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September 15, 2009

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG.11
2009 SEP 16 PM 1:59
REGIONAL HEARING
CLERK

VIA FEDEX

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

Re: *In the Matter of Philadelphia Furniture, LLC (CAA-02-2009-1215)*

Dear Ms. Maples:

Enclosed please find one original and two (2) copies of the following documents: (1) Answer, Affirmative Defenses and Request for Hearing by Philadelphia Furniture, LLC; and (2) a Certificate of Service.

Please accept these documents for filing.

I would also appreciate it if you would return one date-stamped copy of the above-referenced documents in the enclosed, self-addressed, stamped envelope for my records.

Please do not hesitate to call me if you have any questions or concerns with regard to the above.

Very truly yours,

John T. Kolaga
for DAMON MOREY LLP

JTK:nb
Enclosures
#1368925

cc: Ms. Denise C. Leong (w/enclosures – via FedEx)
Mr. Michael Calimeri (w/enclosures – via First Class Mail)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. ENVIRONMENTAL PROTECTION AGENCY-REG. II
RECEIVED
2009 AUG 15 PM 2:00
REGISTRATION HEARING
CLERK

In the Matter of:

Philadelphia Furniture, LLC
Salamanca, NY

**ANSWER, AFFIRMATIVE
DEFENSES & REQUEST FOR
HEARING**

Respondent

CAA-02-2009-1215

In a proceeding brought pursuant to
Section 113(a) of the CAA

Philadelphia Furniture, LLC (“Philadelphia”), by its attorneys Damon Morey LLP, now issues this Answer and Affirmative Defenses in response to the Complaint and Notice of Opportunity for Hearing, dated August 13, 2009 (“Complaint”) of the United States Environmental Protection Agency (“EPA”), as follows:

1. Philadelphia hereby denies the allegations set forth in the following paragraphs: The preliminary, unnumbered paragraphs on pages 1 and 2 of the Complaint, paragraphs 1 through 37, 39, 66, 67, 68, 70, 71, 73, 74, 75, 77, 78, 79, and the unnumbered paragraphs beginning with the heading “Proposed Civil Penalty” on pages 14-22 of the Complaint.

2. Philadelphia re-alleges and incorporates its earlier responses by reference in response to the following paragraphs: 38, 62, 69, 72, and 76 of the Complaint.

3. Philadelphia admits the allegations set forth in the following paragraphs: Paragraph 40, 41, 42, 43, 44, 63, 64, and 65 of the Complaint.

4. Philadelphia denies knowledge and information sufficient to respond to the following paragraphs and therefore denies the following paragraphs: 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, and 61 of the Complaint.

5. Philadelphia hereby denies all allegations set forth in the Complaint except those which are affirmatively and explicitly admitted.

AS A FIRST AFFIRMATIVE DEFENSE

6. Philadelphia was not properly served in this proceeding and therefore this administrative body does not have personal jurisdiction over Philadelphia for purposes of this proceeding.

AS A SECOND AFFIRMATIVE DEFENSE

7. EPA has failed to state a valid cause of action against Philadelphia in this proceeding.

AS A THIRD AFFIRMATIVE DEFENSE

8. Any Clean Air Act violation which may have been committed by Philadelphia as a result of its substitution of equipment at its Salamanca facility constitutes, at best, a *de minimis* violation of the Clean Air Act and not appropriately punished by fine or penalty because, among other things, any violations were, at most, “paperwork” violations and/or violations which occurred as a result of the substitution of comparable machines which did not result in any material increase in air emissions.

AS A FOURTH AFFIRMATIVE DEFENSE

9. The civil penalty sought by the EPA in this proceeding is in violation of the EPA’s own 1986 “Ability to Pay” policy and other EPA regulations and guidance materials in light of the fact that, among other things, Philadelphia (a) has ceased to be an

operating manufacturing facility in early 2009; (b) currently has a negative cash flow, a high debt/equity ratio, has a negative balance on its balance sheet and very limited liquidity; (c) has no employees; (d) obtained no economic benefit as a result of any alleged Clean Air Act violations; and (e) has experienced all of the above as a result of the economic circumstances beyond its control.

AS A FIFTH AFFIRMATIVE DEFENSE

10. Any failure by Philadelphia to comply with the mandates of the Clean Air Act and the directives of the EPA were caused and the result of the termination of Philadelphia employees as a result of economic circumstances beyond the control of Philadelphia or the unauthorized actions and omissions by Philadelphia employees, who unbeknownst to Philadelphia, did not carry out their respective duties and responsibilities of employment.

AS A SIXTH AFFIRMATIVE DEFENSE

11. The amount of penalties sought by EPA in this proceeding is unjust, inequitable, confiscatory and in violation of the United States Constitution.

AS A SEVENTH AFFIRMATIVE DEFENSE

12. The amount of penalties sought by EPA in this proceeding is at variance and contrary to the statements and assurances by EPA representatives to Philadelphia prior to the initiation of this enforcement action, who advised representatives of Philadelphia in 2008 that EPA would not pursue enforcement under certain circumstances, which have occurred.

AS AN EIGHTH AFFIRMATIVE DEFENSE

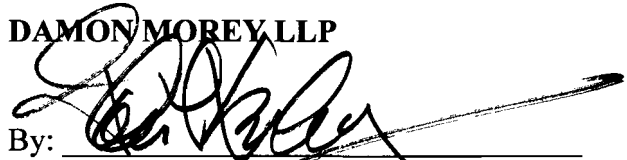
13. The penalty sought by EPA in this proceeding is inconsistent with the EPA's "Clean Air Act Stationary Source Civil Penalty Policy" and other applicable guidance, regulations and statutory authority in light of, among other things, EPA's mischaracterization of the duration of any alleged violation(s), the size of Respondent, the lack of any economic benefit to Respondent, and its combined net worth.

REQUEST FOR HEARING

14. Respondent Philadelphia hereby requests a hearing to contest the material facts set forth in the Complaint, to argue that the amount of the penalty proposed in the Complaint is inappropriate and to seek a judgment with respect to the law inapplicable in this matter for the reasons summarized above.

DATED: September 14, 2009

DAMON MOREY LLP

By: 

John T. Kolaga

Attorneys for Philadelphia Furniture, LLC
The Avant Building, Suite 1200
200 Delaware Avenue
Buffalo, New York 14202-2150
(716) 856-5500

#1366604

CERTIFICATE OF SERVICE

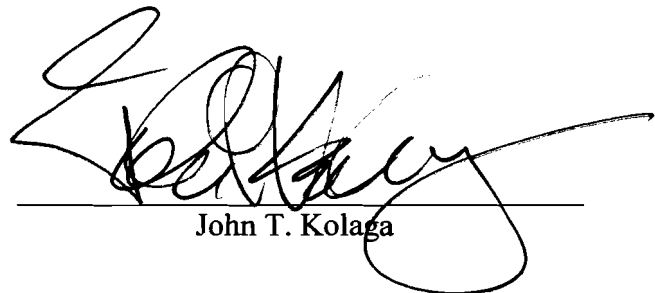
This is to certify that I have this day caused to be mailed by FedEx a copy of the foregoing Answer, Affirmative Defenses and Request for Hearing, bearing the Docket No. CAA-02-2009-1215, and this Certificate of Service to:

Ms. Denise C. Leong
Office of Regional Counsel, Air Branch
U.S. Environmental Protection Agency – Region 2
290 Broadway – 16th Floor
New York, New York 10007-1866

I also certify that I have this day caused the original and two (2) copies of the above-referenced Answer, Affirmative Defenses and Request for Hearing, along with the original of this Certificate of Service, to be mailed by FedEx to:

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

DATED: September 15, 2009
Buffalo, New York



John T. Kolaga

#1368927