12. Unit Wt./Vol.	13. Waste Codes		
X	1. RQ, HAZARDOUS WASTE, LIQUID, N.O.S., 9, NA3082, III, (LEAD, CADMIUM) VA6874	22	CF	4496	P	D006	D008	T
	2.							
	3.							
	4.							

14. Special Handling Instructions and Additional Information
1. VA6874 - WASTE COLOR GLAZE RQ #829705
LDR on file 1/4/5

15. GENERATOR'S/OFFEROR'S CERTIFICATION: I hereby declare that the contents of this consignment are fully and accurately described above by the proper shipping name, and are classified, packaged, marked and labeled/placarded, and are in all respects in proper condition for transport according to applicable international and national governmental regulations. If export shipment and I am the Primary Exporter, I certify that the contents of this consignment conform to the terms of the attached EPA Acknowledgment of Consent.
I certify that the waste minimization statement identified in 40 CFR 262.27(a) (if I am a large quantity generator) or (b) (if I am a small quantity generator) is true.

Generator's/Offeror's Printed/Typed Name: KARL H FRANZ — Signature: [signature] — Month: 04 Day: 17 Year: 07

INT'L

16. International Shipments ☐ Import to U.S. ☐ Export from U.S. Port of entry/exit:
Transporter signature (for exports only): Date leaving U.S.:

TRANSPORTER

17. Transporter Acknowledgment of Receipt of Materials
Transporter 1 Printed/Typed Name: ALFONSO CUTAIA — Signature: [signature] — Month: 04 Day: 17 Year: 07
Transporter 2 Printed/Typed Name — Signature — Month — Day — Year

DESIGNATED FACILITY

18. Discrepancy
18a. Discrepancy Indication Space ☐ Quantity ☐ Type ☐ Residue ☐ Partial Rejection ☐ Full Rejection
Manifest Reference Number:

18b. Alternate Facility (or Generator) — U.S. EPA ID Number
Facility's Phone:

18c. Signature of Alternate Facility (or Generator) — Month — Day — Year

19. Hazardous Waste Report Management Method Codes (i.e., codes for hazardous waste treatment, disposal, and recycling systems)

1.	2.	3.	4.
H132			

20. Designated Facility Owner or Operator: Certification of receipt of hazardous materials covered by the manifest except as noted in Item 18a

Printed/Typed Name — Signature — Month — Day — Year

EPA Form 8700-22 (Rev. 3-05) Previous editions are obsolete

Please print or type. (Form designed for use on elite (12-pitch) typewriter.) Form Approved. OMB No. 2050-0039

UNIFORM HAZARDOUS WASTE MANIFEST

1. Generator ID Number	2. Page 1 of	3. Emergency Response Phone	4. Manifest Tracking Number
NYD980653109	1	1 800 274 5263	000955347 FLE

GENERATOR

5. Generator's Name and Mailing Address
NIAGARA CERAMICS CORP
51 HAYES PLACE
BUFFALO NY 14210
Generator's Phone: (716) 821-5600 ATTN: KARL FRANZ

Generator's Site Address (if different than mailing address)
NIAGARA CERAMICS CORPORATION
75 HAYES PL
BUFFALO NY 14210

6. Transporter 1 Company Name
ASHLAND INC.
U.S. EPA ID Number
OHD042311209

7. Transporter 2 Company Name
U.S. EPA ID Number

8. Designated Facility Name and Site Address
ASHLAND INC.
3 BROAD STREET
BINGHAMTON NY 13902
Facility's Phone: (607) 723-8254
U.S. EPA ID Number
NYD049253719

9a. HM	9b. U.S. DOT Description (including Proper Shipping Name, Hazard Class, ID Number, and Packing Group (if any))	10. Containers No.	10. Containers Type	11. Total Quantity	12. Unit Wt./Vol.	13. Waste Codes		
						D001	D007	D008
X	1. WASTE FLAMMABLE LIQUIDS, N.O.S. (PETROLEUM HYDROCARBONS), 3, UN1993, PGIII RQ(D007)	003	DM	1200	P			B
	2.							
	3.							
	4.							

14. Special Handling Instructions and Additional Information
03-2434 WASTE PETROLEUM NAPTHA DM RIN# 0206-06977, 430641/19694

INTL

15. GENERATOR'S/OFFEROR'S CERTIFICATION: I hereby declare that the contents of this consignment are fully and accurately described above by the proper shipping name, and are classified, packaged, marked and labeled/placarded, and are in all respects in proper condition for transport according to applicable international and national governmental regulations. If export shipment and I am the Primary Exporter, I certify that the contents of this consignment conform to the terms of the attached EPA Acknowledgment of Consent.
I certify that the waste minimization statement identified in 40 CFR 262.27(a) (if I am a large quantity generator) or (b) (if I am a small quantity generator) is true.

Generator's/Offeror's Printed/Typed Name: KARL H. FRANZ
Signature: Karl H. Franz
Month: 04 Day: 17 Year: 07

16. International Shipments ☐ Import to U.S. ☐ Export from U.S. Port of entry/exit:
Transporter signature (for exports only): Date leaving U.S.:

TRANSPORTER

17. Transporter Acknowledgment of Receipt of Materials

Transporter 1 Printed/Typed Name: MICHAEL KNAPP
Signature: Michael Knapp
Month: 04 Day: 17 Year: 07

Transporter 2 Printed/Typed Name
Signature
Month Day Year

DESIGNATED FACILITY

18. Discrepancy

18a. Discrepancy Indication Space ☐ Quantity ☐ Type ☐ Residue ☐ Partial Rejection ☐ Full Rejection

Manifest Reference Number:

18b. Alternate Facility (or Generator)
U.S. EPA ID Number
Facility's Phone:

18c. Signature of Alternate Facility (or Generator)
Month Day Year

19. Hazardous Waste Report Management Method Codes (i.e., codes for hazardous waste treatment, disposal, and recycling systems)

1.	2.	3.	4.

20. Designated Facility Owner or Operator: Certification of receipt of hazardous materials covered by the manifest except as noted in Item 18a

Printed/Typed Name
Signature
Month Day Year

FREY ELECTRIC CONSTRUCTION CO.

Powerful Tradition. . .
Electrifying Future.
SERVICING INDUSTRY • BUSINESS • HOME

EPAID #: NYR 000115204

CERTIFICATE OF RECYCLING/DISPOSAL

Issued to:

Generator Name: Niagara Ceramics

Address: 75 Hayes Place
Buffalo, NY 14210

Customer Name: Niagara Ceramics

Address: 75 Hayes Place
Buffalo, NY 14210

Project/Invoice Number: 6279

Shipping Document Date: 5/2/07

Waste Stream Description	**Quantity Received**
Fluorescent 4' & Less	720
Fluorescent 5' +	24

The above Waste Items have been received, managed and recycled in accordance with all applicable local, state and federal regulations.

Certified by:
Authorized Frey Electric Signature

ISO CERTIFIED

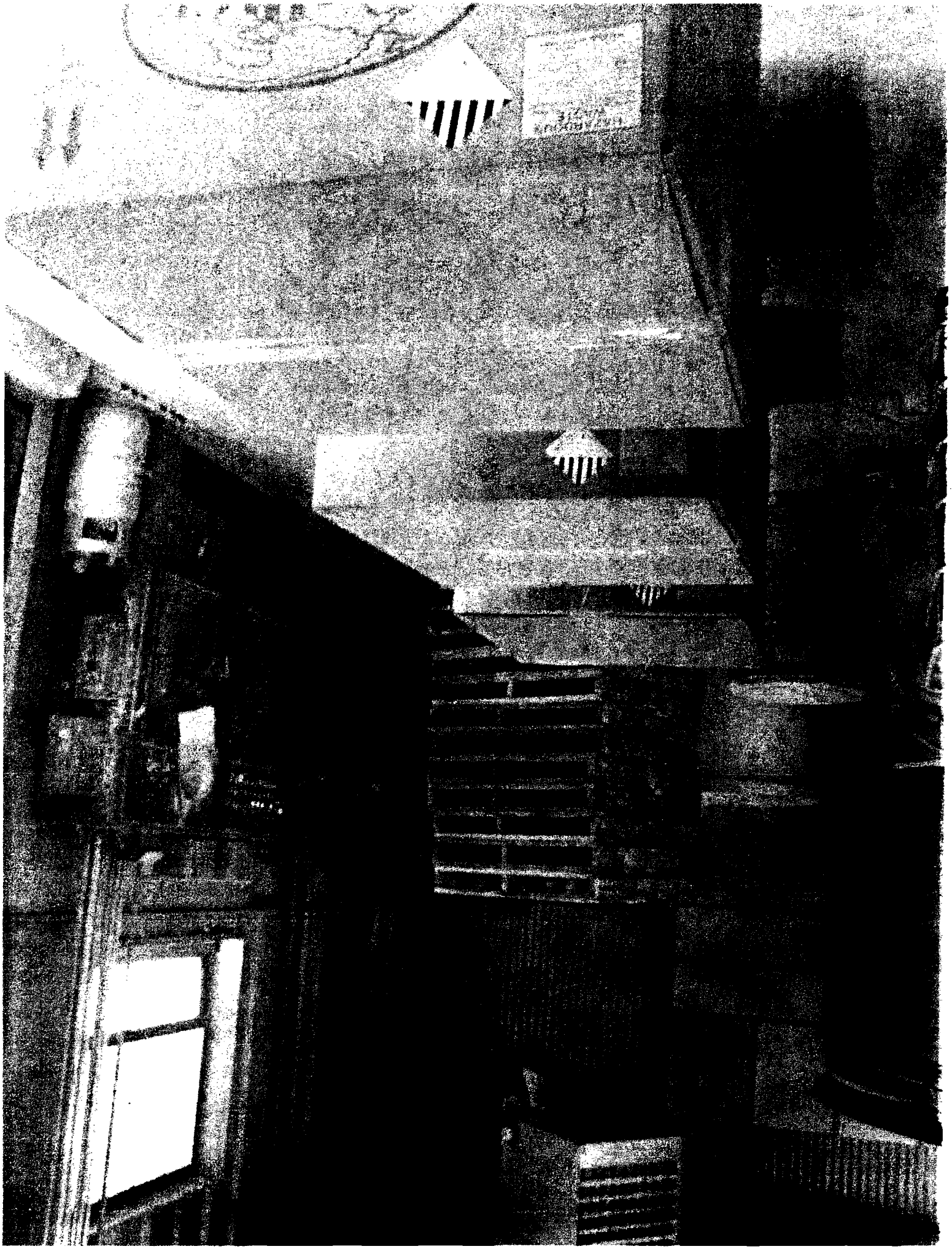
100 Pearce Avenue
Tonawanda, New York 14150
Web: www.frey-electric.com

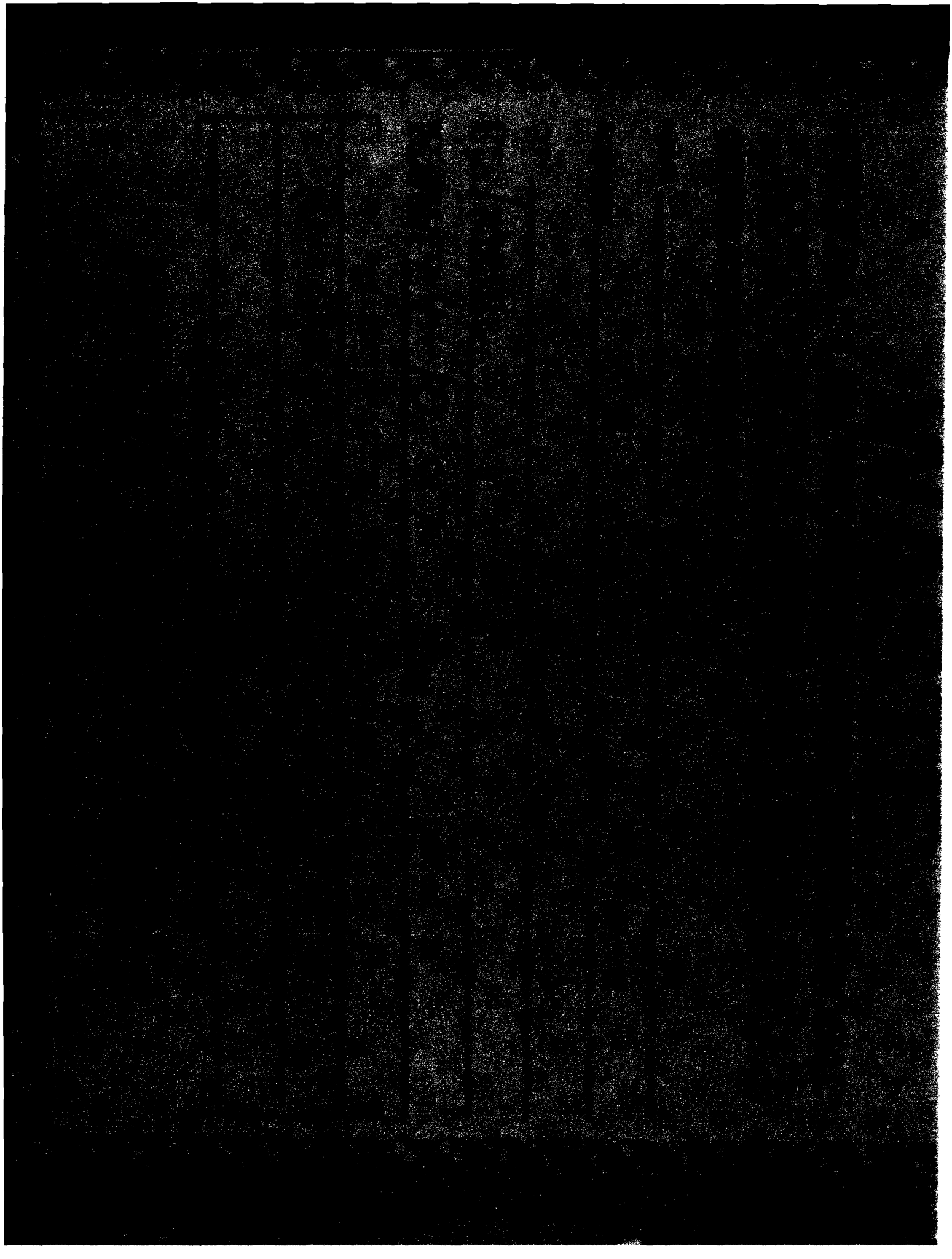
Phone: 716/874-1710
Fax: 716/874-0203
Email: info@frey-electric.com

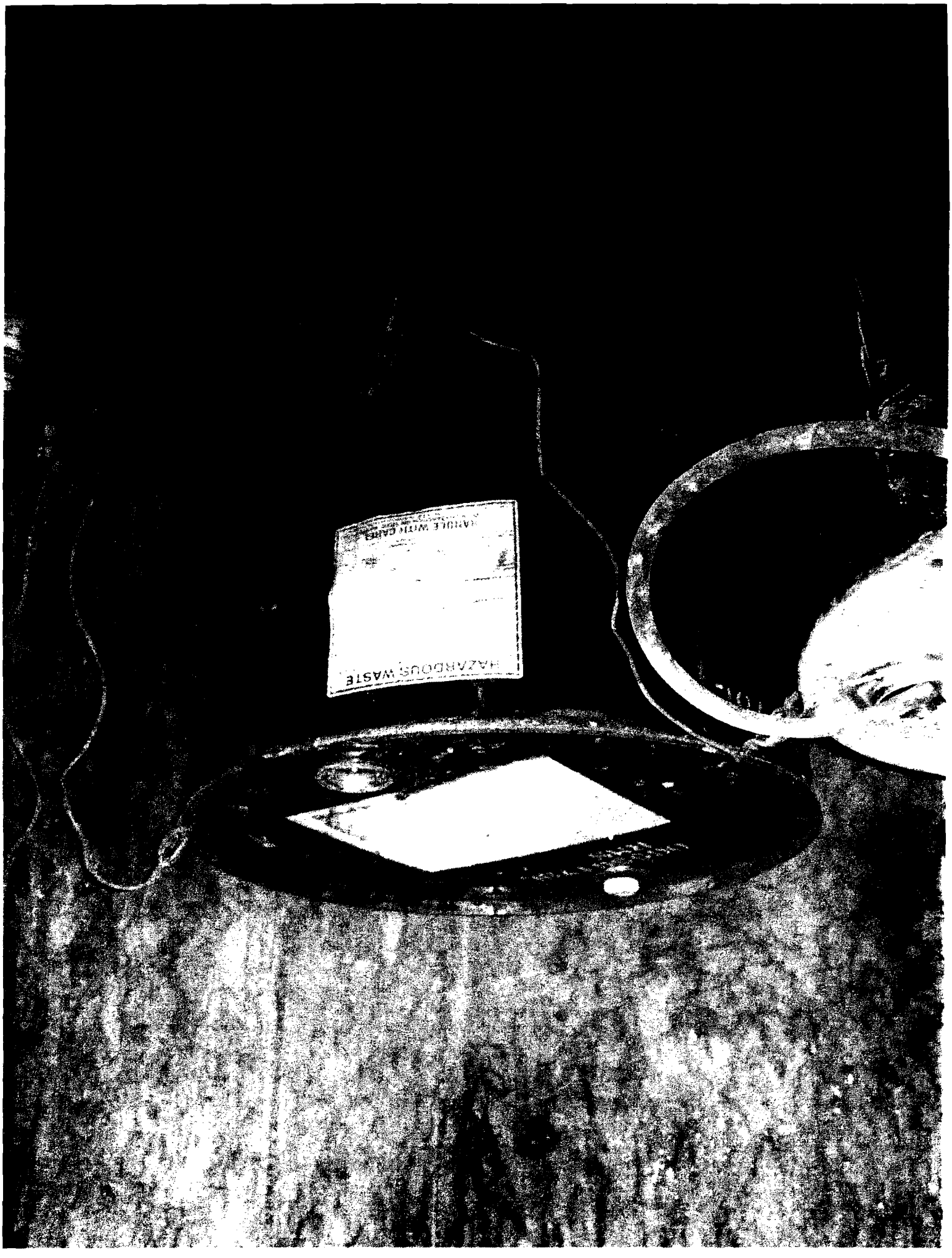
24/7 EMERGENCY SERVICE

Attachment 2

Photographs






HAZARDOUS WASTE

HAZARDOUS WASTE

FEDERAL AND/OR STATE LAWS PROHIBIT IMPROPER DISPOSAL.
IF FOUND, CONTACT THE NEAREST POLICE OR PUBLIC SAFETY AUTHORITY
OR THE U.S. ENVIRONMENTAL PROTECTION AGENCY OR THE
NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION

PROPER D.O.T.
SHIPPING NAME

HAZARDOUS PROPERTIES / DESCRIPTION

GENERATOR INFORMATION:

NAME
ADDRESS
CITY

EPA
ID #

TELEPHONE

E.P.A.
WASTE #

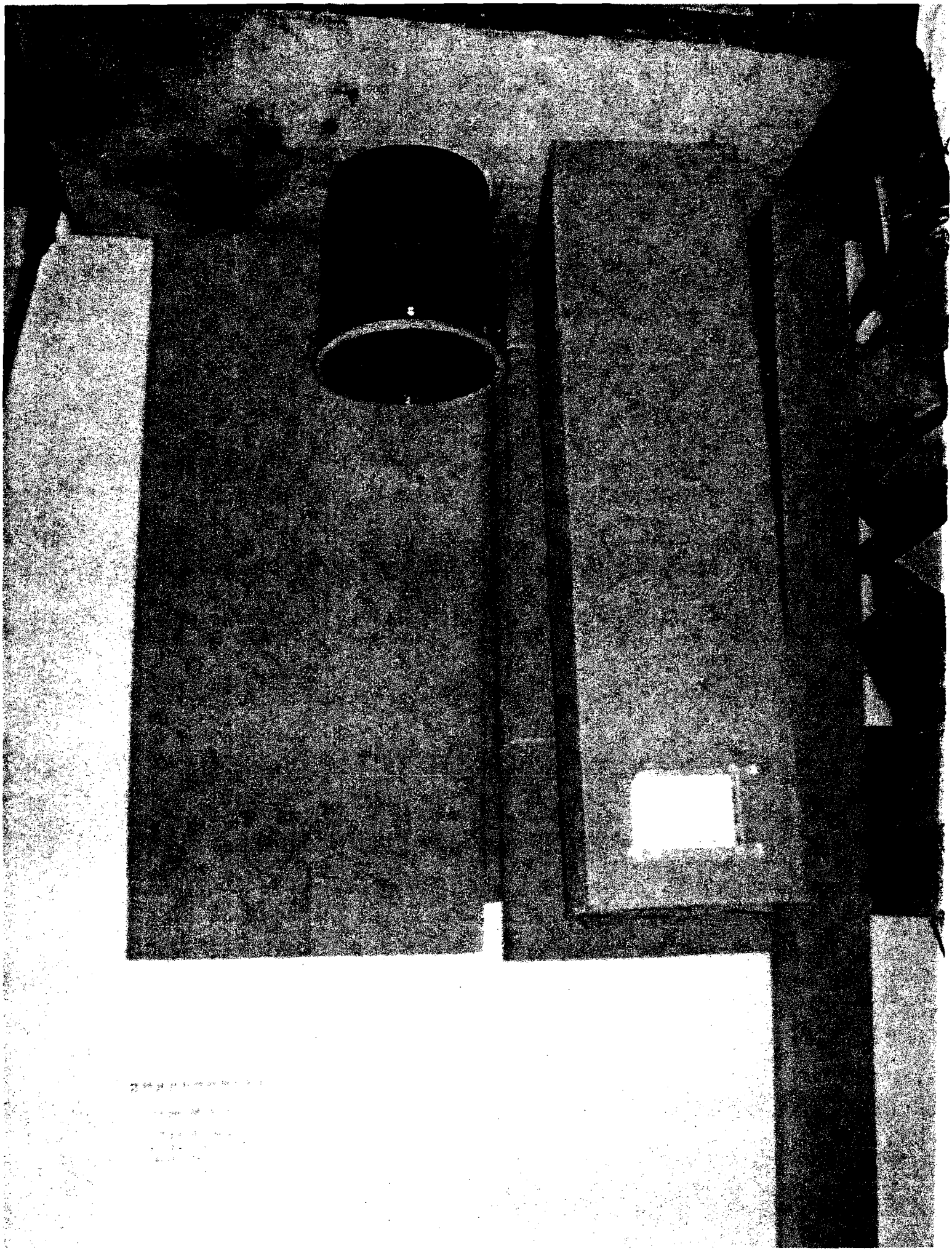
ACCUMULATION
START DATE

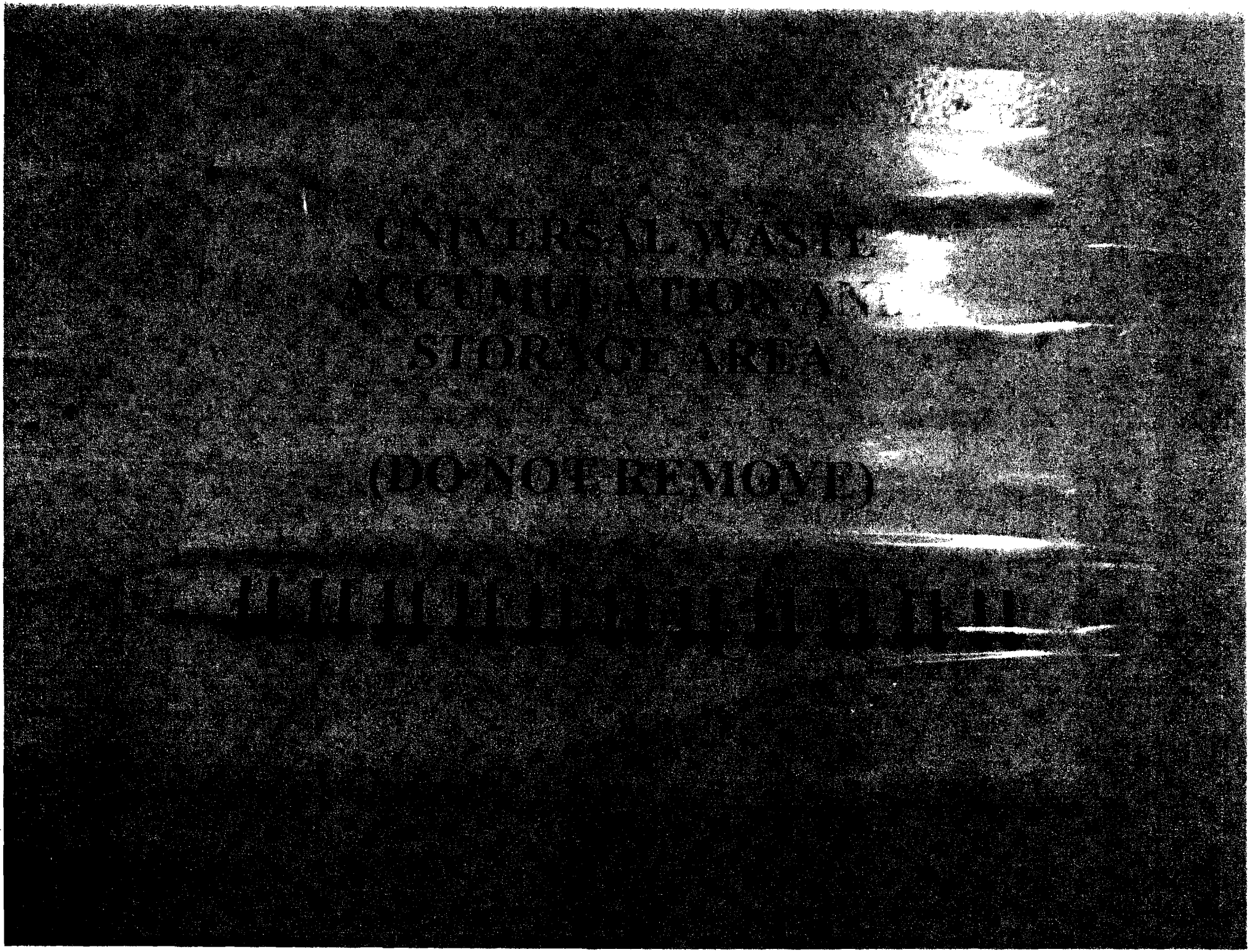
STATE MANIF
TRACKING #

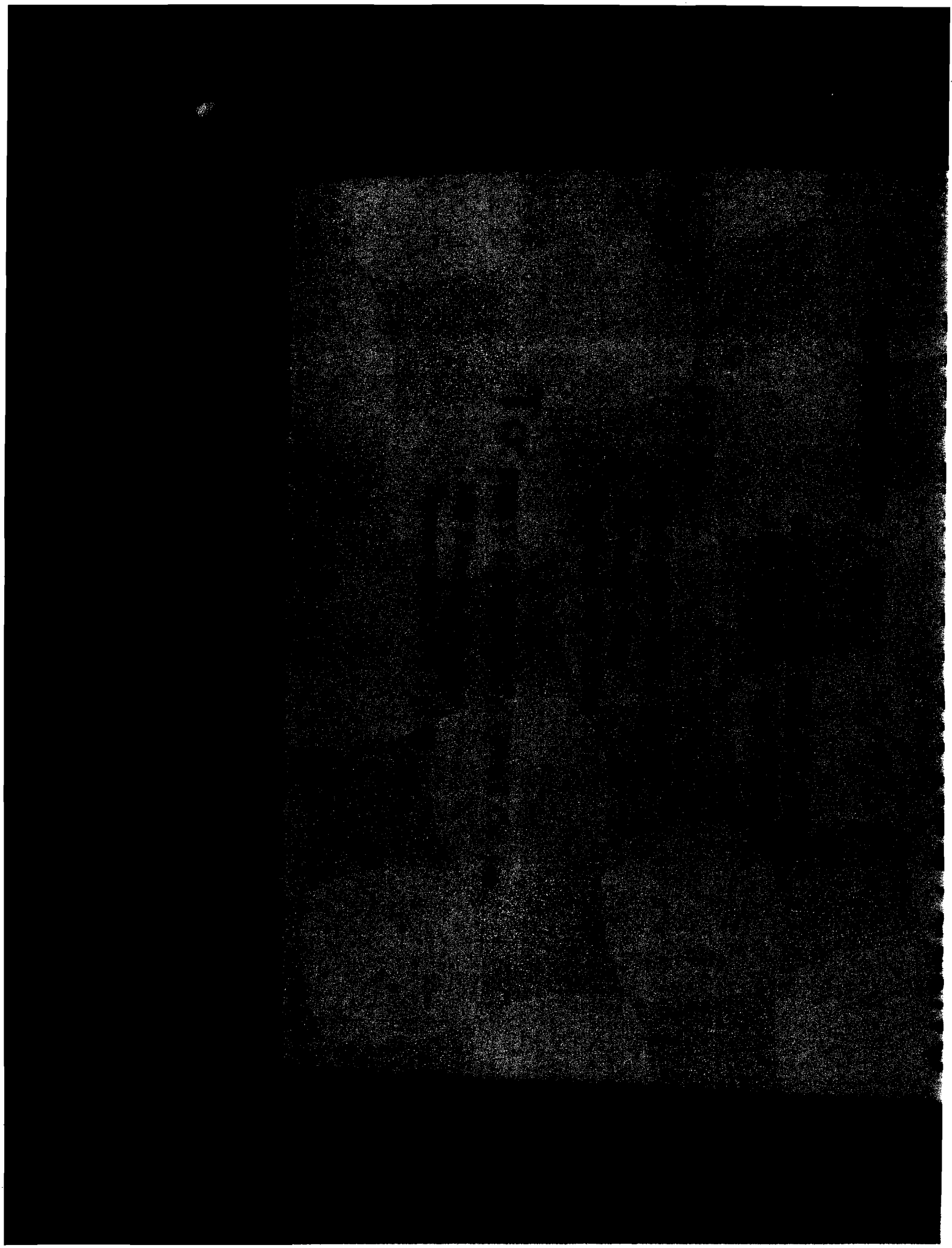
HANDLE WITH CARE

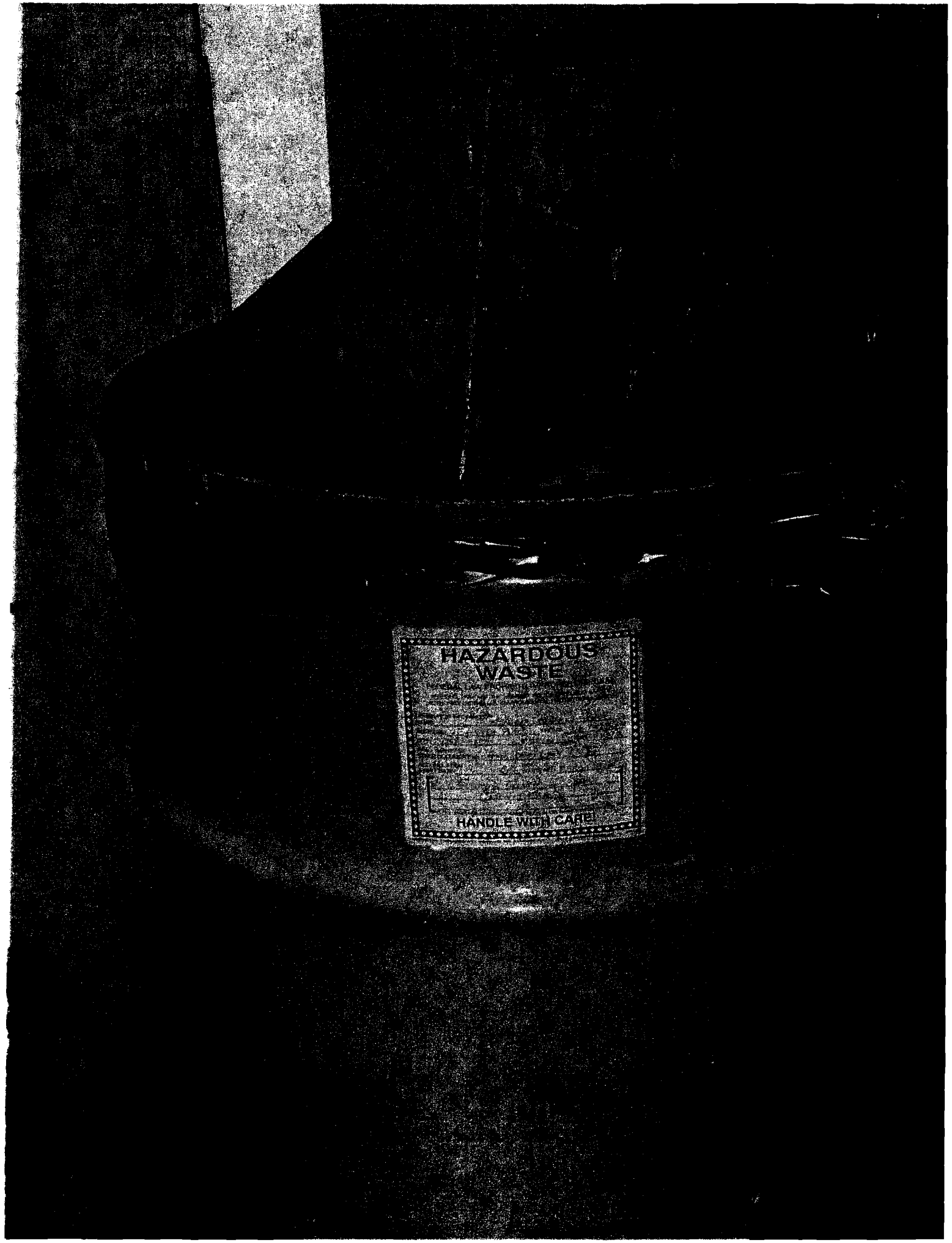
CONTAINS HAZARDOUS WASTE

PRINTED BY: MESA LABEL EXPRESS, INC. POWAY, CA.




UNIVERSAL WASTE
ACCUMULATION
STORAGE AREA
(DO NOT REMOVE)

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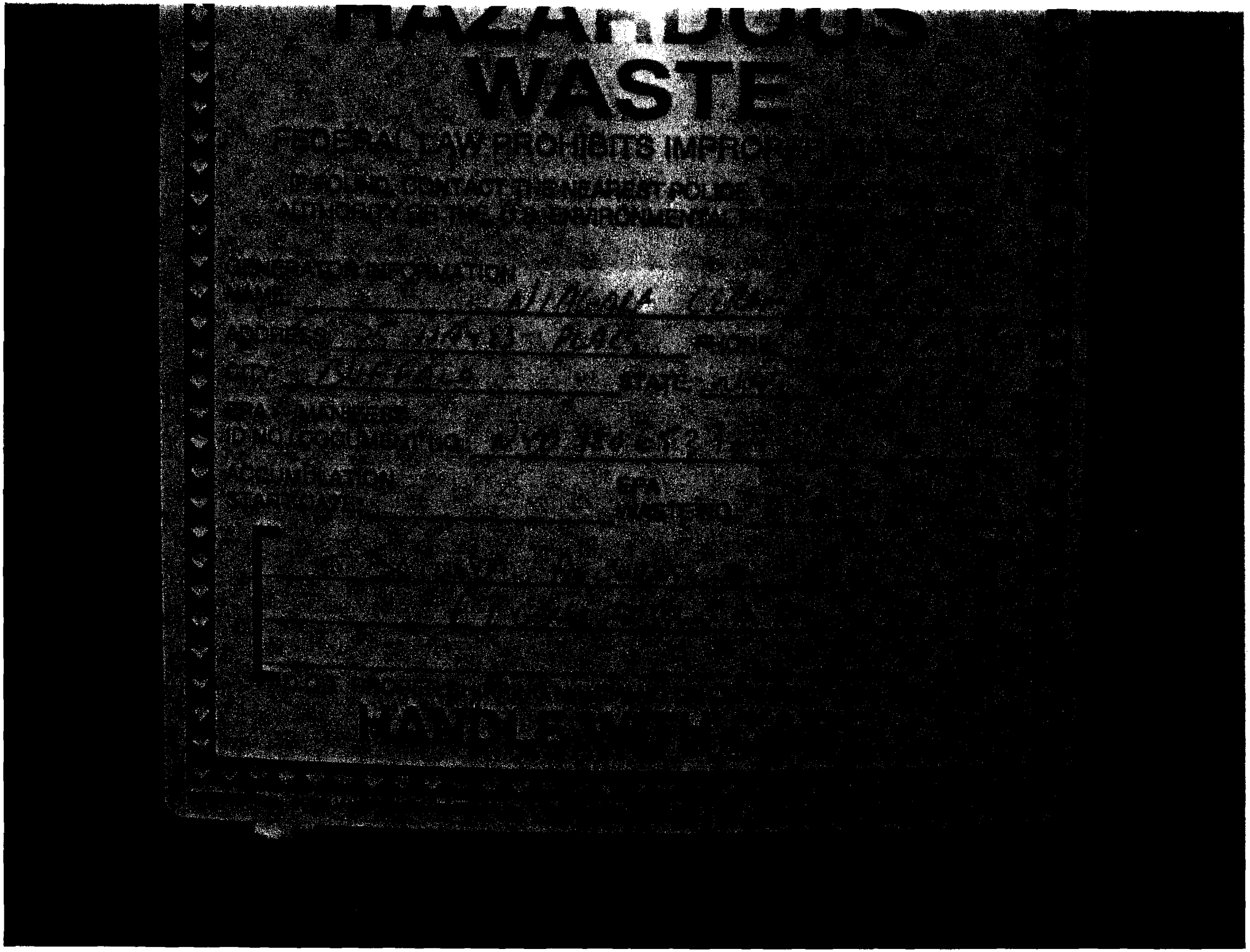

HAZARDOUS
WASTE


HAZARDOUS
WASTE
HANDLE WITH CARE

Attachment 3

Inspection Forms

Hazardous Waste
Waste Glaze Storage Inspection Log
Niagara Ceramics Corporation.
2007

Week	Number of boxes	Boxes stored/ labeled correctly	Inspector	Remarks
5/4	2.5	YES	FRANZ	INSPECTED T CLARK ON BOX SPACING
5/11	3	YES	FRANZ	
5/18	3	YES	FRANZ	

Hazardous Waste
Universal Waste Storage Inspection Log
Niagara Ceramics Corporation
2007

Week	Number of boxes	Stored/labeled correctly	Inspector	Remarks
5/4	0	—	FRANZ	
5/11	1	YES	FRANZ	START DATE 5/9/07
5/18	1	YES	FRANZ	"

Hazardous Waste
Outside Storage Inspection Log
Niagara Ceramics Corporation
2007

Week	Number of drums	Drums stored/ labeled correctly	Inspector	Remarks
5/4	0	—	K FRANZ	
5/11	0	—	FRANZ	
5/18	0	—	FRANZ	

Attachment 4

Emergency Response Postings

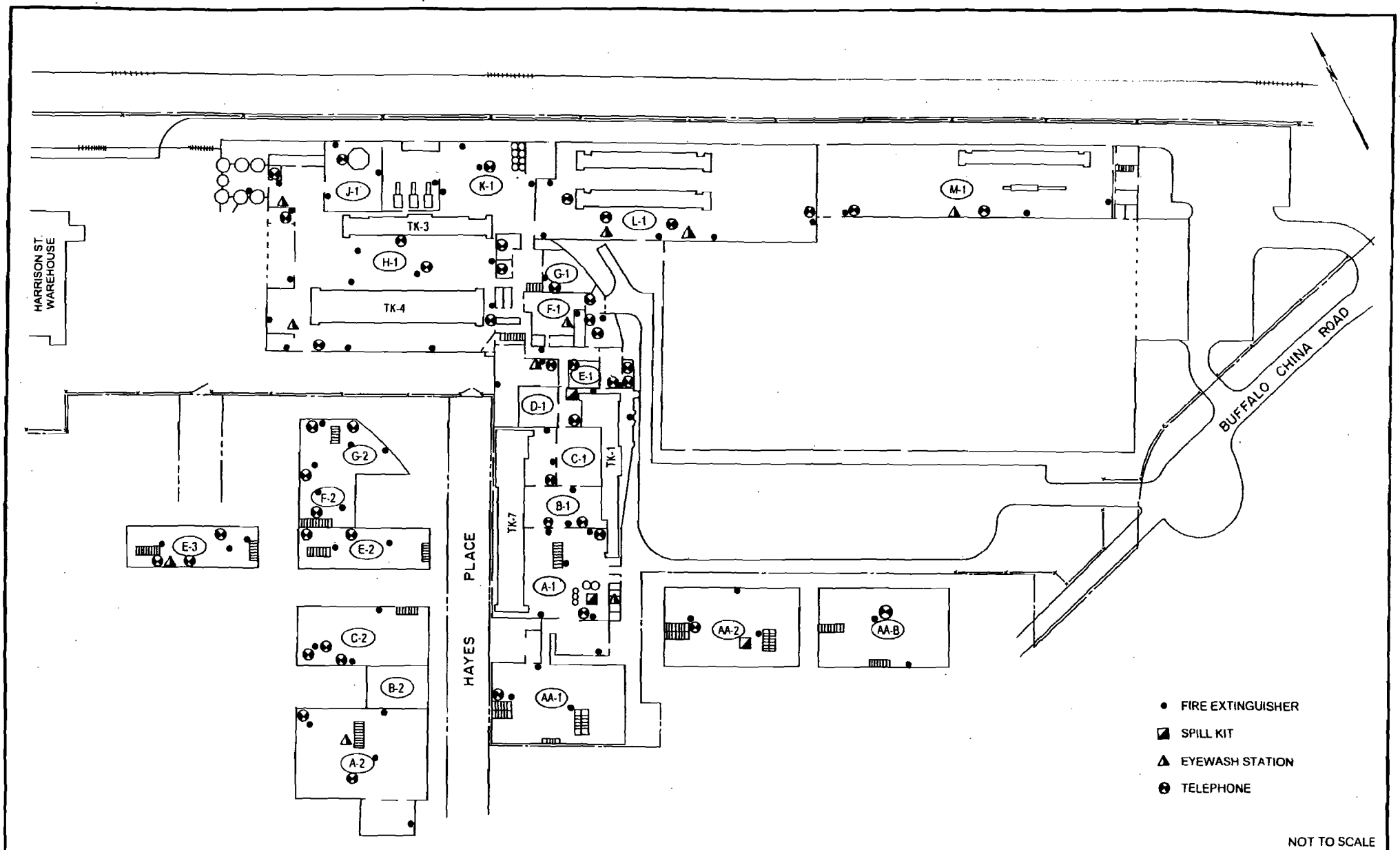
EMERGENCY NOTIFICATION LIST

Facility Emergency Coordinator
Karl Franz, Vice President, Engineering
plant: (716) 824-8515; ext. 205
cell: (716) 983-7945
home: (716) 667-7577

First Alternate Facility Emergency Coordinator
Don Hale, Maintenance Supervisor
plant: (716) 824-8515; ext. 223
cell: (716) 984-2079
home: (716) 892-7601

Second Alternate Facility Emergency Coordinator
Carl Huckins, Maintenance Engineer
plant: (716) 824-8515; ext. 262
cell: (716) 982-2056
home: (716) 895-1137

Buffalo Police Department (South District)	911 or (716) 851-4409
Buffalo Fire Department	911 or (716) 851-3822
Mercy Hospital	(716) 826-7000
Ambulance Service (Rural Metro)	911 or (716) 882-8400
Buffalo Sewer Authority	(716) 883-1820
City of Buffalo Dept. of Public Works	(716) 847-1065
Erie County Department of Emergency Services	(716) 858-6262
Erie County Department of Health	(716) 898-4225
NYSDEC Spill Response	(716) 852-7220
Poison Control Center of Western New York	(800) 888-7655
National Response Center	(800) 424-8802
CHEMTREC	(800) 424-9300



HAZARD EVALUATIONS

NIAGARA CERAMICS CORPORATION
BUFFALO, N. Y.
EMERGENCY RESPONSE EQUIPMENT LOCATIONS

FIGURE 4

Attachment 5

Release Prevention, Control & Countermeasure Plan

RELEASE PREVENTION, CONTROL AND COUNTERMEASURE PLAN (RPCC)

Prepared For:
Niagara Ceramics Corporation
75 Hayes Place
Buffalo, New York 14210

Prepared By:
Hazard Evaluations, Inc.
3836 N. Buffalo Road
Orchard Park, New York 14127

Revised May 2007

TABLE OF CONTENTS

APPENDICES

1.0 GENERAL FACILITY INFORMATION

1.1 Background

This Release Prevention, Control and Countermeasure Plan (RPCC) has been prepared for Niagara Ceramics Corporation (NCC), located at 75 Hayes Place, City of Buffalo, Erie County, New York (Figure 1; Appendix A) in accordance with federal and New York State regulations regarding the storage of hazardous materials and the prevention and control of such releases.

The federal Resource Conservation and Recovery Act (RCRA), Clean Water Act (CWA) and the Superfund Amendment and Reauthorization Act (SARA) require industrial facilities to develop plans to minimize the risks of unplanned releases of hazardous materials and wastes. Some of the applicable regulations are enforced by the USEPA, and others are enforced by the NYSDEC under federally approved state regulations. This plan incorporates the Contingency Plan requirements of the RCRA and the NYSDEC's 6 NYCRR Part 370 regulations, and the Emergency Response Plan requirements of SARA Title III into one document.

This plan is designed to provide information regarding the bulk storage requirements for the facility's batch lead-based glaze and petroleum products, as well as engineering controls and operating procedures necessary to minimize hazards to human health and environment from fires, explosions and releases from hazardous substances from the NCC facility to the air, soil, surface waters and groundwater. This plan also presents preventative actions and emergency response procedures to be followed in the event of an emergency (i.e., unplanned hazardous material or waste release, fire, explosions, etc.). Designated employees of the NCC facility have become familiar with the contents of this plan, and are trained to carry out the necessary procedures either as an on-site location team, or in concert with the NYSDEC, the Erie County Department of Emergency Services, and/or City of Buffalo response agencies.

1.2 General Facility Information

Facility:	Niagara Cerarnics Corporation 75 Hayes Place Buffalo, New York 14210
Facility Permits:	USEPA ID#: NYD980653109 NYSDEC Air Facility ID#: 9-1402-00073/02000 BSA Sewer Use Permit ID#: BU228

1.3 Facility Location & Description

The Niagara Ceramics Corporation (NCC) facility is located in western New York State, within the limits of the City of Buffalo in an industrial area. The facility is located within the Erie-Ontario Lake Plain Physiographic Province, which is characterized by the topography of an abandoned lake bed. Bedrock underlying

Erie County consists of the Upper Silurian and the Middle and Upper Devonian period. Onondaga Limestone, the lowest formation of the Devonian period, underlies the NCC facility.

The Niagara Ceramics Corporation facility is bound to the north by CONRAIL railroad tracks and beyond by commercial properties, to the east by Bailey Avenue and beyond by undeveloped property and NYS Thruway right-of-way, to the south by ERB Co. and beyond by Seneca Street, and to the west by Hayes Place and beyond by NCC parking areas and then residential properties. Virtually all of the properties surrounding NCC are used for either industrial or commercial purposes (See Figure 1 - Appendix A).

The Buffalo River is located less than one mile south of the NCC facility. NCC's sanitary discharges and a limited amount of process wastewater are conveyed directly to the City of Buffalo's public sewerage system along Hayes Place, as managed by the Buffalo Sewer Authority (BSA). The majority of the facility's non-process and process wastewaters are discharged to Niagara Ceramics Corporation's in-plant wastewater pre-treatment system, and then to the City's public sewerage system. Stormwater runoff from the facility's rooftops and portions of the parking areas also discharge to the public sewerage system. There is a very low potential for any release of petroleum or hazardous materials/wastes to the public sewerage system due to the secondary containment systems associated with the petroleum and hazardous materials/wastes storage areas, along with the in-plant pre-treatment system.

Niagara Ceramics Corporation manufactures large volumes of china dinnerware. NCC utilizes various manufacturing operations such as batch mixing of clay slurries, molding, decorating, tumbling, glazing and firing to produce its end products (Figure 2). These operations result in the generation of various industrial solid and hazardous wastes, including waste glaze, various waste oils and broken ware. Process chemicals and petroleum are stored in several areas of the facility. Clay materials in slurry form are prepared and stored in large tanks located in the Old Sliphouse in Building A and the New Sliphouse in Building J.

1.4 Statement of Release Plan Policy

Niagara Ceramics Corporation's management has agreed to use whatever personnel, equipment and/or materials are necessary to control releases of regulated substances at the NCC facility. The priorities of response team members are based upon the protection of human life, mitigating environmental harm and protection of property, respectively. The principal responsible members of NCC's management team have reviewed this document, and have certified the accuracy of the information presented herein.

1.5 History of Releases

NCC has no history of releases of hazardous materials since the firm's inception in 2004.

1.6 Plan Review and Amendment

This plan will be reviewed as necessary or at least annually to satisfy or determine the following conditions:

- o Appropriate plant personnel received their annual training review, and any subsequent necessary revisions were made to the training program.

- o Local emergency response teams and fire department completed their annual visit, and reviewed both the plan as well as the location and properties of all on-site hazardous wastes and materials.

- o The plan must be updated following each occurrence of a petroleum or hazardous material release, and the event will be described in writing for inclusion in this document.

- o The plan must be amended if any of the following conditions occur: 1) Modification of ineffective response procedures; 2) Changes to the design, construction, operation, or maintenance of the facility which increases the potential for fires, explosions, or releases of petroleum, hazardous materials or wastes; 3) Emergency equipment or coordinators change; and 4) If the facility permit is modified, or if the regulations are revised. These changes will be incorporated into this plan as soon as possible, but no later than six months following the change.

- o If there are no emergency releases, and amendments are not required for any of the conditions listed above, then the plan will be revised every three years.

1.7 Plan Distribution List

1. Robert Lupica, President (NCC)
2. Karl Franz, VP, Engineering (NCC)
3. Donald Hale, Maintenance Supervisor (NCC)
4. Carl Huckins, Maintenance Engineer (NCC)
5. Tom Ziolkowski, VP Operations (NCC)
6. Buffalo Fire Department
7. Erie County Department of Emergency Services
8. Mercy Hospital
9. Buffalo Sewer Authority
10. Hazard Evaluations, Inc.

2.0 MATERIALS INVENTORY AND MINIMUM PREVENTATIVE MEASURES

2.1 Hazardous Substance Inventory

Chemical storage areas include the Glaze Making Department, the Color Cell, the chemical storage vaults in Building A, TK-4, and the Clarifier Room. Colors and Mixed Colors are stored on the second floor of Building G (Color Lab) and the Decorating Department (Building D). Flammable cabinets used for the storage of either colors, solvents or lubricating petroleum are located in the two Decorating

Departments (Buildings D and M), the Color Lab, the Decal Lab (second floor, Building G), the second floor Quint area (Building A) and the Press Room (second floor, Building E).

Table 1 (Appendix B) presents a list of the hazardous substances, petroleum products and industrial gases, as well as various wastes, containing the hazardous constituents identified on the facility's Material Safety Data Sheets. These regulated substances stored and/or used at the NCC facility have the potential for spills or accidental releases into the environment. For each substance, Table 1 includes: 1) Chemical description; 2) Information on its storage location or area where it is used; 3) Estimated amount stored on-site; 4) Type(s) of storage containers used along with the temperature and pressure conditions of each; and 5) Potential for release at the facility. The chemical description is the same as used on the SARA Tier Two report form (i.e., pure, mix, solid, liquid, gas, and EHS). Figure 3 presents the locations of all storage areas for petroleum, hazardous materials and hazardous wastes.

2.2 Facility Design

The NCC facility has been designed or retrofitted to prevent releases of petroleum products, hazardous substances and hazardous wastes to the environment. Various clay powders and related powdered raw materials are stored either in bulk in the silos located in the northwest corner of the facility or in bags in the adjacent interior area of the facility. Colors and glazes are prepared and stored in either large plastic or wooden vessels in the Glaze Making and Color Cell areas of the facility. Organic liquids, such as thinners, lubricating oils and solvents, are stored in 55-gallon drums within various chemical storage areas. These chemical processing and storage areas are all within the interior portions of the facility, located away from doorways and floor drains. In many cases, adequate secondary containment is available to prevent or minimize releases of these materials to the environment. If doorways are present, curbs have been installed to prevent smaller spills from exiting the facility. All storage areas are well-ventilated to prevent the build-up of combustible or corrosive fumes.

The NCC facility's sanitary discharges and some non-process wastewaters are discharged to directly to the BSA's public sewerage system. However, NCC's process discharges and any active floor drains throughout the facility are connected to an in-plant wastewater pretreatment system. This recently upgraded wastewater pretreatment system is designed to remove suspended solids from the facility's process wastewaters, which are then discharged from the facility to the public sewers. The chemical assisted clarification pretreatment system which removes the solids subsequently collects these solids as sludge, which is then pressed to create a filter cake that is appropriately disposed of in a landfill. There is a very low potential for release of petroleum or hazardous materials/wastes to the public sewerage system due to the secondary containment system associated with NCC's wastewater pretreatment system, which can be shut down to contain any released regulated hazardous substances. In addition, many of the floor drains throughout the facility have been permanently sealed.

Stormwater runoff from the facility's rooftops and portions of the parking areas also discharge to the public sewerage system, either along Hayes Place or Bailey Avenue.

The northern-most chemical storage vault in Building A contains a 300-gallon aboveground hydraulic oil storage tank and is equipped with a dike capable of containing the entire 300 gallons. The bulk storage of diesel fuel also occurs on-site in a 500-gallon above ground tank located along the concrete pad outside Building F (Maintenance). This tank is equipped with a steel wall secondary containment structure capable of containing the entire 500 gallons. The hazardous waste glaze, waste solvents, and waste oil accumulation and storage areas are equipped with spill containment pallets, and/or readily available absorbent material.

2.3 Facility Operation

The Niagara Ceramics Corporation facility is operated and maintained in a manner which reduces the chance for petroleum, hazardous substance or hazardous waste spills or related fires and explosions. Specialty thinners and specialty colors (including Cadmium-containing colors) are stored in one and five-gallon containers in the facility's Decorating Departments. Hazardous wastes are stored in the secured three-sided covered sheds outside the Hayes Warehouse or within the glaze making area on the first floor of Building K (Lead/Cadmium Waste). New and used Acetylene and oxygen tanks are stored outside of the Maintenance Shop in a covered shed and are used primarily in the welding area of the Maintenance Department. Propane is stored in the Harrison Street Warehouse and is used in its original cylinders as fuel for the forklift. Natural gas used throughout the facility in the various kilns is controlled by automatic shutdown systems in the event that a power outage occurs. Within each of these storage areas, incompatible materials are segregated. All chemicals are also inventoried regularly to ensure that each is tracked throughout its existence at the plant.

One and five-gallon cans are used in the manufacturing areas and the unused and/or waste materials are returned to the various storage areas. There is a limited number of 55-gallon drums of chemicals on the production floor. Compressed gases are used directly from their original cylinders. Liquid Nitrogen is stored in the 3rd floor lab. Propane gas is delivered directly to the Harrison Street Warehouse where it is promptly secured. The storage of excess glaze and waste glaze has been minimized on-site due to the installation of a glaze reclaim system. Liquid glazes which were formerly stored in bulk within the facility are now pumped to a filter press and the liquid portion is reused. The solid filter cake from this operation is packaged in storage boxes and shipped off-site for disposal. The entire operation is enclosed within secondary containment structures.

The varieties of both the storage container types and the petroleum and hazardous materials/wastes stored at the Niagara Ceramics Corporation facility require that plant personnel be familiar with the hazards associated with the materials on-site and with appropriate handling and emergency response procedures. Therefore, all employees at the facility who come in contact with

petroleum and hazardous materials have received Hazard Communication training. In addition, all employees who handle hazardous wastes have received RCRA Hazardous Waste training, including annual training updates.

2.4 Loading/Unloading Operations

Procedures have been developed to prevent releases during chemical unloading and loading operations. The filling of the NCC's petroleum storage tanks (i.e., 300-gal. hydraulic oil and 500-gal. diesel fuel ASTs) is completed from tanker trucks parked outside the facility. The vendor is responsible for both the connection of the transfer lines and the pumping. NCC has a Laborer present during all petroleum transfers to ensure that proper procedures are followed by the vendor drivers and to initiate clean-up procedures in the event of a spill.

The 55-gallon drums of various chemicals enter the facility through receiving and are transported through the facility primarily by forklifts to their respective storage vaults or cabinets. Materials in one and five-gallon cans are transferred by pouring or pumping, and 55-gallon drums of liquid chemicals are equipped with manual pumps and are never transferred by gravity draining. All chemical storage areas (i.e. vaults, cabinets and other areas) have secondary containment available, at least through the use of containment pallets. All chemical storage areas are well-ventilated to prevent the build-up of combustible or corrosive fumes, and incompatible materials are segregated. Compressed gas cylinders are delivered to the area where they are stored/used and are promptly secured. Gases used for welding purposes (acetylene and oxygen) are delivered to the maintenance department where they are stored/used and promptly secured.

2.5 Inspections

Routine inspections of process equipment and storage areas are completed to prevent the unexpected rupture of tanks, containers or chemical transfer equipment. Several areas of the plant require periodic inspections because of the potential for significant environmental, operational, or personal consequences in the event of a failure or malfunction. Inspections are performed often enough to identify problems in time to correct them before they cause any damage or harm. Hazardous material/waste areas subject to releases, such as loading and unloading areas, are inspected daily when in use. Hazardous waste regulations stipulate that hazardous waste containers, and areas where the containers are stored, be inspected weekly for leaks, deterioration, corrosion and other factors. An inspection schedule (Table 2) has been developed by the Maintenance Department which identifies: 1) Areas and equipment to be inspected; 2) Types of problems to look for during the inspection; 3) Personnel or department responsible for the inspections; and 4) Inspection frequency. The inspection frequency varies, and is based upon the rate of possible deterioration of equipment, and the probability of an environmental or human health incident if the deterioration or malfunction or operator error goes undetected between inspections. An inspection form has been developed which identifies areas and equipment to be inspected, types of problems to look for during the inspection, and personnel or the department responsible for the inspections (Appendix C).

2.6 Air Emissions

All of the air emission sources at the NCC facility are minor sources. The majority of the emission points at NCC are equipped with various mechanical emission control units to reduce the release of airborne particles. Process equipment which generates Lead-contaminated air emissions involve the use of scrubbers to meet NYSDEC regulations. This equipment is routinely maintained (i.e. preventative maintenance) to ensure proper operation, and all maintenance and repairs are logged to track equipment condition. In the event of scrubber malfunction, these devices are equipped with warning systems to allow automatic shutdown, thereby minimizing release to the facility roof.

2.7 Security

The Niagara Ceramics Corporation facility has a soil berm and/or chain link fence located along its northern, eastern and southern property lines which encloses the majority of the facility property, including all areas of waste storage. The fill pipe for the 300-gallon hydraulic oil tank is clearly labeled and locked at all times except during filling. Outdoor lighting is provided in all areas of the facility to ensure adequate light is available for security, work, and inspection. All colors, lubricating oils, methanol, degreaser, etc. are stored inside the main building which is locked except for limited points of entry. There are personnel on-site at all times (24 hours/day, 7 days/week, 365 days/year). Keys to the chemical storage vaults and the oil tank fill cap are available only to supervisory and authorized personnel (upon approval by their supervisor).

3.0 CONTINGENCY PLANNING

3.1 Preparedness and Prevention

There are two primary objectives of the applicable federal and state regulations which all facilities that either use or store petroleum or hazardous materials or generate hazardous wastes must address. The first is the prevention of emergency situations. Many procedures have been implemented at Niagara Ceramics Corporation's manufacturing facility to reduce the probability of a petroleum, chemical or hazardous waste spill, fire or explosion. However, possibly of greatest importance to this objective, is the training of NCC's employees in the proper handling of petroleum and chemicals used and the hazardous wastes generated at the facility. In addition, the plant's prevention-oriented management and maintenance program has a notable impact on preventing emergencies from occurring.

The second objective of these regulations is the preparedness within the plant for responding to an emergency situation if one actually occurs. Response operations during the initial phase of an emergency incident are critical to its control, and require familiarity with the selection, use and limitations of personal protection equipment and emergency control equipment. Obviously, the training of employees is important to this objective also, but the input of plant management is most important to ensure that adequate supplies, equipment and systems are in place to put in effect a coordinated, effective response. To that end, NCC has made

appropriate preparations in the event that a release of a regulated substance occurs within the facility, including the selection of a Facility Emergency Coordinator and his alternates. NCC has also made the necessary arrangements with local authorities and response agencies concerning their involvement in any situations at the facility. The Buffalo Fire Department, Mercy Hospital, the Erie County Department of Emergency Services and the Buffalo Sewer Authority have been provided with copies of the appropriate plans to ensure that the potential dangers are understood before any emergency response teams arrive on-site.

This RPCC Plan is designed to minimize hazards to human health and the environment from fires, explosions or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water. The provisions of this plan must be carried out immediately whenever there is an emergency event.

3.2 Emergency Response Equipment

Various types of spill response equipment have been purchased and are distributed throughout the NCC facility for ready accessibility. The entire facility, excluding 75 Hayes Place, is protected with an automatic sprinkler system. Shovels and brooms are available to clean up spills of dry chemicals or raw materials. Absorbent materials are located throughout the facility to control and clean up small spills or to construct dikes in the event of larger non-contained spills. The contained spill, whether inside secondary containment, drip trays, containment pallets or absorbent materials, can be cleaned up by pumping the liquid into drums or by applying sufficient absorbent materials to soak up all of the spilled liquid and shoveling into drums for proper disposal. All response equipment is inspected on a regular basis to ensure its usability, and employees are provided with hands-on training to optimize its effectiveness. NCC has acquired the following specific emergency response equipment:

- Personal protective equipment (i.e., gloves, boots, face shields, air-purifying respirators with organic vapors and particulate cartridges) is available in the Maintenance Department.
- Non-combustible granular absorbent material and absorbent tubes, as well as shovels and open-topped drums, are stored in the Maintenance Department and at locations throughout the facility where there is a potential for chemical or hazardous waste spills.
- ABC dry chemical type fire extinguishers and fire hoses are located throughout the facility.
- In-plant telephones are located throughout the NCC facility which can be used to contact outside emergency assistance, in-plant emergency response personnel, and/or operate the internal paging system. All in-plant telephones have the capability of emergency dialing (911), as well as the page system.
- Eyewash stations are located at the following:

  Bldg.A 2nd Floor
  Bldg.E 2nd Floor, 3rd Floor
  Bldg.F 1st Floor

Bldg.H	1st Floor
Bldg.L	1st Floor

Figure 4 presents the location of existing spill control devices and emergency response equipment.

3.3 Facility Emergency Coordinators

At all times, there will be at least one employee either on the NCC facility premises or on call with the responsibility of coordinating spill response measures. The Facility Emergency Coordinator (FEC) will be thoroughly familiar with all aspects of NCC's RPCC Plan, all operations and activities at the facility, the location of hazardous substances and petroleum products and the facility layout. In addition, the FEC has the authority to commit the resources needed to carry out the requirements of the RPCC Plan. NCC's FEC, as well as the designated FEC alternates, specific contingency planning responsibilities include:

Facility Emergency Coordinator
Karl Franz, Vice President, Engineering
Plan applicability and implementation; chemical inventories and storage practices; operations modifications, including the introduction of new chemicals and the elimination of existing chemicals; facility inspection and reporting; spill planning and coordination with local response agencies; plan practice activities; and control of fuel source hazards.

First Alternate Facility Emergency Coordinator
Don Hale, Maintenance Supervisor
Plan implementation and review; facility inspection and reporting; spill planning and coordination with local response agencies; maintenance of Safety Station;

Second Alternate Facility Emergency Coordinator
Carl Huckins, Maintenance Engineer
Plan implementation and review; spill planning and facility inspections.

Emergency Response Personnel
Individuals assigned to this position will have a general knowledge of facility operations and will be thoroughly familiar with the procedures and safety measures provided in the RPCC Plan. All emergency response technicians will be trained annually by a qualified professional in proper hazardous substance and hazardous waste release response techniques and RPCC implementation. A list of trained employees is presented in Table 4.

4.0 EMERGENCY RESPONSE PROCEDURES

4.1 General Overview

The Emergency Response Procedures outlined in this RPCC include procedures in the event of a release of petroleum, hazardous materials, chemicals,

or fires or explosions. It should be noted that special procedures are presented specific to the in-plant release of airborne Cadmium. All procedures will be reviewed annually, and amended as needed to address changes or additions to facilities, processes, operations, hazardous substances, and personnel which would adversely impact their effectiveness. Following the occurrence of a spill, release, fire, or explosion that requires implementation of this plan, the Facility Emergency Coordinator must immediately notify the proper regulatory agencies and follow-up with a written release report which will be submitted within the time frame requirements (5 - 15 days) of the applicable regulations. Table 3 presents an Emergency Notification List, which includes in-plant, and outside emergency telephone numbers which may be required during an emergency situation.

4.2 Initial Response Procedures

In the event of an emergency situation (e.g., release of a hazardous substance, fire, etc.), the employee detecting the problem will immediately inform his/her Department Supervisor. In the event that the Department Supervisor is not available, the employee detecting the problem should immediately contact another supervisor, the FEC or an alternate FEC, and then move all personnel away from the affected area. No attempt to locate and eliminate the source, contain or remediate the release or extinguish the fire should be undertaken by that employee detecting the problem unless he/she has been specifically trained and approved by NCC to undertake such actions.

The responding Supervisor must then consider several factors, including the nature of the situation (note the presence of Cadmium-bearing substances), whether any personnel or facilities are in jeopardy and safety equipment availability. Following his/her initial evaluation of the situation, the Supervisor should act in accordance with the following procedures:

- **Do not take any unnecessary risks**;

- If evacuation is necessary, know how to: 1) Sound the facility alarm; 2) Initiate evacuation procedures; 3) Assemble and account for department personnel and visitors/contractors;

- Document the incident and response activities so that this information can be used for reporting purposes.

If the problem appears simple, such as spilled dry chemical or a tipped liquid container, a Supervisor or other authorized personnel may take initial response actions (including closing valves, turning drums upright, activating emergency pumps, using absorbent materials, or extinguishing a fire) before the FEC is notified. These measures should only be undertaken if they can be accomplished without any risk to the responding individual. In all cases, the Supervisor's main objective during this initial response period is to stay in control of the situation until experts arrive.

The Supervisor or other authorized personnel should never become involved without first contacting another employee about the situation. If there is imminent danger to that person (including the presence of airborne Cadmium), the source is not immediately obvious or if these measures are not effective and the situation is beyond his/her control, then the initial responder should contact the FEC or an alternate FEC immediately. It is imperative that the Facility Emergency Coordinator be informed of the incident in order to implement NCC's proper Emergency Response Procedures. **For employees in the Color Cell and other glaze storage/handling areas, a preliminary determination must be made as to whether the release involves orange-colored glaze, which is Cadmium bearing (See special procedures section below).**

4.3 Facility Emergency Coordinator Response Procedures

Upon arrival at the scene, the FEC or alternate FEC will complete the initial assessment of any situation, and determine whether an emergency exists within the NCC facility. Emergency response activities are based upon the need to define, address and mitigate the problem at hand. Defining the situation consists of assessing the hazard and its degree of risk associated with the substances involved, their potential dispersion pathways and the need for protective actions. This assessment must evaluate possible hazards to human health or the environment that may result from the situation, including both direct and indirect effects (e.g., the effects of any toxic, irritating or asphyxiating gases that are generated). If it is determined by the FEC that adjoining areas of the facility should be evacuated, then the appropriate Department Supervisors will be contacted by the FEC using the internal paging system, and these Supervisors will direct their department personnel out of the building to assemble within the department's designated assembly area.

Special emergency response procedures related to a substantial release of Cadmium-containing substances to be carried out by the Facility Emergency Coordinator involve the following:

- Cease operations in the Color Cell area during the emergency;
- Immediate evacuation of non-response employees from the building containing the release;
- Contact the designated response personnel or agency and notify them that airborne Cadmium presents a risk;
- Ensure that responders are properly outfitted with appropriate respirators and protective clothing (i.e., Tyvek suits, rubber gloves, face shields) to prevent exposure.

Once all of NCC's non-responding personnel are safe, the FEC must determine whether NCC personnel are capable of handling the situation or if outside agencies must be contacted either as notification of the emergency or to aid in any response. Authorized NCC response personnel are identified in Table 4. During this initial phase of an incident, several key decisions must be made by the FEC, including the selection of the proper response equipment and techniques. If the FEC's assessment indicates that evacuation of local areas surrounding the NCC facility may be advisable, he will immediately notify appropriate local authorities.

This notification will be made using the facility telephone system. All notifications to the responding agencies (See Table 3 - Emergency Notification List) should include:

- Name, address, and telephone number of the facility;
- Chemical name or identity of released substance(s) and whether or not the substance is listed under SARA Title III, Section 302(a) - Extremely Hazardous Substance List;
- Hazardous waste name and associated code(s), if applicable;
- The location, source, time, duration cause and circumstances of the release;
- An estimate of the quantity of substance(s) released;
- The environmental media or medium into which the substance(s) was released;
- Any known or anticipated acute or chronic health risks associated with the release, and, where appropriate, advice regarding medical attention necessary for exposed individuals;
- Proper precautions to take as a result of the release, including evacuation;
- Corrective actions being taken and an approximate timetable to control, contain, and clean-up the release;
- Extent of personal injuries or casualties, if any;
- Other unique or unusual circumstances;
- Name and telephone number of person(s) to contact for further information.

Subsequently, the FEC must be available to help appropriate officials decide whether local areas should be evacuated.

During his period of control as part of the emergency response, the FEC must also take all reasonable measures necessary to ensure that releases or other emergency situations do not occur or recur within the facility. These measures must include where applicable, stopping processes and operations, collecting and containing released wastes and removing or isolating containers. If the facility stops operations in response to an emergency, the Facility Emergency Coordinator will monitor for leaks, pressure build-up, gas generation or ruptures in valves, pipes, or other equipment, wherever this is appropriate. Also during the situation, the FEC must record details of all significant occurrences in order to complete a report after the emergency has been controlled.

4.4 Special Response Considerations

The following considerations are presented to provide additional insight into handling emergency situations:

- Do not rush into the emergency area. Stop as soon as there is visual sighting to evaluate the situation;
- Never underestimate an incident. Unknown or unseen substances can easily become involved;
- Always use the buddy system - never send a responder in alone. Use recognized and agreed upon emergency signals to indicate distress;
- Recognize "no win" situations. The life you save may be your own;

- Avoid visible concentrations of smoke, fumes and liquids. Approach from upwind and upgrade using natural barriers for protection;
- Immediately and positively identify the product, its reactive characteristics and proper containment and control methods. Do not commit personnel until positive identifications have been made. Chemical-specific response information can be obtained from a product's Material Safety Data Sheet;
- Make every possible effort to contain spilled hazardous substances and limit contamination to the smallest possible area. Containment includes not only the immediate control of the spill, but continuous control of manpower and equipment; and
- Create a command post on-scene to provide leadership and coordinate field operations.

4.5 Emergency Evacuation Routes and Procedures

Due to its large size and complex structural layout, NCC has several designated evacuation routes through which an emergency evacuation may occur. The evacuation routes and designated assembly areas for the entire facility are identified in Figure 5. Upon being notified of a required evacuation, the Department Supervisors must know the appropriate evacuation route and assembly area for their department, organize and direct the evacuation, and account for all personnel in the assembly area.

Once the notification to evacuate is given by the FEC, the following actions must take place:

o All affected employees will evacuate according to the evacuation route designated for the area they are in at the sounding of the alarm (Figure 5). All employees are trained regarding evacuation routes to be followed in the event of an emergency, and must exit the building via the safest and most direct route and proceed along the property perimeter to the specified assembly area. Evacuation route maps are posted in plain site within all areas of the facility.

o There will be three pre-designated assembly areas where all evacuees will gather for head counting, including the Bailey parking lot (500 Bailey Avenue), the main employee parking lot (adjacent to ERB building), and Harrison parking lot (near the Harrison Street Warehouse). If in the initial assessment of the situation, the FEC determines that any of these assembly areas are unsafe due to a potential risk, the FEC will choose an alternate assembly area(s) which will be announced during the evacuation command. Department Supervisors should advise employees of the established evacuation route or alternative route if the established route is impossible to use.

o Each Department Supervisor will be responsible for head counting his/her employees, as only the Department Supervisor will have an accurate account of which employees are on shift at that time. After performing a head count,

the Department Supervisor will contact the FEC to confirm that all employees within their department are present. A list of missing employees and their last known whereabouts must be provided to the FEC as soon as practicable.

- Emergency response personnel will be available at each assembly area to provide medical assistance as necessary.

ALL PERSONNEL MUST REMAIN IN THEIR DESIGNATED ASSEMBLY AREA UNTIL THEIR SUPERVISOR VERIFIES THEIR PRESENCE.

4.6 Rescue and Medical Responsibilities

NCC employees should never attempt to rescue trapped or incapacitated individuals. The rescue of such persons will be the first priority of the local emergency response agencies upon arriving at the site. If an emergency situation occurs in which an individual becomes trapped or incapacitated, the employee discovering this situation should immediately contact the Department Supervisor. If the Department Supervisor is not available, the person detecting the problem will immediately contact another supervisor, the FEC or the first available alternate FEC using an intra-plant telephone. The FEC or alternate will assess the situation and notify the appropriate local response agencies via telephone, providing details regarding the number and location of individuals requiring rescue and any other information which responders should be aware of before arriving on the scene (i.e., safety precautions, health risks and any special equipment which may be needed to conduct the rescue). Medical aid, if necessary, will be performed by members of the local response agencies. **At no time should facility employees that have not received appropriate First Aid/EMT training and/or certification ever attempt to treat or provide medical assistance to injured individuals.**

4.7 Media Information Management

If upon his assessment of an emergency situation, the FEC determines that the incident may threaten the health and safety of the local community (i.e., major fire, explosion, etc.), the FEC will immediately notify the Company President. The Company President will be solely responsible for communicating with the media regarding public information concerning any emergency situation. When informing the public about an emergency, the Company President should include a detailed explanation of the situation and the preventative measures taken to avoid a future occurrence. **Please note that at no time should NCC employees offer any information to the media or a community organization regarding an emergency situation. Any questions from these groups should be referred directly to the Company President.**

4.8 Follow-up Activities

Immediately after an emergency situation is under control, the Facility Emergency Coordinator must provide for treating, storing, or disposing of all recovered wastes and wastewaters, contaminated soil or any other material that results from the emergency at the facility. In addition, the FEC must ensure that in the affected area(s) of the facility clean up procedures are completed and that all

emergency equipment listed in the RPCC Plan is cleaned and fit for its intended use before operations are resumed.

Absorbent material is located throughout the facility to clean-up small spills and to construct dikes in the event of a larger non-contained spill. Spilled chemicals or hazardous wastes, whether dry or liquid, will never be washed to the facility's sewer systems. Dry chemicals will be shoveled or swept up. In areas with no secondary containment, liquids will be contained using absorbent materials and will be pumped into containers or soaked up with absorbent material. Large volume spills can be contained using absorbent materials to form a berm to control the spread of the liquid. The contained spill may be cleaned up by pumping the liquid into drums or by applying sufficient absorbent materials to soak up all of the spilled liquid and shoveling into drums for proper disposal. These drums will be temporarily stored on pallets out of the weather until arrangements are made for transport and disposal under manifest. Gaseous releases (i.e., acetylene and oxygen) will be vented outdoors and allowed to disperse. Personnel should evacuate the area, stay upwind of the material, and reenter only when wearing the proper protective equipment. If the situation cannot be rectified by NCC personnel, the Facility Emergency Coordinator (FEC) will contact the Buffalo Fire Department and/or Erie County HazMat Team for clean-up assistance.

The disposal of any contaminated absorbent materials following spill containment requires special consideration in each instance. Of primary importance is the chemical composition of the specific material spilled. Should the material contain any hazardous or toxic substances as defined in 40 CFR 261.40 or 6NYCRR Part 371, the contaminated absorbents must be disposed of as hazardous waste subject to federal and state regulation. Other chemicals may also be considered hazardous wastes if they are discarded or spilled, based upon the "Characteristics of Hazardous Waste" as described in these regulations, which identify a substance as exhibiting characteristics of Ignitability, corrosivity, reactivity or toxicity. For all other process chemicals stored on-site (those not containing hazardous or toxic substances or exhibiting hazardous characteristics), spilled material and contaminated absorbents can be disposed of in the plant's normal refuse disposal system. However, in the event that the absorbed materials are petroleum products, and the total monthly amount of waste is greater than or equal to 220 pounds or a 55-gallon drum, the material must be tested for hazardous waste characteristics prior to disposal.

5.0 NOTIFICATIONS AND REPORTING

5.1 Emergency Notification Procedures

This section describes the notification procedures which must be followed in the event of a release of petroleum or hazardous substances. Environmental release reporting procedures are addressed by the following regulations, at a minimum:

- Comprehensive Environmental Response, Compensation and Liability Act (CERCLA/Superfund);
- Superfund Amendments Reauthorization Act (SARA);
- Resource Conservation and Recovery Act (RCRA) and NYSDEC 6 NYCRR Part 371 regulations;
- Toxic Substances Control Act (TSCA);
- Clean Water Act (CWA);
- Clean Air Act (CAA) and NYSDEC 6 NYCRR Part 200 regulations;
- NYSDEC 6 NYCRR Parts 595-599 (Chemical Bulk Storage) and 612-614 (Petroleum Bulk Storage) regulations; and
- Buffalo Sewer Authority Sewer Use Regulations.

The following subsections include information on the proper reporting requirements for regulated substance releases covered by federal regulations. The federal reporting requirements must be used in conjunction with the State and local requirements.

Initial reports should be made by telephone. All oral notifications of a release should include the following information:

- Name, address, and telephone number of the facility;
- Chemical name or identity of released substance(s) and whether or not the substance is listed under SARA Title III, Section 302(a) - Extremely Hazardous Substance List;
- Hazardous waste name and associated code(s), if applicable;
- The location, source, time, duration cause and circumstances of the release;
- An estimate of the quantity of substance(s) released;
- The environmental media or medium into which the substance(s) was released;
- Any known or anticipated acute or chronic health risks associated with the release, and, where appropriate, advice regarding medical attention necessary for exposed individuals;
- Proper precautions to take as a result of the release, including evacuation;
- Corrective actions being taken and an approximate timetable to control, contain, and clean-up the release;
- Extent of personal injuries or casualties, if any;
- Other unique or unusual circumstances;
- Name and telephone number of person(s) to contact for further information.

5.2 Hazardous Substances (CERCLA)

Report any "release" into the environment equal to or exceeding the "reportable quantity" (see below for definition) in any 24 hour period to:

National Response Center
Washington, D.C.
(800) 424-8802 or (202) 267-2675 (24 hours/day)

New York State Department of Environmental Conservation
Regional Spill Response
(716) 851-7220

Reportable Quantity is defined as one pound for hazardous substances other than substances for which specific quantities are listed in 40 CFR Part 302 Table 302A, and 40 CFR Part 300, respectively.

Hazardous Substances are defined by Superfund legislation as:

- Hazardous Substances (Section 311, CWA);
- Hazardous Waste (Section 3002, RCRA);
- Toxic Water Pollutants (Section 307, CWA);
- Toxic Air Pollutants (Section 112, CAA);
- Substances designated to present substantial danger under Section 102, Superfund Act;
- Substances controlled under Section 7, TSCA; and
- Any other substance that because of its physical and/or chemical properties might pose a danger to human health or the environment.

Release is defined as any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment. Releases that are contained within a building are not considered to have entered the environment.

Environment is defined as all surface and groundwater, land surface or subsurface strata and ambient air within the United States or under the jurisdiction of the United States.

5.3 Extremely Hazardous Substances (EPCRA)

Immediately report releases into the environment of reportable quantities of extremely hazardous substances in any 24 hour period which result in exposure to persons outside the boundaries of the facility to:

National Response Center
Washington, D.C.
(800) 424-8802 or (202) 267-2675 (24 hours/day)

New York State Department of Environmental Conservation
Regional Spill Response
(716) 851-7220

New York State Department of Environmental Conservation
Emergency Response Commission (Albany)
(800) 457-7362 or (518) 402-9543

Erie County Department of Emergency Services
(716) 858-6262

A written report should be submitted within 15 days to:

New York State Emergency Response Commission
New York State Department of Environmental Conservation
Bureau of Spill Prevention and Response
625 Broadway
Albany, NY 12233-7020

This written report should include all of the information given in the oral notification as well as the following:

- Actions taken to respond to and contain the release;
- Confirmation of any known or anticipated acute or chronic health risks associated with the release; and
- Advice regarding medical attention necessary for exposed individuals.

5.4 Hazardous Wastes

Report any releases into the environment from a generator, or a treatment, storage or disposal facility equal to or exceeding the reportable quantity to:

National Response Center
Washington, D.C.
(800) 424-8802 or (202) 267-2675 (24 hours/day)

New York State Department of Environmental Conservation
Regional Spill Response
(716) 851-7220
Erie County Department of Emergency Services
(716) 858-6262

A written report should be submitted within 15 days of the incident to:

United States Environmental Protection Agency
Region 2 Preparedness Coordinator
2890 Woodridge Avenue
Edison, NJ 08837

This written report should include all of the information given in the oral notification as well as the following:

- Actions taken to respond to and contain the release;
- An assessment of actual or potential hazards to human health or the environment, where this is applicable;
- Confirmation of any known or anticipated acute or chronic health risks associated with the release; and
- Estimated quantity and disposition of recovered material that resulted from the incident.
- Advice regarding medical attention necessary for exposed individuals.

5.5 Petroleum

Report spills into or upon the "navigable water of the United States" to:

National Response Center
Washington, D.C.
(800) 424-8802 or (202) 267-2675 (24 hours/day)

New York State Department of Environmental Conservation
Regional Spill Response Division
(716) 851-7220

Navigable Waters of the United States is broadly defined as all surface waters.

Facilities required to have a Spill Prevention Control and Countermeasure (SPCC) Plan that have a spill in excess of "1,000 US gallons" in a single event or have two spill events within any 12-month period into or upon "navigable water of the United States" shall submit to the appropriate USEPA Regional Administrator within 60 days from the time the facility becomes aware of the spill a written report containing the following information:

- Names of the facility, owner or operator of the facility;
- Location of the facility;
- Date and year of initial facility operation;
- Maximum storage or handling capacity of facility and normal throughput;
- Description of the facility, including maps, flow diagrams, and topographic maps;
- A complete copy of the SPCC plan with any amendments;
- The cause(s) of the spill, including a failure analysis of the system or subsystem in which the failure occurred;
- The corrective actions and/or countermeasures taken, including an adequate description of equipment repairs and/or replacement;
- Additional preventive measures taken or contemplated to minimize the possibility of recurrence; and
- Such other information as the Regional Administrator may reasonably require pertinent to the Plan or spill event.

5.6 Sewer Discharge Excursions

Report any excursion which may endanger human health or the environment orally within 24 hours of becoming aware of the discharge to:

Buffalo Sewer Authority
90 West Ferry Street
Buffalo, New York 14213
(716) 883-1820

New York State Department of Environmental Conservation
Regional Spill Response Division
(716) 851-7220

In addition to the information identified in Section 5.1 above, the following information must also be orally reported within 24 hours:

- Any unanticipated "bypass" which exceeds any effluent limitation in the BPDES permit;
- Any "upset" which exceeds any effluent limitation in the BPDES permit;
- Violation of a maximum daily discharge limitation for any pollutants listed in the BPDES permit.

A written report must also be provided to the BSA within 5 days of becoming aware of the release, and should include all of the information given in the oral notification as well as the following:

- Description of the non-compliance and its cause;
- Period of non-compliance, including exact dates and times;
- If the non-compliance has not been corrected, the anticipated time that it is expected to continue; and
- Steps taken or planned to reduce, eliminate, and prevent recurrence of the non-compliance.

Bypass is defined as the intentional diversion of waste streams from any portion of a treatment facility.

Upset is defined as an exceptional incident in which there is unintentional and temporary non-compliance with technology based permit effluent limitations, because of factors beyond the reasonable control of the permitee.

5.7 Required NCC Notifications

The Legal Counsel for NCC must be notified after every release or emergency response event that also requires notification of government agencies. A summary report should be completed and mailed to the Legal Department. It is the responsibility of the Facility Emergency Coordinator to complete and submit this summary report. Copies of all summary reports will be maintained in Appendix D.

6.0 PERSONNEL TRAINING

6.1 Training Overview

NCC employees who use, handle or are exposed to hazardous materials or hazardous wastes (i.e., regulated substances) receive extensive training in the safe management of these regulated substances, as well as emergency response procedures, as required by their specific assigned job responsibilities. All of this training addresses facility-specific information, including the implementation of this RPCC plan. All new employees receive initial safety training upon employment, as well as more specific safety training within one month. No new employees are

directly involved in the use or handling of hazardous materials or hazardous wastes until they are properly trained, whether through classroom sessions or on-the-job training. Likewise, employees who transfer to new jobs which involve these responsibilities receive appropriate additional training following their transfer. Everyone who works in an unsupervised position involving regulated substances receives appropriate training. The training of all of these employees is updated annually. NCC's VP Operations is responsible for identifying employees that require training and arranging for the needed training.

6.2 Specific Training Programs

Niagara Ceramics Corporation has initiated various training programs to prepare employees for the proper use and handling of hazardous materials and hazardous wastes, as well as to respond to spills or other releases of petroleum, hazardous materials and hazardous wastes. All employees, regardless of their potential for exposure to any hazardous materials, receive OSHA Hazard Communication (HazCom) Standard training. In addition, Level 1 RCRA Hazardous Waste Management training and OSHA First Responder Awareness level training are provided to those NCC employees working in areas of the facility where hazardous materials are routinely used, handled and/or stored and hazardous wastes are generated (i.e., the Decorating, Decal, Color Cell, Glaze-Making, Glost and Maintenance Departments and the petroleum storage vaults and waste storage area).

Supervisors in the Decorating, Decal, Color Cell, Glaze-Making, Glost and Maintenance Departments are also trained in Level 2 RCRA Hazardous Waste Management and OSHA First Responder Operations, and are authorized to carry out emergency action procedures developed to ensure employee safety in the event of a facility emergency, including a hazardous material or waste release.

The limited number of individuals that serve on the facility's Emergency Response Team, including the Facility Emergency Coordinators, receive Level 3 RCRA Hazardous Waste Management and OSHA Hazardous Materials Technician training. These individuals are familiar with all aspects of this RPCC Plan and the related Emergency Action Plan, and are prepared to respond directly to limited releases of hazardous substances. It should be noted that large releases of hazardous materials or hazardous wastes will be turned over to the Erie County HazMat Team and/or outside contractors.

6.3 Training Program Outlines

The following topics are addressed in NCC's training programs:

OSHA Hazard Communication Standard Training

- General description of the Hazard Communication Standard and summary of applicable employee requirements;
- Details of NCC's Written Hazard Communication Program;
- Definitions of specific technical terms used in the program;
- Identification of hazardous materials used in specific departments;

- Descriptions of the availability and use of both MSDS and container labels, including an explanation of the information presented on them;
- Safe use procedures for handling hazardous materials; and
- Locations of MSDS books, hazardous chemical inventory and written Hazard Communication Program.

Level 1 RCRA Hazardous Waste Management Training

- Applicable state and federal hazardous waste regulations;
- Solid waste determination and hazardous waste characterization criteria;
- Identification of hazardous wastes specific to departments (Ignitable and Cadmium and Lead Toxic wastes are identified);
- Employee responsibilities regarding hazardous waste identification and management at the point of generation;
- Sources of hazardous waste health/safety information, including labels, MSDSs and process manuals;
- Information concerning waste container labeling and the use of manifests and licensed hazardous waste management contractors;
- Restrictions regarding the clean-up of small spills of hazardous wastes; and
- Emergency response procedures for Level 1 employees.

OSHA First Responder Awareness Training

- Applicable federal emergency response regulations;
- Identification of the regulated substances specific to departments;
- Safe use procedures for handling regulated substances;
- Sources of regulated substance health/safety information, including labels, MSDSs and process manuals;
- Employee responsibilities regarding the recognition, notification and evaluation of small spills of regulated substances;
- Selection and use of personal protective equipment; and
- Emergency response procedures for First Responder Awareness level employees.

Level 2 RCRA Hazardous Waste Management Training

- Details regarding the implementation of emergency action procedures in accordance with NCC's RPCC and Emergency Action Plans, include:
  - Identification of Facility Emergency Coordinators and procedures for contacting FECs;
  - Information concerning the identification and inspection of response equipment for each affected department;
  - Basic hazardous waste release risk assessment considerations;
  - Facility alarm and emergency communication systems;
  - Notification and evacuation procedures; and
  - Equipment shutdown procedures.

OSHA First Responder Operations Level Training

- Details regarding the implementation of emergency action procedures in accordance with NCC's RPCC and Emergency Action Plans include:
  - Information concerning the identification and inspection of response equipment for each affected department;
  - Basic hazardous materials or hazardous waste release risk assessment considerations; and
  - Notification and evacuation procedures.
- Use and care of personal protective equipment provided to first responders at the operations level;
- Control, containment and/or confinement measures used to protect employees during small spills of regulated substances;
- Basic decontamination procedures.

Level 3 RCRA Hazardous Waste Management Training

- Incident command procedures for NCC;
- Information concerning the locations and types of emergency response equipment for each affected department;
- Use and care of emergency response equipment; and
- Decontamination, inspection and replacement of emergency response equipment.

OSHA Hazardous Materials Technician Training

- Local, state and federal emergency response plans;
- Advanced hazard and risk assessment techniques;
- Advanced control, containment and confinement measures;
- Health effects, basic chemistry and toxicological terminology and behavior;
- Incident command systems;
- Air monitoring equipment and measuring instruments;
- Confined space safety; and
- Use and care of emergency response equipment, including decontamination.

6.4 Training Records

Training records are maintained by the VP Operations, and are located in the environmental and health/safety filing system at the 75 Hayes Place facility. These training records will be kept on file until closure of this facility.

7.0 EPCRA REQUIREMENTS

7.1 Applicability

The Emergency Planning and Community Right-To-Know Act (EPCRA) was enacted during 1986 to encourage and support emergency planning for mutual aid or municipal responses to chemical emergencies. This Act was enacted in response to concerns regarding the environmental and safety hazards posed by the storage

and handling of hazardous and extremely hazardous substances. Under EPCRA, all facilities must notify local emergency planning groups regarding the amounts of hazardous materials and their locations on-site for reporting and response purposes. In Erie County, the local emergency planning group is the Erie County Local Emergency Planning Committee (LEPC). Reporting (Tier Two Forms) takes place to the Erie County Department of Environment and Planning.

7.2 Extremely Hazardous Substances

There is one extremely hazardous substance (EHS) used and stored at the NCC facility: SULFURIC ACID. Sulfuric Acid is contained in forklift batteries and is used throughout the facility; however, this EHS does not have a significant dispersal potential. The required hazard analysis associated with the transport, use and storage of this EHS at the NCC facility does not mandate the development of a Emergency Response Plan or vulnerability determination (Appendix E).

APPENDIX A

Figures

HAZARD EVALUATIONS	NIAGARA CERAMICS CORPORATION BUFFALO, N. Y. **LOCATION PLAN**	FIGURE 1

APPENDIX B

Tables

Table 1

REGULATED MATERIALS INVENTORY

Material/Chemical	Location	Amount Stored On-Site	Storage Container/ Containment Codes	Release Potential
Icecap K	Bldgs. J & K	03 (lbs.)	H14	Low
Frit Unground 3565	Bldg. K	05 (lbs.)	J14	Low
Alumina Calcined Unground	Bldgs. H, K & A	03 (lbs.)	H14	Low
Oil Roller Tool	Bldg. A	01 (gal.)	D14	Low
Airvol 24203 Polyvinyl Alcohol	Bldg. K	03 (lbs.)	D14	Low
Acetic Acid, Glacial	Bldg. H	03 (lbs.)	E14	Low
Dark Mold Oil	Bldg. A	02 (lbs.)	D14	Low
Micro Liquid Lab Cleaner	Bldg. A	02 (gal.)	D14	Low
Methanol	Bldg. A	02 (gal.)	D14	Low
Machine Self Burnish Gold	Bldg. E-2	03 (lbs.)	N14	Low
Split 230 Emulsion Breaker	Bldg. H	02 (gal.)	O14	Low
MC 25	Bldg. A	03 (lbs.)	J14	Low
Diesel Fuel	Outside Bldg. F	02 (gal.)	A14i	Low
Wax Emulsion	Bldg. A	04 (lbs.)	D14	Low
Aluminum Silicate	Silo	06 (lbs.)	H14	Low
Nepheline Syenite	Bldg. K	05 (lbs.)	J14	Low
Aluminum Oxide	Silo	06 (lbs.)	H14	Low
Propane	Harrison Whse.	02 (lbs.)	L24	Low
Acetylene	Bldg. F	02 (lbs.)	L24	Low
Oxygen	Bldg. F	02 (lbs.)	L24	Low
Hydraulic Oil	Bldg. A	02 (gal.)	A14a	Low
Oils (misc.)	Bldg. A	03 (gal.)	D14	Low
Kerosene	Bldg. A	02 (gal.)	D14	Low
Banding Medium 63/5022	Bldgs. M & F-2	02 (lbs.)	D14	Low
WD-40	Bldgs. A & F	02 (gal.)	D14	Low
Glycol FR40XD	Bldg. A	02 (gal.)	D14	Low
G Zircon	Bldg. K	03 (lbs.)	J14	Low
Contraspum KWE	Bldg. J	03 (lbs.)	E14	Low
Colors (Pb & Cd Containing)	Bldgs. H & K	02 (gal.)	I & C14	Low
Flint - Crystalline Silica	Silo	06 (lbs.)	H14	Low
Solvent GLV-100	Bldgs. A & F-2	03 (lbs.)	D14	Low

Table 1 - RAW MATERIALS INVENTORY (continued)

Material/Chemical	Location	Amount Stored On-Site	Storage Container/ Containment Codes	Release Potential
Silicone Fluid SWS-101	Bldg. F-2	02 (lbs.)	D14	Low
Kwik Dri 66	Bldgs. M & F-2	02 (lbs.)	D14	Low
Rando HD 46 Refined Solvent	Bldg. A	02 (gal.)	D14	Low
Darvan 811	Bldg. AA-2	02 (lbs.)	D14	Low
772 Water Repellant	Bldg. F-2	02 (lbs.)	D14	Low
Batt Wash	Bldg. A	03 (lbs.)	D14	Low
Argon/ Carbon Dioxide	Bldg. F	01 (lbs.)	L24	Low
Glaze In System	Bldgs. K & H	04 (lbs.)	R14	Low
Lead/ Cadmium Waste	Bldg. K & Sheds	05 (lbs.)	K14	Low
Waste Oil	Bldg. A & Sheds	02 (gal.)	D14	Low
Industrial Batteries - Pb & SO_4	Bldg. A	04 (lbs.)	R14	Low

The amounts of substances stored on site were estimated by NCC using CY 2000 SARA data. The following codes should be used to identify the ranges of the amounts typically on site over the course of a year.

Range Value	Quantity Range in Pounds or Gallons From	To
01	0	99
02	100	999
03	1,000	9,999
04	10,000	99,999
05	100,000	999,999
06	1,000,000	9,999,999

The type of storage container along with the actual storage conditions and the type of secondary containment provided should be designated for each source using the following codes.

Codes	Types of Storage
A	Above Ground Tank
B	Below Ground Tank
C	Tank Inside Building
D	Steel Drum
E	Plastic or Non-Metallic Drum
F	Can
G	Carboy
H	Silo
I	Fiber Drum
J	Bag
K	Box
L	Cylinder
M	Glass Bottles or Jugs
N	Plastic Bottles or Jugs
O	Tote Bin
P	Tank Wagon
Q	Rail Car
R	Other

Codes	Storage Conditions
(PRESSURE)	
1	Ambient Pressure
2	Greater Than Ambient
3	Less Than Ambient
(TEMPERATURE)	
4	Ambient Temperature
5	Greater Than Ambient
6	Less Than Ambient
7	Cryogenic Conditions

Codes	Secondary Containment
a	Dikes or Berms
b	Curbing
c	Culverts, Gutters, Sumps
d	Weirs, Booms, Dams
e	Spill Diversion Ponds
f	Retention Ponds
g	Drip Pans
h	Sorbent Materials
i	Other
(FOR BURIED TANKS)	
k	Coated
l	Cathodic Protection

Release potential rankings are based upon the likelihood that a material will leave the confines of its containment vessel, pipe, or dike and enter the environment. A "low" ranking indicates secure containment and/or little chance for a released material to reach the environment. A "moderate" ranking may indicate less secure containers, piping and valves which may leak, moderate possibility of container damage by vehicles, no secondary containment and/or a possibility that released material may enter the environment. A "high" ranking may indicate that containers are not suitable for the chemical stored, poor conditions of containers, high possibility of container damage by vehicles, little or no secondary containment and/or high possibility that released material may enter the environment through drains, soil percolation, or vapor releases.

Table 2

INSPECTION SCHEDULE

Area/Equipment	Types of Problems	Frequency	Responsibility
Solvent Storage Vault	leaking or spilled drums	weekly	Decorating Mgr.
Oil Storage Vault	leaking or spilled drums	weekly	Maintenance Dept.
Compressed Gas Storage Vault	unsecured, damaged cylinders	weekly	Maintenance Dept.
Welding Department	unsecured, damaged cylinders	weekly	Maintenance Dept.
Decorating	leaking or spilled containers	weekly	Decorating Mgr.
Frit 3565 Storage Area	leaking or spilled containers	weekly	Decorating Mgr.
Hazardous Waste Storage Shed	leaking or spilled drums	weekly	Decorating Mgr.
Non-Hazardous Waste Storage Shed	leaking or spilled drums	weekly	Decorating Mgr.

Table 3

EMERGENCY NOTIFICATION LIST

Facility Emergency Coordinator
Karl Franz, Vice President, Engineering
plant: (716) 824-8515; ext. 205
cell: (716) 983-7945
home: (716) 667-7577

First Alternate Facility Emergency Coordinator
Don Hale, Maintenance Supervisor
plant: (716) 824-8515; ext. 223
cell: (716) 984-2079
home: (716) 892-7601

Second Alternate Facility Emergency Coordinator
Carl Huckins, Maintenance Engineer
plant: (716) 824-8515; ext. 262
cell: (716) 982-2056
home: (716) 895-1137

Buffalo Police Department (South District)	911 or (716) 851-4409
Buffalo Fire Department	911 or (716) 851-3822
Mercy Hospital	(716) 826-7000
Ambulance Service (Rural Metro)	911 or (716) 882-8400
Buffalo Sewer Authority	(716) 883-1820
City of Buffalo Dept. of Public Works	(716) 847-1065
Erie County Department of Emergency Services	(716) 858-6262
Erie County Department of Health	(716) 898-4225
NYSDEC Spill Response	(716) 852-7220
Poison Control Center of Western New York	(800) 888-7655
National Response Center	(800) 424-8802
CHEMTREC	(800) 424-9300

Table 4

EMERGENCY RESPONSE TEAM PROFILE

Facility Emergency Coordinator:
Karl Franz, Vice President of Engineering

Emergency Response Personnel List:
Don Hale, Maintenance Supervisor;
Carl Huckins, Maintenance Engineer;
Frank Trala, Kiln supervisor;
Joe Bronco, Director of Decorating;
John Bartolucci, Kiln Fireman;
Calvin Cawthon, Kiln Fireman;
Edward Sarvis, Kiln Fireman; and
Charles Schalberg, Kiln Fireman.

APPENDIX C

Inspection Forms

Hazardous Waste
Universal Waste Storage Inspection Log
Niagara Ceramics Corporation
2007

Week	Number of boxes	Stored/labeled correctly	Inspector	Remarks

Hazardous Waste
Universal Waste Storage Inspection Log
Niagara Ceramics Corporation
2007

Week	Number of boxes	Stored/labeled correctly	Inspector	Remarks

Hazardous Waste
Universal Waste Storage Inspection Log
Niagara Ceramics Corporation
2007

Week	Number of boxes	Stored/labeled correctly	Inspector	Remarks

APPENDIX D

Release Reports

APPENDIX E

EPCRA Requirements

HAZARD EVALUATIONS

HAZARD EVALUATIONS, INC. • 3836 N. BUFFALO ROAD • ORCHARD PARK, NEW YORK 14127
716-667-3130 • FAX 716-667-3156

November 30, 2004

Patrick L. Daley, SARA Title III Coordinator
Erie County Department of Emergency Services
Erie County Office Building, Room 1351
95 Franklin Street
Buffalo, New York 14202

Re: **USEPA SARA Section 302; Emergency Response Plan**
Niagara Ceramics Corporation, Buffalo, NY

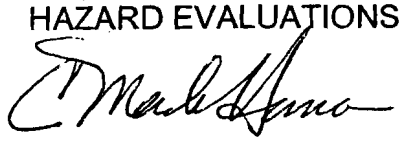
Dear Mr. Daley:

Recently, your office contacted Hazard Evaluations, Inc. (HEI) requesting an update of the Emergency Response Plan and HA-1 forms for Niagara Ceramics Corporation (NCC), formerly the Buffalo China, Inc. manufacturing facility. The former BCI facility had reported two EHSs on the SARA Title III Section 302 Tier Two forms that were stored in excess of applicable Threshold Planning Quantities for calendar year 2003: **Sulfuric acid** (stored in forklift batteries) and **Phosphorus pentoxide** (contained in bone ash).

In order to assist NCC in complying with applicable SARA Title III Section 302 requirements, HEI has performed a review of the facility's current operating data and determined that NCC is **not** required to complete an Emergency Response Plan. The Sulfuric acid previously reported is contained in forklift batteries; therefore, a release from these articles would not present a dispersion issue. The Phosphorus pentoxide is not used on-site by NCC, and was removed from the facility and returned to the manufacturer during the week of September 20, 2004.

If you have any questions concerning this information, please contact me directly.

Very truly yours,
HAZARD EVALUATIONS, INC.



C. Mark Hanna, CHMM
President

cc: K. Franz (NCC)
20401\NCC#1\General\ERPresponse1204

Attachment 6

Job Descriptions

JOB DESCRIPTION

Job Title:	Millwright/Electrician	Job No:	503-772
Department:	Maintenance	Date:	04/01/04

JOB DEFINITION:

Rig, move, install, rebuild, align and maintain all equipment and do electrical work to the extent of electrical qualification.

GENERAL RESPONSIBILITIES:

1. Analyzes mechanical, electrical and plumbing malfunctions to identify problems and required corrective action.
2. Secure parts, tools and equipment required for installation, repairs and adjustment.
   Repairs, overhauls, adjusts, aligns and sequences the equipment.
3. Performs welding operations as required.

PHYSICAL ACTION:

Stands, walks, sits, bends,lays down, climbs ladders.

MATERIAL UTILIZED:

All equipment and parts for equipment.

FACILITIES USED:

Electricity, water, gas, air, vacuum.

TOOL AND EQUIPMENT USED:

All shop tool-drills, lathes, power saw, welding and burning equipment, common hand tools, hoists, special tools as required, electrical test instruments.

REQUIRED TRAINING:

Level 1 RCRA Hazardous Waste Management.
OSHA First Responder Awareness

The above statement reflects the general details considered necessary to describe principal functions of the work identified, and shall not be construed as a detailed description of all the work requirements that may be inherent in the job.

JOB DESCRIPTION

Job Title: China Operator - Glost Job No.: _____

Department: All Departments Date: 6/5/02

JOB DEFINITION:
Perform all operations related to manufacturing china ware.

GENERAL RESPONSIBILITIES:
1. Unload ware from dryer shelve in a careful manner.
2. Cut flash and imperfections from edge of ware with a knife or toll using a turntable as required.
3. Remove tool marks and other imperfections with wet sponge to obtain required finish.
4. Visually inspect the ware to insure conformance to quality standards.
5. Prepare greenware and apply parting agent and supply firing support as necessary.
6. On an as needed basis move trucks as required.
7. Place finished pieces in bungs on refractory setters and place total bung on ware wagon.
8. Obtains greenware and applies separating agent and any other firing support as required.
9. Maintains daily written and electronic records as required.
10. Maintains a clean and orderly work area.
11. Performs other tasks as needed or directed by lead - director.

PHYSICAL ACTION:
Stand, walk, lift, bend, push, pull, sit, carry and stack.

MATERIAL UTILIZED:
Unfired greenware, parting agents, disks, setters.

FACILITIES USED:
Electricity, water

TOOL AND EQUIPMENT USED:
Turn table, cutting tools, knife, sponge, refractory setters, brush, boom, writing utensils, ware trucks, plaster batts, cargo containers, kiln cars

REQUIRED TRAINING:
Level 1 RCRA Hazardous Waste Management.
OSHA First Responder Awareness

The above statement reflects the general details considered necessary to describe principal functions of the work identified, and shall not be construed as a detailed description of all the work requirements that may be inherent in the job.

JOB DESCRIPTION

Job Title: China Operator - Decorating/Decal Job No.: _____

Department: All Departments Date: 6/5/02

JOB DEFINITION:
Perform all operations related to manufacturing china ware.

GENERAL RESPONSIBILITIES:
1. Unload ware from dryer shelve in a careful manner.
2. Cut flash and imperfections from edge of ware with a knife or toll using a turntable as required.
3. Remove tool marks and other imperfections with wet sponge to obtain required finish.
4. Visually inspect the ware to insure conformance to quality standards.
5. Prepare greenware and apply parting agent and supply firing support as necessary.
6. On an as needed basis move trucks as required.
7. Place finished pieces in bungs on refractory setters and place total bung on ware wagon.
8. Obtains greenware and applies separating agent and any other firing support as required.
9. Maintains daily written and electronic records as required.
10. Maintains a clean and orderly work area.
11. Performs other tasks as needed or directed by lead - director.

PHYSICAL ACTION:
Stand, walk, lift, bend, push, pull, sit, carry and stack.

MATERIAL UTILIZED:
Unfired greenware, parting agents, disks, setters.

FACILITIES USED:
Electricity, water

TOOL AND EQUIPMENT USED:
Turn table, cutting tools, knife, sponge, refractory setters, brush, boom, writing utensils, ware trucks, plaster batts, cargo containers, kiln cars

REQUIRED TRAINING:
Level 1 RCRA Hazardous Waste Management.
OSHA First Responder Awareness

The above statement reflects the general details considered necessary to describe principal functions of the work identified, and shall not be construed as a detailed description of all the work requirements that may be inherent in the job.

JOB DESCRIPTION

Job Title: Glaze/Color Setup Job No:
Department: Glost Date: 04/1/04

JOB DEFINITION:
Reclaims and prepares glaze as directed. Clean glazing machine.

GENERAL RESPONSIBILITIES:
1. Operates glaze reclaim equipment in a prescribed manner to render usable glaze that meets all operating specifications.
2. Performs quality and control checks.
3. Maintains current status of all required inventories.
4. Participates in new employee orientations through job demonstration.
5. Keeps written or electronic records as required.
6. Cleans glazing equipment between changes and surrounding areas on daily basis.
7. Maintains orderly work area.
8. Performs other miscellaneous functions as directed.
9. Use protective equipment as required.

PHYSICAL ACTION:
Stand, walk, climb, lift, bend, sit, pull, push.

MATERIAL UTILIZED:
All materials/components required to process reclaimed glaze.

FACILITIES USED:
Electricity, compressed air, gas, water.

TOOL AND EQUIPMENT USED:
Hand power walker, filter press, pumps, storage tanks, high shear mixer, hand tools, pressure washer, scales, viscometer, barrels.

REQUIRED TRAINING:
Level 1 RCRA Hazardous Waste Management.
OSHA First Responder Awareness

The above statement reflects the general details considered necessary to describe principal functions of the work identified, and shall not be construed as a detailed description of all the work requirements that may be inherent in the job.

JOB DESCRIPTION

Job Title: Firemen Job No.: _____

Department: All Departments Date: 6/5/02

JOB DEFINITION:
Perform all operations related to firing and manufacturing chinaware.

GENERAL RESPONSIBILITIES:
1. Monitor and control all firing equipment.
2. Fill in all manufacturing areas as needed.
3. Visually inspect the ware to insure conformance to quality standards.
4. Prepare greenware and apply parting agent and supply firing support as necessary.
5. On an as needed basis move trucks as required.
6. Place finished pieces in bungs on refractory setters and place total bung on ware wagon.
7. Obtains greenware and applies separating agent and any other firing support as required.
8. Maintains daily written and electronic records as required.
9. Maintains a clean and orderly work area.
10. Performs other tasks as needed or directed by Supervisor.

PHYSICAL ACTION:
Stand, walk, lift, bend, push, pull, sit, carry and stack.

MATERIAL UTILIZED:
Unfired greenware, parting agents, disks, setters.

FACILITIES USED:
Electricity, water

TOOL AND EQUIPMENT USED:
Turn table, cutting tools, knife, sponge, refractory setters, brush, boom, writing utensils, ware trucks, plaster batts, cargo containers, kiln cars

REQUIRED TRAINING:
Level 1 RCRA Hazardous Waste Management.
OSHA First Responder Awareness

The above statement reflects the general details considered necessary to describe principal functions of the work identified, and shall not be construed as a detailed description of all the work requirements that may be inherent in the job.

Salaried Job Description

Title: Decorating Technician
Department: Decorating Services
Approved By:

Date: Revised
5/01/2007

Summary: Supervises all technical processes in the silkscreen, decal room, color lab, and photo lab allowing decorating and sample departments to meet individual requirements in an efficient, safe and timely manner.

Essential Duties and Responsibilities:

1. Approves new artwork before issued to production.
2. Insures that in-house decals are manufactured in a cost efficient manner.
3. Insures proper materials are available to perform functions and controls the maintenance of all pertinent equipment.
4. Performs experimentation in the areas of cost/loss reduction and process development.
5. Coordinates with production control to enter new decorating processes and processing changes into the mainframe computer system.
6. Develops and distributes up to date product decorating specifications.
7. Performs other marginal tasks.

Supervisory Responsibilities:

1. Supervises 5 to 8 salaried employees in the services area.
2. Performs all interviewing, hiring, training, performance appraising, rewarding, developing and disciplining for direct reports.
3. Establishes workload priorities.
4. Supervises the decorating leadpersons and operators in the production of samples.
5. Evaluates and develops future objectives for all direct reports.
6. Manages capital projects that affect his/her area.

Qualification Requirements:

To perform this job successfully an individual must be able to perform each of the above essential duties satisfactorily. The requirements listed below are representative of the knowledge, skill, and/or ability required. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

EDUCATION AND / OR EXPERIENCE:

1. Associates degree in engineering with an emphasis on ceramics or chemistry and /or 3 to 5 years experience in decorated hotel china, silk screening and photography.

LANGUAGE SKILLS:

1. Read/write simple and complex instructions.
2. Draft short memos and correspondence.
3. Present information to small groups and relay information over the phone.

MATHEMATICAL SKILLS:

1. Add, subtract, multiply, divide whole number, fractions and decimals.
2. Calculate and use ratios, percentages and fractions.

REASONING ABILITY:

1. Absorb and interpret data in written, graphical, digital, audio and oral form and develop conclusions from these for the solution of problems.
2. Handle high volume of changing priorities with reasonable level of organization and control.

PHYSICAL DEMANDS:

The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

1. Frequently required to stand, walk, use hands to finger, handle or feel, talk or hear.
2. Occasionally required to sit, reach with hands and arms, climb or balance, stoop, kneel crouch and crawl and taste or smell.
3. Frequently required to lift up to 10 lbs. Occasionally required to lift as much as 100 lbs.
4. Frequently required to use color distinction. Occasionally required to use close vision, distant vision, peripheral vision, depth perception and adjust focus.

REQUIRED TRAINING:

1. Level 1 RCRA Hazardous Waste Management.
2. OSHA First Responder Awareness
3. Level 2 RCRA Hazardous Waste Management

WORK ENVIRONMENT:

1. Works in controlled temperature environment under comfortable conditions.
2. Occasionally required to work near moving parts, in high precarious places, in fumes or airborne particles or near toxic or caustic chemicals. Occasionally exposed to risk of electric shock and vibration.
3. Frequently works in noise of moderate levels. Occasionally works in very quiet, quiet or loud conditions.

Job Description

Title: Supervisor
Department: Decorating/ Decal
Approved By:

Date: Revised
5/01/2007

Summary:

Directs personnel and coordinates activities of department(s) to manufacture planned quantities of quality products, on a timely basis within budgetary objectives.

Essential Duties and Responsibilities:

1. Plans, schedules, organizes and supervises the daily production activities of assigned department(s).
2. Develops and implements operating methods and procedures designed to eliminate operating problems and improve product quality.
3. Revises production schedules and priorities as a result of equipment failure or operating problems.
4. Monitors inventory levels of all materials and supplies to ensure production priorities and budget objectives are met.
5. Requisitions all maintenance work to be performed in the departments(s).
6. Maintains safety, payroll, and personnel records of all personnel under direct supervision.
7. Manages manpower levels and addresses and resolves human resources issues appropriate to handle at that level.
8. Applies bargaining unit contract.
9. Enforces rules of conduct and safety in the plant.
10. Maintains all documentation required.
11. Performs other marginal tasks.

Supervisory Responsibilities:

1. Supervises the work of up to 40 bargaining unit employees.
2. Interviews, trains, assigns work, directs, appraises performance, issues discipline, develops, rewards and resolves.

Qualification Requirements:

To perform this job successfully an individual must be able to perform each of the above essential duties satisfactorily. The requirements listed below are representative of the

knowledge, skill, and/or ability required. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

EDUCATION AND / OR EXPERIENCE:

1. A.S. degree preferably in business and 1 to 3 years experience in supervision or lead work. Bachelors preferred.
2. Otherwise, 7 to 10 years experience in production supervision in manufacturing environment.

LANGUAGE SKILLS:

1. Read/write simple and complex general and technical instructions.
2. Draft general correspondence. Document performance issues in memo form.
3. Present information, instruct, inform, mediate, negotiate, listen and interpret one on one, to small groups, to large groups and to upper management on phone and in person.
4. Communicate policies, procedures, and rules and bargaining unit contract.

MATHEMATICAL SKILLS:

1. Add, subtract, multiply, divide whole numbers, fractions, decimals etc.
2. Compute rates, ratios, and percents.
3. Use graphs.
4. Contribute to budget development process and use budget and production schedules.

REASONING ABILITY:

1. Solve practical production and human resources problems,
2. Plan scheduling patterns and appropriates manpower levels.
3. Interpret and consistently enforce policies, procedures and bargaining unit contract.
4. Function in situations with many variables where standardization does not exist.
5. Interpret a variety of instructions furnished in written, oral, diagram or schedule form.

PHYSICAL DEMANDS:

The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

1. Regularly required to stand and talk or hear. Frequently required to walk and use hands to finger, handle or feel.
2. Occasionally required to sit, reach with hands and arms, climb or balance, stoop or kneel, taste or smell.

3. Frequently required to lift up to 10 lbs.

Regularly required to use close and distant vision, color distinction, peripheral vision, depth perception and adjust focus.

REQUIRED TRAINING:

1. Level 1 RCRA Hazardous Waste Management.
2. OSHA First Responder Awareness.
3. Level 2 RCRA Hazardous Waste Management.

WORK ENVIRONMENT:

1. Frequently works near moving parts.
2. Occasionally works in wet or humid conditions, in high precarious places, near fumes or airborne particles, near toxic or caustic chemicals, in extreme heat or cold, near risk of electric shock or radiation, and near vibration.
3. Frequently works in moderate, loud or very loud conditions. Occasionally works in very quiet or quiet conditions.

Job Description

Title: Supervisor
Department: Glost/ Color
Approved By:

Date: Revised
5/01/2007

Summary:

Directs personnel and coordinates activities of department(s) to manufacture planned quantities of quality products, on a timely basis within budgetary objectives.

Essential Duties and Responsibilities:

1. Plans, schedules, organizes and supervises the daily production activities of assigned department(s).
2. Develops and implements operating methods and procedures designed to eliminate operating problems and improve product quality.
3. Revises production schedules and priorities as a result of equipment failure or operating problems.
4. Monitors inventory levels of all materials and supplies to ensure production priorities and budget objectives are met.
5. Requisitions all maintenance work to be performed in the departments(s).
6. Maintains safety, payroll, and personnel records of all personnel under direct supervision.
7. Manages manpower levels and addresses and resolves human resources issues appropriate to handle at that level.
8. Applies bargaining unit contract.
9. Enforces rules of conduct and safety in the plant.
10. Maintains all documentation required.
11. Performs other marginal tasks.

Supervisory Responsibilities:

1. Supervises the work of up to 40 bargaining unit employees.
2. Interviews, trains, assigns work, directs, appraises performance, issues discipline, develops, rewards and resolves.

Qualification Requirements:

To perform this job successfully an individual must be able to perform each of the above essential duties satisfactorily. The requirements listed below are representative of the

knowledge, skill, and/or ability required. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

EDUCATION AND / OR EXPERIENCE:

1. A.S. degree preferably in business and 1 to 3 years experience in supervision or lead work. Bachelors preferred.
2. Otherwise, 7 to 10 years experience in production supervision in manufacturing environment.

LANGUAGE SKILLS:

1. Read/write simple and complex general and technical instructions.
2. Draft general correspondence. Document performance issues in memo form.
3. Present information, instruct, inform, mediate, negotiate, listen and interpret one on one, to small groups, to large groups and to upper management on phone and in person.
4. Communicate policies, procedures, and rules and bargaining unit contract.

MATHEMATICAL SKILLS:

1. Add, subtract, multiply, divide whole numbers, fractions, decimals etc.
2. Compute rates, ratios, and percents.
3. Use graphs.
4. Contribute to budget development process and use budget and production schedules.

REASONING ABILITY:

1. Solve practical production and human resources problems,
2. Plan scheduling patterns and appropriates manpower levels.
3. Interpret and consistently enforce policies, procedures and bargaining unit contract.
4. Function in situations with many variables where standardization does not exist.
5. Interpret a variety of instructions furnished in written, oral, diagram or schedule form.

PHYSICAL DEMANDS:

The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

1. Regularly required to stand and talk or hear. Frequently required to walk and use hands to finger, handle or feel.
2. Occasionally required to sit, reach with hands and arms, climb or balance, stoop or kneel, taste or smell.

3. Frequently required to lift up to 10 lbs.

Regularly required to use close and distant vision, color distinction, peripheral vision, depth perception and adjust focus.

REQUIRED TRAINING:

1. Level 1 RCRA Hazardous Waste Management.
2. OSHA First Responder Awareness.
3. Level 2 RCRA Hazardous Waste Managment

WORK ENVIRONMENT:

1. Frequently works near moving parts.
2. Occasionally works in wet or humid conditions, in high precarious places, near fumes or airborne particles, near toxic or caustic chemicals, in extreme heat or cold, near risk of electric shock or radiation, and near vibration.
3. Frequently works in moderate, loud or very loud conditions. Occasionally works in very quiet or quiet conditions.

Salaried Job Description

Title: Supervisor
Department: Maintenance
Approved By:

Labor Grade:
Exempt/Non-Exempt
Date: Revised
5/01/2007

Summary:

Directs personnel and coordinates activities of the maintenance department so product can be made on a timely basis, within budgetary objectives.

Essential Duties and Responsibilities:

1. Plans, schedules, organizes and supervises the daily production activities of assigned department(s).
2. Develops and implements operating methods and procedures designed to eliminate operating problems and improve product quality.
3. Revises production schedules and priorities as a result of equipment failure or operating problems.
4. Monitors inventory levels of all materials and supplies to ensure production priorities and budget objectives are met.
5. Requisitions all maintenance work to be performed in the departments(s).
6. Maintains safety, payroll, and personnel records of all personnel under direct supervision.
7. Manages manpower levels and addresses and resolves human resources issues appropriate to handle at that level.
8. Applies bargaining unit contract.
9. Enforces rules of conduct and safety in the plant.
10. Maintains all documentation required.
11. Performs other marginal tasks.

Supervisory Responsibilities:

1. Supervises the work of up to 40 bargaining unit employees.
2. Interviews, trains, assigns work, directs, appraises performance, issues discipline, develops, rewards and resolves.

Qualification Requirements:

To perform this job successfully an individual must be able to perform each of the above essential duties satisfactorily. The requirements listed below are representative of the

knowledge, skill, and/or ability required. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

EDUCATION AND / OR EXPERIENCE:

1. A.S. degree preferably in business and 1 to 3 years experience in supervision or lead work. Bachelors preferred.
2. Otherwise, 7 to 10 years experience in production supervision in manufacturing environment.

LANGUAGE SKILLS:

1. Read/write simple and complex general and technical instructions.
2. Draft general correspondence. Document performance issues in memo form.
3. Present information, instruct, inform, mediate, negotiate, listen and interpret one on one, to small groups, to large groups and to upper management on phone and in person.
4. Communicate policies, procedures, and rules and bargaining unit contract.

MATHEMATICAL SKILLS:

1. Add, subtract, multiply, divide whole numbers, fractions, decimals etc.
2. Compute rates, ratios, and percents.
3. Use graphs.
4. Contribute to budget development process and use budget and production schedules.

REASONING ABILITY:

1. Solve practical production and human resources problems,
2. Plan scheduling patterns and appropriates manpower levels.
3. Interpret and consistently enforce policies, procedures and bargaining unit contract.
4. Function in situations with many variables where standardization does not exist.
5. Interpret a variety of instructions furnished in written, oral, diagram or schedule form.

PHYSICAL DEMANDS:

The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

1. Regularly required to stand and talk or hear. Frequently required to walk and use hands to finger, handle or feel.
2. Occasionally required to sit, reach with hands and arms, climb or balance, stoop or kneel, taste or smell.

3. Frequently required to lift up to 10 lbs.
4. Regularly required to use close and distant vision, color distinction, peripheral vision, depth perception and adjust focus.

REQUIRED TRAINING:

1. Level 1,2 & 3 RCRA Hazardous Waste Management.
2. OSHA First Responder Awareness

WORK ENVIRONMENT:

1. Frequently works near moving parts.
2. Occasionally works in wet or humid conditions, in high precarious places, near fumes or airborne particles, near toxic or caustic chemicals, in extreme heat or cold, near risk of electric shock or radiation, and near vibration.
3. Frequently works in moderate, loud or very loud conditions. Occasionally works in very quiet or quiet conditions.

Attachment 7

Certification

ATTACHMENT IV

Certification of Answers to Responses to Request for Information

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document (response to EPA Request for Information) and all documents submitted herewith, that the submitted information is true, accurate and complete, and that all documents submitted herewith are complete and authentic, unless otherwise indicated. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

KARL H. FRANZ

NAME (print or type)

VP ENGINEERING

TITLE (print or type)

SIGNATURE

5/25/07

DATE

Complainant's Exhibit 6

NIAGARA CERAMICS CORP.
75 Hayes Place Buffalo, New York 14210
Phone: (716) 821-5600 Fax: (716) 821-5608

May 31, 2007

Ronald Voelkel, Environmental Scientist
RCRA Compliance Branch
Div. Enforcement & Compliance Assistance
USEPA - Region 2
290 Broadway, 22 Floor
New York, New York 10007-1866

Re: **Follow up letter to Response to Notice of Violation**
Niagara Ceramics Corporation, Buffalo, NY
USEPA ID #: NYD 980 653 109

Dear Mr. Voelkel:

On May 25, 2007, Niagara Ceramics Corporation (NCC) facility located at 75 Hayes Place, Buffalo, New York responded to violations citied the agency's April 25, 2007 Notice of Violation (the "Notice') as prepared for Mr. George C. Meyer, PE, Chief, Div. Enforcement & Compliance Assistance. This letter is a continuation of our reponse to Question 2b of the notice.

Question 2: Missing Documents

2b - Employee Job Descriptions and Related Information

During the inspection, job descriptions for all individuals involved with the management of hazardous wastes were not available, nor were any affected employee training records. Job descriptions have been prepared for the various employee classifications and were attached to the initial reponse dated May 25, 2007 as Attachment 6. The list of specific employees whom will be be trained are as follows (Attachment 1) arranged by job title.

We sincerely hope that this submittal is adequate for your agency to help complete its assessment of NCC's response actions. However, if you feel that a submittal of additional selected documents will further serve your needs, please contact me directly to discuss and arrange a submittal. Thank you for your cooperation in this matter.

KF
NCC

Attachment 1

Employees to be Trained and Job Title

VP Engineering	
	Karl Franz
Supervisor Maintenance	
	Carl Huckins
	Don Hale
	Mike Mahiques?
Maintenance Millwright/Electrician	
	Ron Becker
	Chet Romen
	Dan Savage
	Dan Sabadasz
	Pete Mckeown
	Bruce Joyce
Supervisor Glost/Color	
	Peter Blach
	Geno Furler
	Joe Leonarczyak
	Andrea Favors
	Bill Wasielewski
China Operator-Glost	
	Mark Harrington
	Columbus Brooks.
Glaze/Color Setup	
	Tony Clark
Supervisor Decorating/Decal	
	Jim Ventura
	Linda Morgan
	Bruce Lewis
Decorating Technician	
	Robin Mongoivi
	Emmy Oluette
China Operator-Decorating/Decal	
	Nancy Trala
Kiln Fireman	
	Calvin Cawthon
	Frank Trala
	Charles Schalberg
	Ed Sarvis
	John Bartolucci

ATTACHMENT IV

Certification of Answers to Responses to Request for Information

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KARL A FRANZ

NAME (print or type)

VP ENGINEERING

TITLE (print or type)

SIGNATURE

MAY 31 2007

DATE

Complainant's Exhibit 7

BUFFALO CHINA, INC., BUFFALO, NEW YORK 14240

716/824-8515

December 3, 1982

EPA Region II
Information Service Center
26 Federal Plaza
New York, N Y 10007

Gentlemen:

Enclosed is a completed form on notification of hazardous waste activity. We did not complete these forms when originally received as we generate appreciably less than 1000 Kg/month of hazardous waste.

Through an oversight we accumulated more than 1000 Kg of contaminated degreaser solvent and had it collected by an authorized disposal service several days ago. To transport the material we had to complete a N.Y. State hazardous waste manifest which requires an E.P.A. I/D number.

As we understand it, to obtain an I/D number requires the completed form enclosed. We trust that the form is properly completed and you can furnish us with the necessary I/D number.

Sincerely,

BUFFALO CHINA, INC.

Harold Corser
Dir. of Engineering

/jp

cc: L. Rickard
R. Saunders

Please print or type with ELITE type *(12 characters/inch)* in the unshaded areas only.

GSA No. 0246-EPA-OT

EPA — U.S. ENVIRONMENTAL PROTECTION AGENCY
NOTIFICATION OF HAZARDOUS WASTE ACTIVITY

INSTALLATION'S EPA I.D. NO.

I. NAME OF INSTALLATION

II. INSTALLATION MAILING ADDRESS

III. LOCATION OF INSTALLATION

PLEASE PLACE LABEL IN THIS SPACE

INSTRUCTIONS: If you received a preprinted label, affix it in the space at left. If any of the information on the label is incorrect, draw a line through it and supply the correct information in the appropriate section below. If the label is complete and correct, leave items I, II, and III below blank. If you did not receive a preprinted label, complete all items. "Installation" means a single site where hazardous waste is generated, treated, stored and/or disposed of, or a transporter's principal place of business. Please refer to the INSTRUCTIONS FOR FILING NOTIFICATION before completing this form. The information requested herein is required by law *(Section 3010 of the Resource Conservation and Recovery Act)*.

DETACH

FOR OFFICIAL USE ONLY

COMMENTS: C

INSTALLATION'S EPA I.D. NUMBER	APPROVED	DATE RECEIVED (yr., mo., & day)
NYD980653104	A	821209

I. NAME OF INSTALLATION

BUFFALO CHINA INC.

II. INSTALLATION MAILING ADDRESS

STREET OR P.O. BOX: 3 HAYES PL.

CITY OR TOWN: 4 BUFFALO — ST.: NY — ZIP CODE: 14210

III. LOCATION OF INSTALLATION

STREET OR ROUTE NUMBER: 5 SAME

CITY OR TOWN: 6 SAME — ST. — ZIP CODE

IV. INSTALLATION CONTACT

NAME AND TITLE *(last, first, & job title)*: 2 CORSER HAROLD DIRECTOR ENG'G.

PHONE NO. *(area code & no.)*: 716 824 8515

V. OWNERSHIP

A. NAME OF INSTALLATION'S LEGAL OWNER: 8 BUFFALO CHINA INC.

B. TYPE OF OWNERSHIP *(enter the appropriate letter into box)*: M

F = FEDERAL
M = NON-FEDERAL

VI. TYPE OF HAZARDOUS WASTE ACTIVITY *(enter "X" in the appropriate box(es))*

- [X] A. GENERATION
- [ ] B. TRANSPORTATION *(complete item VII)*
- [X] C. TREAT/STORE/DISPOSE
- [ ] D. UNDERGROUND INJECTION

VII. MODE OF TRANSPORTATION *(transporters only – enter "X" in the appropriate box(es))*

- [ ] A. AIR
- [ ] B. RAIL
- [ ] C. HIGHWAY
- [ ] D. WATER
- [ ] E. OTHER *(specify)*:

VIII. FIRST OR SUBSEQUENT NOTIFICATION

Mark "X" in the appropriate box to indicate whether this is your installation's first notification of hazardous waste activity or a subsequent notification. If this is not your first notification, enter your installation's EPA I.D. Number in the space provided below.

- [X] A. FIRST NOTIFICATION
- [ ] B. SUBSEQUENT NOTIFICATION *(complete item C)*

C. INSTALLATION'S EPA I.D. NO.:

IX. DESCRIPTION OF HAZARDOUS WASTES

Please go to the reverse of this form and provide the requested information.

I.D. – FOR OFFICIAL USE ONLY

W

T/A C 1

IX. DESCRIPTION OF HAZARDOUS WASTES *(continued from front)*

A. HAZARDOUS WASTES FROM NON-SPECIFIC SOURCES. Enter the four-digit number from 40 CFR Part 261.31 for each listed hazardous waste from non-specific sources your installation handles. Use additional sheets if necessary.

1	2	3	4	5	6
F001					
7	**8**	**9**	**10**	**11**	**12**

B. HAZARDOUS WASTES FROM SPECIFIC SOURCES. Enter the four-digit number from 40 CFR Part 261.32 for each listed hazardous waste from specific industrial sources your installation handles. Use additional sheets if necessary.

13	14	15	16	17	18
19	**20**	**21**	**22**	**23**	**24**
25	**26**	**27**	**28**	**29**	**30**

C. COMMERCIAL CHEMICAL PRODUCT HAZARDOUS WASTES. Enter the four-digit number from 40 CFR Part 261.33 for each chemical substance your installation handles which may be a hazardous waste. Use additional sheets if necessary.

31	32	33	34	35	36
37	**38**	**39**	**40**	**41**	**42**
43	**44**	**45**	**46**	**47**	**48**

D. LISTED INFECTIOUS WASTES. Enter the four-digit number from 40 CFR Part 261.34 for each listed hazardous waste from hospitals, veterinary hospitals, medical and research laboratories your installation handles. Use additional sheets if necessary.

49	50	51	52	53	54

E. CHARACTERISTICS OF NON-LISTED HAZARDOUS WASTES. Mark "X" in the boxes corresponding to the characteristics of non-listed hazardous wastes your installation handles. *(See 40 CFR Parts 261.21 – 261.24.)*

☐ 1. IGNITABLE (D001) ☐ 2. CORROSIVE (D002) ☐ 3. REACTIVE (D003) ☐ 4. TOXIC (D000)

X. CERTIFICATION

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

SIGNATURE	NAME & OFFICIAL TITLE *(type or print)*	DATE SIGNED
Harold Corser	HAROLD CORSER DIRECTOR OF ENGINEERING	12/2/82

EPA Form 8700-12 (6-80) REVERSE

Complainant's Exhibit 8

BUFFALO CHINA, INC., BUFFALO, NEW YORK 14240

716/824-8515

March 3, 1983

NYD 980653109

United States Environmental
Protection Agency
Region II
26 Federal Plaza
New York, N Y 10278

Dear Sir:

We are in receipt of your letter dated February 22, 1983 received on February 28th requesting a reply by March 4th.

After studying your letter and 40CFR we are still unsure of what action we should take. As explained in our letter of December 3, 1982, we "dirty" a small amount (less than 1000Kg/month) of degreaser solvent. CECOS an authorized disposal service collects the solvent and incinerates it. To transport the initial quantity we had collected since using this solvent which was more than 1000 Kg, CECOS required an EPAI/D number which we requested in our letter of December 3rd. We are now trying to only store up to 1000 Kg before having CECOS collect it.

In the request for the I/D number we may have incorrectly marked box C section VI. Our interpretation was that as we had initially stored more than 1000 Kg then we should mark box C. What we did not do was complete the card requesting Part A which is required if box C is marked. If you need the completed card please let us know and we will mail it to you immediately.

Sincerely,

BUFFALO CHINA, INC.

Harold Corser
Dir. of Engineering

/jp

Complainant's Exhibit 9

FEB 9 1984

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Harold Corser
Director of Engineering
Buffalo China Company
Bayes Place
Buffalo, NY 14210

Re: EPA Identification Number: NYD980653109
Facility Location: Same
Inspection Date: December 2, 1983

Dear Mr. Corser:

The Environmental Protection Agency (EPA) is charged with the responsibility of implementing the Solid Waste Disposal Act, as amended, 42 U.S.C. §6901 et seq. (the Act). [Among the statutes amending the Act is the Resource Conservation and Recovery Act (RCRA), 90 Stat. 2795, P.L. 94-580 (1976).] By notification, you informed EPA that you conduct activities at the above referenced facility involving "hazardous waste," as that term is defined in Section 1004(5) of the Act, 42 U.S.C. §6904(5), and in 40 CFR §261.

In accordance with EPA's responsibility, an inspection was performed at this facility by a duly authorized representative of EPA pursuant to Section 3007 of the Act. This above referenced inspection revealed that your facility was acting as a generator by producing hazardous waste.

40 CFR Part 262.34 establishes standards for generators who accumulate hazardous waste on site for 90 days or less. This section of Part 262 incorporates by reference §265.16 and Subparts C, D, I, and J of 40 CFR Part 265.

The inspection revealed that your facility was in violation of one or more of these subparts. On the basis of these findings, the Chief, Solid Waste Branch, Region II, has determined that your facility is operating in violation of Section 3002 of the Act, 42 U.S.C. §6922, and the regulations promulgated thereunder. The following paragraphs indicate the regulatory provisions that have been violated.

§ 40 CFR §262.34(a) allows a generator to accumulate hazardous waste in containers and tanks for a period of no more than 90 days provided the

accumulation conforms to certain regulations. At the time of the inspection, it was revealed that your facility did not meet the requirements of:

- 40 CFR 262.34(a)(1) which requires a generator to comply with the requirements in 40 CFR 265 Subparts I (Containers) and J (Tanks). At the time of the inspection, containers and/or tanks were observed which failed to comply fully with those Subparts. You were therefore in violation of 40 CFR 262.34(a)(1).

- 40 CFR §262.34(a)(2) which requires the date upon which each period of accumulation begins to be clearly marked and visible for inspection on each container. You were therefore in violation of 40 CFR 262.34(a)(2).

- 40 CFR §262.34(a)(3) which requires each container or tank accumulating hazardous waste to be marked or labeled clearly with the words, "Hazardous Waste." You were therefore in violation of 40 CFR 262.34(a)(3).

- 40 CFR §262.34(a)(4) which requires a generator to comply with the requirements in 40 CFR 265 Subpart C (Preparedness and Prevention) and 40 CFR 265 Subpart D (Contingency Plan and Emergency Procedures) and with §265.16 (Personnel Training). You were therefore in violation of 40 CFR 262.34(a)(4).

40 CFR §262.34(b) states that a generator who accumulates hazardous waste for more than 90 days is an operator of a storage facility and is subject to the requirements of 40 CFR Parts 264 and 265, and the permit requirements of 40 CFR Part 270. At the time of the inspection, waste had been accumulated on-site for more than 90 days without total compliance with above regulations governing operators of storage facilities. You were therefore in violation of 40 CFR 262.34(b)

Section 3008 of the Act authorizes the assessment of a civil penalty of up to $25,000 per day for violations of statutory provisions or relevant regulations. The determination of whether a penalty is to be imposed is based upon the nature and seriousness of the violation and the good faith efforts to comply with the applicable requirements. It has been determined in this case that no penalty will be imposed for the violations cited above if the facility corrects all violations cited herein as expeditiously as possible and in no case later than sixty (60) days from the receipt of this letter. Should the cited violations be discovered at this facility during future inspections, it is likely that an action for the assessment of a civil penalty will be initiated. Furthermore, please be advised that this letter in no way precludes future enforcement actions for any other violations discovered as a result of any other inspection.

Please confirm in writing within sixty (60) days of your receipt of this letter that the above referenced violations have been corrected and include supporting documentation as appropriate. This confirmation should be addressed to:

Ernest A. Regna
Chief, Solid Waste Branch
Air and Waste Management Division
U. S. Environmental Protection Agency, Region II
26 Federal Plaza
New York, NY 10278

with copies to:

Richard A. Baker
Chief, Permits Administration Branch
U. S. Environmental Protection Agency, Region II
26 Federal Plaza
New York, NY 10278

and

Robert Mitrey, P.E.
Regional Solid Waste Engineer, Region 9
New York State Department of Environmental Conservation
600 Delaware Avenue
Buffalo, NY 14202

You must include your EPA identification number on all correspondence.

Should you have questions about this Notice or should you wish to discuss this matter further, please contact Frank Langone of my staff at (212) 264-2073. A copy of the inspection report is enclosed.

Sincerely yours,

Ernest A. Regna
Chief
Solid Waste Branch

Enclosure

cc: David Mafrici, Chief
Bureau of Hazardous Waste Operations, NYSDEC, w/o encl.

Robert Mitrey, P.E.
Regional Solid Waste Engineer, Region 9, NYSDEC, w/o encl.

bcc: Frank Langone, 2AWM-SW w/encl.
Richard A. Baker, 2PM-PA w/o encl.

Complainant's Exhibit 10

BUFFALO CHINA, INC., BUFFALO, NEW YORK 14240

716/824-8515

NYD980653109

March 28, 1984

Mr. Ernest A. Regna
Chief, Solid Waste Branch
Air and Waste Management Division
U.S. Environmental Protection Agency, Region II
26 Federal Plaza
New York, New York 10278

Dear Mr. Regna:

With regard to your letter received on February 9, 1984, enclosed is a copy of our preliminary Hazardous Waste Program. We would appreciate your comments on its format and content.

Immediately after the visit of Mr. Langone on December 10, 1983 we implemented his recommendations of inspecting the drums weekly for leakage, marking the drums, and locating two fire extinguishers and absorbent material adjacent to our storage area. Last week one of our local fire chiefs reviewed our hazardous waste handling and storage and more visits are planned. As you may know we now send our hazardous waste to Envirotek in Buffalo who reclaim it and return the cleaned solvent back to us.

Now that we have a Hazardous Waste Program we can start reviewing it with our employees, but before doing so we would appreciate your comments. We trust that we have complied with the requirements in your letter. There is, however, one paragraph that we do not fully understand and that is 40CFR 262 34 (a) (1). We assume that it relates only to the drum storage area being inspected weekly and the reference to tanks is not applicable.

Sincerely,

BUFFALO CHINA, INC.

Harold Corser

/nl

Harold Corser
Director of Engineering

enc.

cc: Mr. Richard Baker
Mr. Robert - Mitrey, P.E.
Mr. Jack Rudnick - Oneida Ltd.

Complainant's Exhibit 11

FOR BUSINESS

Niagara China produces high-quality, durable dinn
including mugs, cups, saucers, cookware, plates, b
platters, and other accessory items. We are flexible
meet the needs of a wide range of customers, inclu
museums, corporations, restaurants, collectors, an
organizations. Our state-of-the-art plant in Buffalo,
provides customized design and development optic
are unparalleled in the industry.

Complainant's Exhibit 12

ATTN: RONALD VOELKL Report Printed: AUG 09 2007

In Date

==========

* * * BUSINESS SUMMARY * * *

==========

NIAGARA CERAMICS CORPORATION
75 Hayes Pl
Buffalo, NY 14210
This is a single location.

Telephone:	716 821-5600
Chief executive:	ROBERT LUPICA, PRES
Year started:	1901
Management control:	2004

D-U-N-S® Number:	00-210-8157
D&B Rating:	1R3
Number of employees:	1R is 10 or more employees.
Composite credit appraisal:	3 is fair.

Employs:	250
History:	CLEAR
Financing:	SECURED
SIC:	3262
Line of business:	Mfg vitreous china tableware

D&B PAYDEX®:

12-Month D&B PAYDEX: 78

When weighted by dollar amount, payments to suppliers average 3 days beyond terms.

Based on trade collected over last 12 months.

==========

* * * SUMMARY ANALYSIS * * *

==========

D&B Rating: 1R3

Number of employees: 1R indicates 10 or more employees.

Composite credit appraisal: 3 is fair.

The 1R and 2R ratings categories reflect company size based on the total number of employees for the business. They are assigned to business files that do not contain a current financial statement. In 1R and 2R Ratings, the 2, 3, or 4 creditworthiness indicator is based on analysis by D&B of public filings, trade payments, business age and other important factors. 2 is the highest Composite Credit Appraisal a company not supplying D&B with current financial information can receive.

Below is an overview of the company's rating history since 04/08/04:

D&B Rating	Date Applied
1R3	10/07/04
--	04/08/04

The Summary Analysis section reflects information in D&B's file as of August 6, 2007.

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* * * CUSTOMER SERVICE * * *

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If you have questions about this report, please call our Customer Resource Center at 1.800.234.3867 from anywhere within the U.S. If you are outside the U.S. contact your local D&B office.

*** Additional Decision Support Available ***

Additional D&B products, monitoring services and specialized investigations are available to help you evaluate this company or its industry. Call Dun & Bradstreet's Customer Resource Center at 1.800.234.3867 from anywhere within the U.S. or visit our website at www.dnb.com

==========

* * * HISTORY * * *

==========

The following information was reported 02/07/2007:

Officer(s): ROBERT LUPICA, PRES
RICK REICHARD, CFO

DIRECTOR(S): THE OFFICER(S)
Business started 1901 by Buffalo Pottery Co. Present control succeeded March 2004. 100% of capital stock is owned by officers.
CONTROL CHANGE:
On April 7 2004, inside sources stated Oneida Ltd has completed the sale of certain assets of its Buffalo China dinnerware factory to Niagara Ceramics Corporation in a management led buyout. Robert Lupica, former senior vice president of Oneida, has been named President. Further information was not available.
ROBERT LUPICA. Antecedents are undetermined.
RICK REICHARD. 2004-present active here.

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* * * BUSINESS REGISTRATION * * *

CORPORATE AND BUSINESS REGISTRATIONS REPORTED BY THE SECRETARY OF STATE OR OTHER OFFICIAL SOURCE AS OF JUL 20 2007:
The following data is not an official record of the Department of State or the
State of New York and Dun & Bradstreet is not an employee or agent thereof.

Registered Name:	NIAGARA CERAMICS CORPORATION
Business type:	CORPORATION
Corporation type:	PROFIT
Date incorporated:	FEB 18 2004
State of incorporation:	NEW YORK
Filing date:	FEB 18 2004
Registration ID:	3014779
Duration:	PERPETUAL
Status:	ACTIVE
Where filed:	SECRETARY OF STATE/CORPORATION DIVISION, ALBANY, NY
Principals:	ROBERT LUPICA, CHAIRMAN OF THE BOARD, 75 HAYES PLACE, BUFFALO, NY, 142100000

* * * OPERATIONS * * *

02/07/2007

Description:	Manufactures vitreous china table and kitchenware, specializing in tableware (100%). Has 1,500 account(s). Terms are cash, check or credit card, net 10 days and contractual basis. Sells to commercial concerns. Nonseasonal.
Employees:	250 which includes officer(s).
Facilities:	Owns 210,000 sq. ft. in a two story brick building.

* * * SIC & NAICS * * *

SIC: Based on information in our file, D&B has assigned this company an extended 8-digit SIC. D&B's use of 8-digit SICs enables us to be more specific to a company's operations than if we use the standard

NAICS:

327112	Vitreous China, Fine Earthenware, and Other Pottery Product Manufacturing

4-digit code.

32629904 Tableware, vitreous china

==========

* * * D&B PAYDEX * * *

==========

The D&B PAYDEX is a unique, dollar weighted indicator of payment performance based on up to 54 payment experiences as reported to D&B by trade references.

3-Month D&B PAYDEX: 78	12-Month D&B PAYDEX: 78
When weighted by dollar amount, payments to suppliers average 3 days beyond terms.	When weighted by dollar amount, payments to suppliers average 3 beyond terms.
Based on trade collected over last 3 months.	Based on trade collected over last 12 months.
	When dollar amounts are not considered, then approximately 89% of the company's payments are within terms.

==========

* * * PAYMENT SUMMARY * * *

==========

The Payment Summary section reflects payment information in D&B's file as of the date of this report.

Below is an overview of the company's dollar-weighted payments, segmented by its suppliers' primary industries:

	Total Rcv'd (#)	Total Dollar Amounts ($)	Largest High Credit ($)	W/In Terms (%)		Days Slow (%)		
<31 31-60 61-90 90>								
Top industries:								
Trucking non-local	7	22,000	15,000	62	37	-	1	-
Nonclassified	6	28,600	15,000	100	-	-	-	-
Public finance	5	6,400	5,000	100	-	-	-	-
Whol electrical equip	5	5,850	2,500	79	21	-	-	-
Railroad	2	6,000	5,000	83	17	-	-	-
Coating/engrave svcs	1	55,000	55,000	100	-	-	-	-
Paper mill	1	15,000	15,000	100	-	-	-	-
Mfg gypsum products	1	10,000	10,000	100	-	-	-	-
Misc business credit	1	10,000	10,000	-	100	-	-	-

Gas production/distrb	1	7,500	7,500	100	-	-	-
OTHER INDUSTRIES	20	21,300	5,000	94	5	-	-
Other payment categories:							
Cash experiences	0	0	0				
Payment record unknown	4	6,750	5,000				
Unfavorable comments	0	0	0				
Placed for collections:							
With D&B	0	0					
Other	0	N/A					
Total in D&B's file	54	194,400	55,000				

The highest "Now Owes" on file is $5,000
The highest "Past Due" on file is $1,000
D&B receives over 600 million payment experiences each year. We enter these new andupdated experiences into D&B Reports as this information isreceived.

* * * PAYMENT DETAILS * * *

Detailed payment history

Date Reported (mm/yy)	Paying Record	High Credit ($)	Now Owes ($)	Past Due ($)	Selling Terms	Last Sale Within (months)
07/07	Ppt	5,000	5,000	0	N30	1 mo
	Ppt	2,500	0	0		6-12 mos
	Ppt-Slow 30	1,000	0	0	N15	4-5 mos
	Ppt-Slow 30	250	250	250	N15	1 mo
06/07	Disc	10,000	0	0		2-3 mos
	Disc-Ppt	15,000	2,500	0		1 mo
	Ppt	55,000	0	0		1 mo
	Ppt	15,000	0	0	N30	6-12 mos
	Ppt	10,000	5,000	0		1 mo
	Ppt	7,500	5,000	0		
	Ppt	5,000	5,000	0		1 mo
	Ppt	2,500	0	0		2-3 mos
	Ppt	1,000	0	0		6-12 mos
	Ppt	1,000	250	0		1 mo

	Ppt	1,000	0	0	N30	4-5 mos
	Ppt	500	0	0	N30	6-12 mos
	Ppt	500	500	0		1 mo
	Ppt	500	0	0		1 mo
	Ppt	250	250	0		1 mo
	Ppt	250	250	0		1 mo
	Ppt-Slow 15	15,000	1,000	500		1 mo
	Ppt-Slow 30	2,500	2,500	0		1 mo
	Ppt-Slow 120	500	0	0	N30	6-12 mos
	Slow 20	10,000	0	0		2-3 mos
	Slow 70	250	250	100		1 mo
05/07	Ppt	5,000	0	0		1 mo
	Ppt	2,500	250	0	N30	1 mo
	Ppt	2,500	0	0		6-12 mos
	Ppt	500	0	0		6-12 mos
	Ppt	0	0	0	N30	4-5 mos
04/07	Ppt	0	0	0	N30	6-12 mos
03/07	Ppt	250	0	0		6-12 mos
02/07	Ppt	250	0	0	N30	6-12 mos
01/07	Ppt	250	0	0		6-12 mos
12/06	Slow 30	1,000	1,000	1,000	N30	
	(036)	500	0	0		4-5 mos
11/06	Ppt	100	0	0		6-12 mos
	(038)	50				6-12 mos
	Satisfactory.					
08/06	Ppt	750	0	0	N30	6-12 mos
	Slow 30	1,000	0	0		6-12 mos
07/06	(041)	5,000	0			6-12 mos
06/06	Ppt	250	0	0		6-12 mos
05/06	Ppt	5,000				1 mo
	Ppt	1,000				1 mo

	Ppt	250				1 mo
	Ppt	100				1 mo
	Ppt	50				1 mo
03/06	(048)	1,000	0	0		6-12 mos
02/06	Ppt	1,000	0	0		6-12 mos
	Ppt	750	0	0	N15	6-12 mos
	(051)	250	100	100	N30	
01/06	Ppt	2,500	0	0		6-12 mos
12/05	Ppt	500	0	0		4-5 mos
	Ppt	100	0	0		6-12 mos

Payment experiences reflect how bills are met in relation to the terms granted. In some instances payment beyond terms can be the result of disputes over merchandise, skipped invoices etc.
Each experience shown is from a separate supplier. Updated trade experiences replace those previously reported.

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* * * FINANCE * * *

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02/07/2007
On February 7, 2007, attempts to contact the management of this business have been unsuccessful. Outside sources confirmed operation and location.

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* * * PUBLIC FILINGS * * *

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The following Public Filing data is for information purposes only and is not the official record. Certified copies can only be obtained from the official source.

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* * * UCC FILINGS * * *

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Collateral: All Assets including proceeds and products - All

Inventory including proceeds and products - All
Account(s) including proceeds and products - All
General intangibles(s) including proceeds and products - and OTHERS

Type: Original
Sec. party: CITIZENS BANK, N.A., ALBANY, NY
Debtor: NIAGARA CERAMICS CORPORATION
Filing number: 0611060881257
Filed with: SECRETARY OF STATE/UCC DIVISION, ALBANY, NY
Date filed: 11/06/2006
Latest Info Received: 11/25/2006

Collateral:	All Assets
Type:	Original
Sec. party:	WACHOVIA BANK, NATIONAL ASSOCIATION, AS COLLATERAL AGENT, NEW YORK, NY
Debtor:	BUFFALO CHINA, INC.
Filing number:	0610170831405
Filed with:	SECRETARY OF STATE/UCC DIVISION, ALBANY, NY
Date filed:	10/17/2006
Latest Info Received:	11/07/2006

Collateral:	All Assets
Type:	Original
Sec. party:	CREDIT SUISSE, CAYMAN ISLANDS BRANCH, AS ADMINISTRATIVE AGENT, NEW YORK, NY
Debtor:	BUFFALO CHINA, INC.
Filing number:	0609150749732
Filed with:	SECRETARY OF STATE/UCC DIVISION, ALBANY, NY
Date filed:	09/15/2006
Latest Info Received:	10/09/2006

Type:	Amendment
Sec. party:	CREDIT SUISSE, CAYMAN ISLANDS BRANCH, AS ADMINISTRATIVE AGENT, NEW YORK, NY CREDIT SUISSE, CAYMAN ISLANDS BRANCH, AS COLLATERAL AGENT, NEW YORK, NY
Debtor:	BUFFALO CHINA, INC.
Filing number:	0610170831417
Filed with:	SECRETARY OF STATE/UCC DIVISION, ALBANY, NY
Date filed:	10/17/2006
Latest Info Received:	11/07/2006
Original UCC filed date:	09/15/2006
Original filing no.:	0609150749732

Collateral:	Negotiable instruments including proceeds and products - Inventory including proceeds and products - Accounts receivable including proceeds and products - Account(s) including proceeds and products - and OTHERS
Type:	Original
Sec. party:	JPMORGAN CHASE BANK, N.A., AS AGENT, HOUSTON, TX
Debtor:	BUFFALO CHINA, INC.
Filing number:	0603220255726
Filed with:	SECRETARY OF STATE/UCC DIVISION, ALBANY, NY
Date filed:	03/22/2006
Latest Info Received:	04/27/2006

Collateral:	Assets
Type:	Original
Sec. party:	MANUFACTURERS AND TRADERS TRUST COMPANY, BUFFALO, NY
Debtor:	NIAGARA COLD DRAWN CORP.
Filing number:	20088728
Filed with:	SECRETARY OF STATE/UCC DIVISION, DOVER, DE
Date filed:	12/05/2001
Latest Info Received:	02/01/2002

Type:	Termination
Sec. party:	GREATER BUFFALO SAVINGS BANK, BUFFALO, NY
Debtor:	NIAGARA CERAMICS CORPORATION
Filing number:	0611150909422

Filed with: SECRETARY OF STATE/UCC DIVISION, ALBANY, NY
Date filed: 11/15/2006
Latest Info Received: 12/20/2006
Original UCC filed date: 03/15/2004
Original filing no.: 0403150270212

Type: Termination
Sec. party: GREATER BUFFALO SAVINGS BANK, BUFFALO, NY
Debtor: NIAGARA CERAMICS CORPORATION
Filing number: 0611150909410
Filed with: SECRETARY OF STATE/UCC DIVISION, ALBANY, NY
Date filed: 11/15/2006
Latest Info Received: 12/20/2006
Original UCC filed date: 03/15/2004
Original filing no.: 0403150270197

Type: Termination
Sec. party: A&L HOLDING COMPANY, LLC, BUFFALO, NY
Debtor: NIAGARA CERAMICS CORPORATION
Filing number: 0611150909408
Filed with: SECRETARY OF STATE/UCC DIVISION, ALBANY, NY
Date filed: 11/15/2006
Latest Info Received: 12/20/2006
Original UCC filed date: 03/22/2004
Original filing no.: 0403220293986

Type: Termination
Sec. party: GREATER BUFFALO SAVINGS BANK, BUFFALO, NY
Debtor: NIAGARA CERAMICS CORPORATION
Filing number: 0611150909395
Filed with: SECRETARY OF STATE/UCC DIVISION, ALBANY, NY
Date filed: 11/15/2006
Latest Info Received: 12/20/2006
Original UCC filed date: 03/15/2004
Original filing no.: 0403150270185

Type: Termination
Sec. party: COBBLESTONE ENTERPRISES, LLC, CLARENCE, NY
Debtor: NIAGARA CERAMICS CORPORATION
Filing number: 0611150909383
Filed with: SECRETARY OF STATE/UCC DIVISION, ALBANY, NY
Date filed: 11/15/2006
Latest Info Received: 12/20/2006
Original UCC filed date: 03/22/2004
Original filing no.: 0403220293912

The public record items contained in this report may have been paid, terminated, vacated or released prior to the date this report was printed.

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* * * GOVERNMENT ACTIVITY * * *

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Activity summary

Borrower (Dir/Guar):	NO
Administrative debt:	NO
Contractor:	NO
Grantee:	NO
Party excluded from federal program(s):	NO

Possible candidate for socio-economic program consideration

Labor surplus area:	YES (2007)
Small Business:	YES (2007)

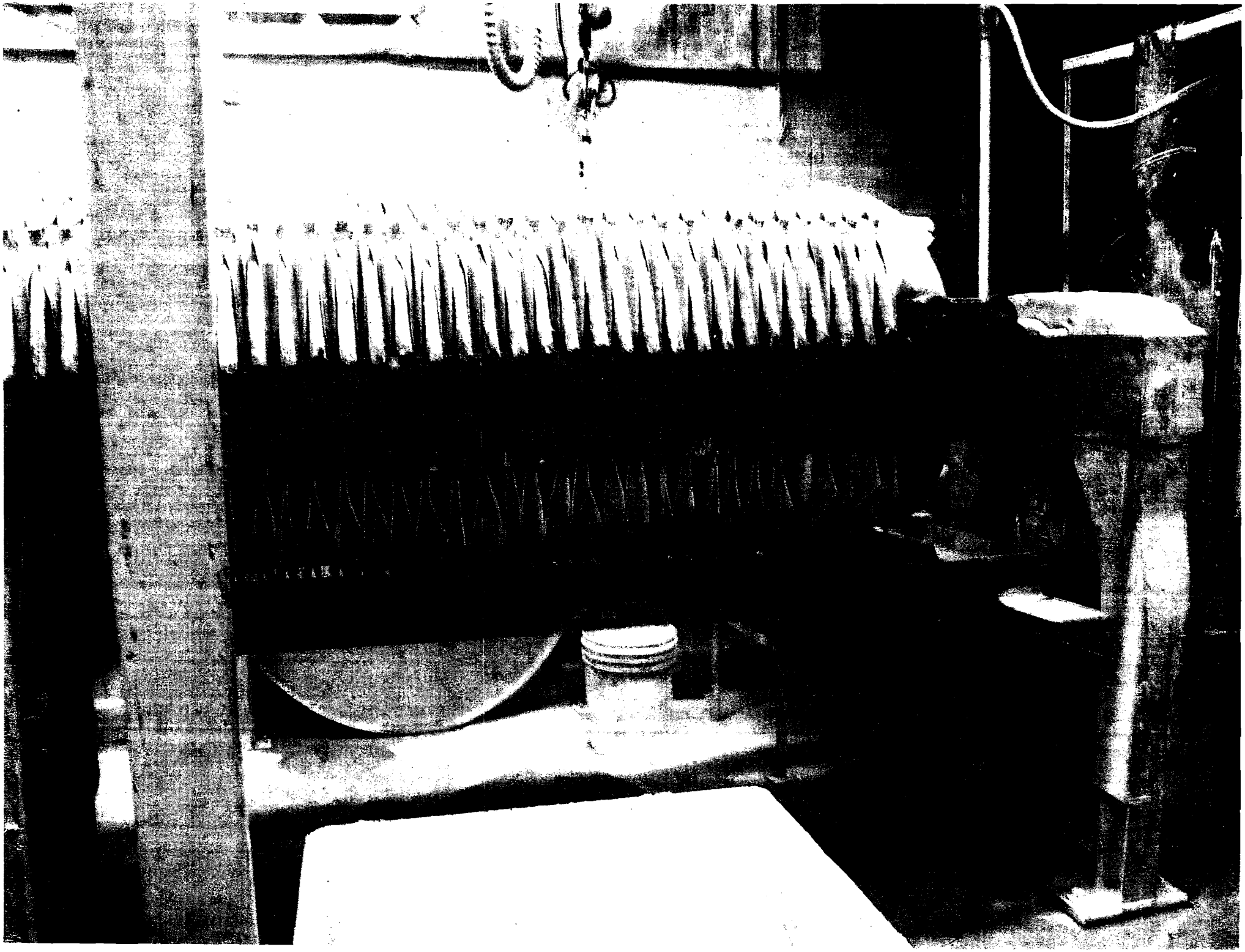
8(A) firm: N/A

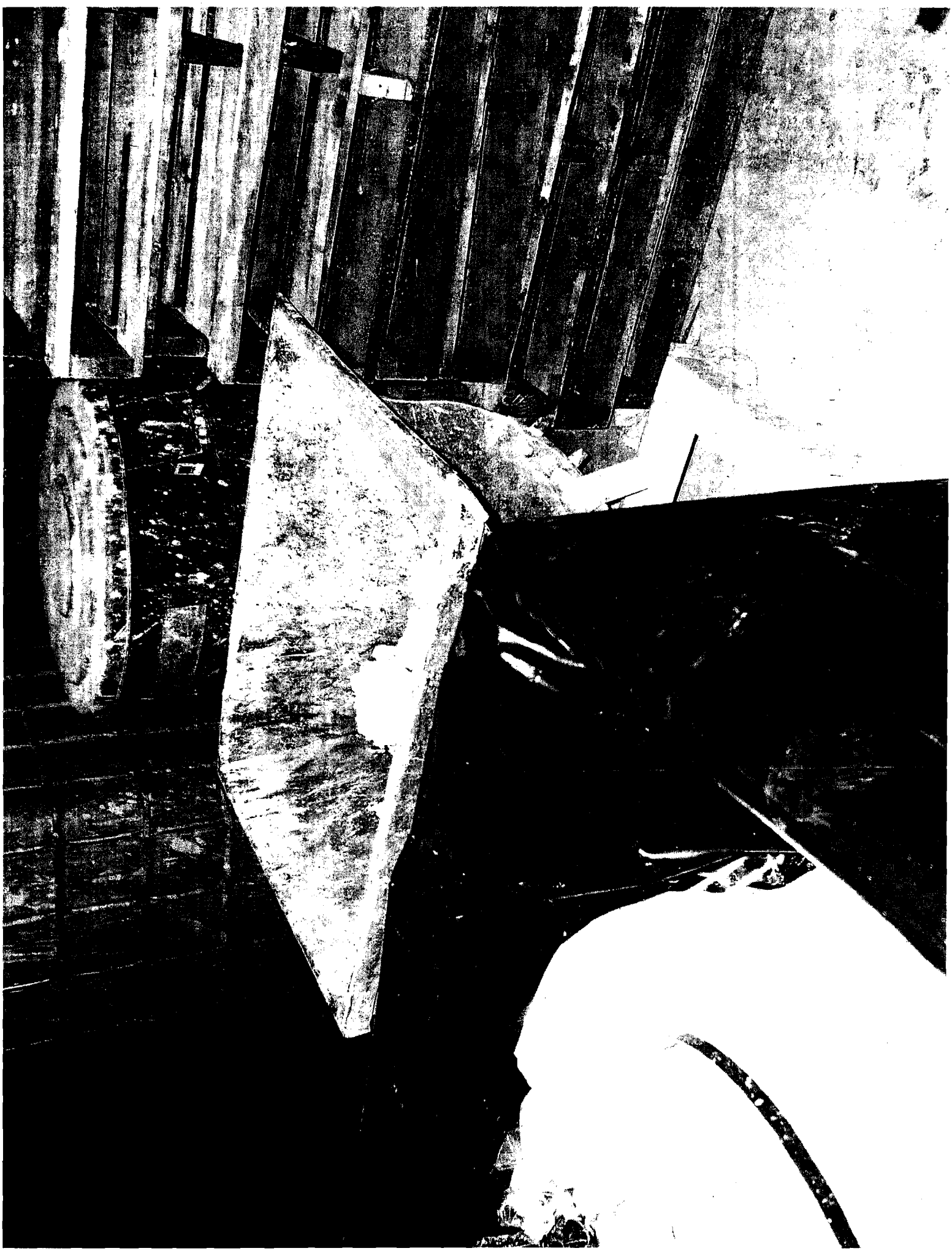
The details provided in the Government Activity section are as reported to Dun
& Bradstreet by the federal government and other sources.

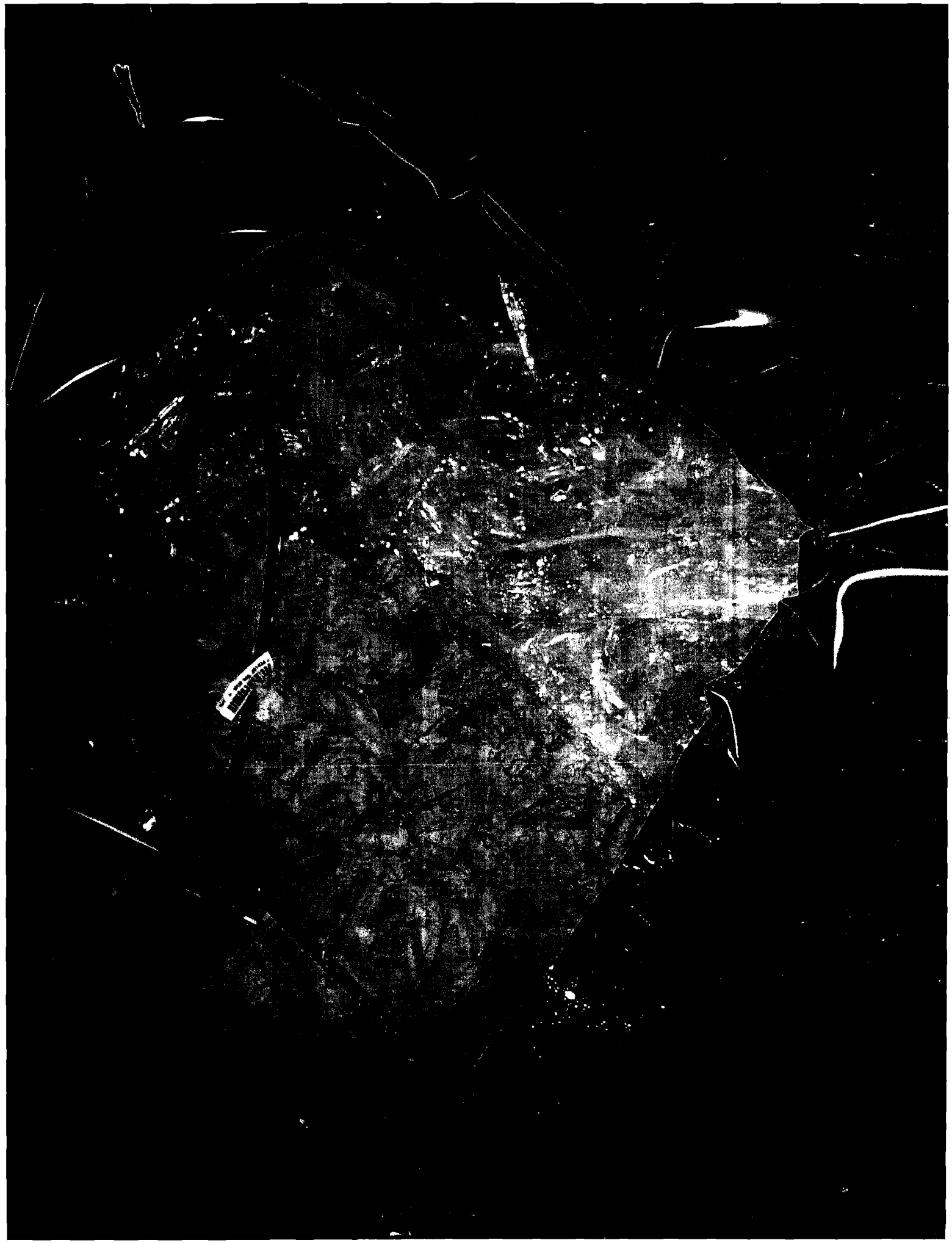
FULL DISPLAY COMPLETE

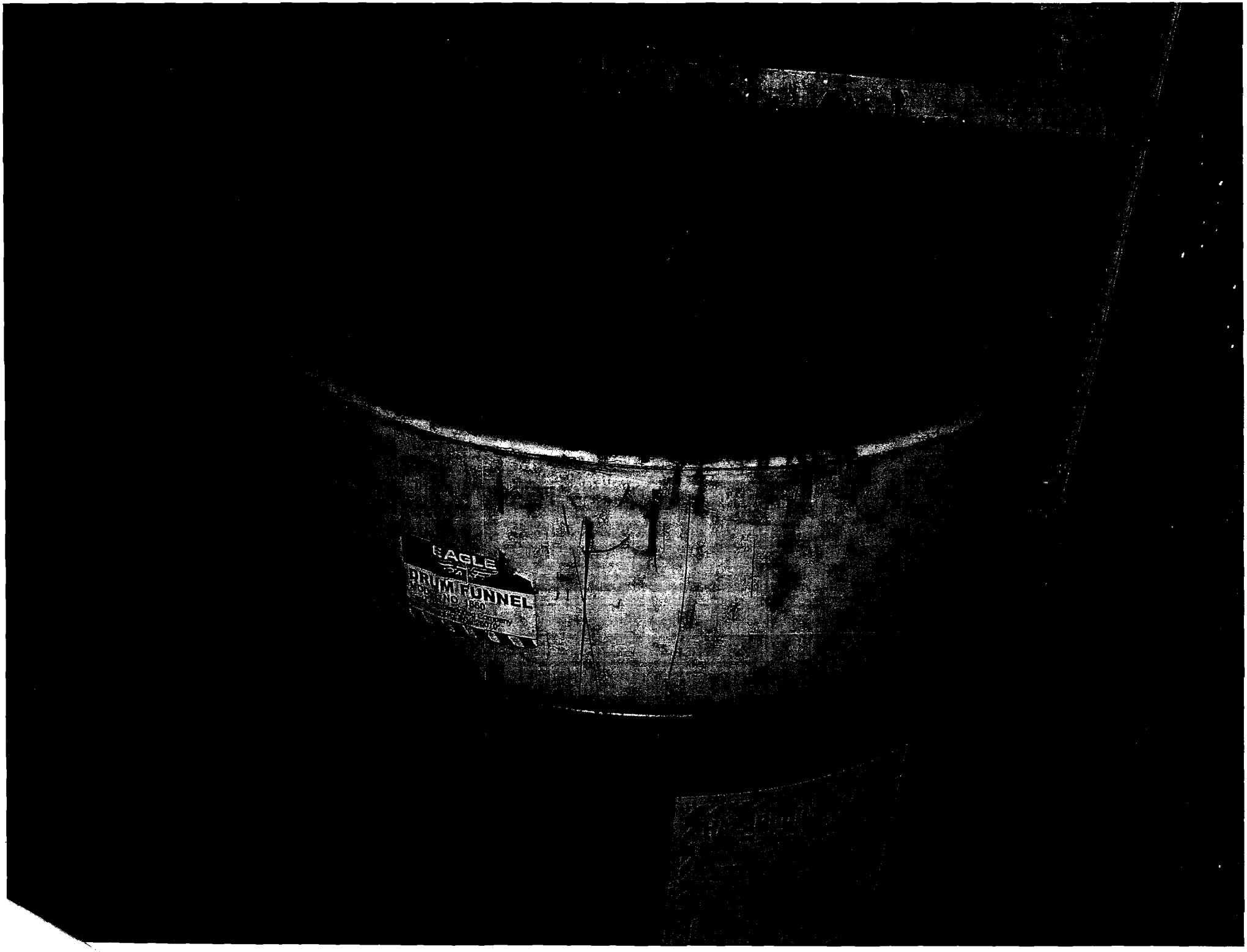
396484.BIR.2142.3364125025.tng.email.htm

Complainant's Exhibit 13








EAGLE
DRUM FUNNEL