

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
**Region 2**

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2008 MAY 30 PM 1:14  
REGIONAL HEARING  
CLERK

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In the Matter of: :  
 :  
Niagara Ceramics Corporation, : Docket No. RCRA-02-2007-7114  
 :  
Respondent. :  
 :  
Proceeding Under Section 3008 of the : Honorable William B. Moran,  
Solid Waste Disposal Act, as amended. : Presiding Officer  
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MOTION TO EXTEND TIME FOR FINALIZING CONSENT AGREEMENT

Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, EPA, Region 2 (EPA), through her attorney, requests this Court grant an extension of time for the parties to obtain the signatures necessary to execute the consent agreement. For the reasons set forth below, EPA submits that good cause exists for granting this motion.

The Court's April 23, 2008 order codified what the Court had directed earlier that day during a settlement conference – "that a copy of the fully executed CAFO be delivered within six weeks from [April 23, 2008]," *i.e.* June 4, 2008. Shortly afterward, in early May a consent agreement was drafted and circulated for Regional concurrence (the undersigned was on vacation through Monday, April 28<sup>th</sup>). Regional concurrence was secured in the middle of May and a draft was sent to Respondent's counsel for review. The parties discussed the document and a final agreement (including the document's wording) between counsel was obtained. A copy of the document formally approved through the office of Complainant was sent via overnight mail

to Respondent's counsel on May 20<sup>th</sup> for his client's signature. To date the document has not been returned, and counsel spoke today. Respondent's counsel noted that there have been logistical problems in securing his client's signature. It appears likely that this will occur shortly.

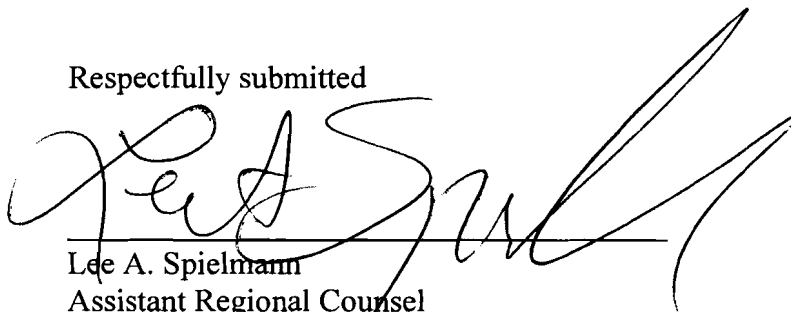
Thus the parties will in all likelihood be unable to comply with the directive set forth in the Court's April 23<sup>rd</sup> order. During the conference that day, the Court stated that, if the parties do not submit such a copy by the designated day, the Court will set the matter down for an expedited hearing. Neither party wishes that to occur, and, in fact, there is no need for such action, as this case will be concluded. Thus, because of circumstances beyond the control of either counsel, the parties seek an additional increment of time for the performance of essentially ministerial functions – to allow for the requisite signatures to be obtained where the relevant parties (or their designated representatives) have already indicated their assent to the settlement and the document memorializing it.

Counsel for Respondent has indicated to the undersigned that he supports the relief herein sought.

Therefore, EPA respectfully moves this Court, pursuant to 40 C.F.R. §§ 22.4(c)(10), 22.7(b) and 22.16(a), for an order: **a)** vacating the April 23, 2008 order and **b)** directing the parties file a copy of the fully executed consent agreement and final order by no later than June 18, 2008 (or, in the alternative, if the Court is unable to grant two weeks, then an extension of one week, until June 11, 2008).

Dated: May 29, 2008  
New York, New York

Respectfully submitted

A handwritten signature in black ink, appearing to read 'Lee A. Spielmann', is written over a horizontal line. The signature is fluid and cursive.

Lee A. Spielmann  
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U.S. Environmental Protection Agency, Region 2  
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TO: Honorable William B. Moran  
Administrative Law Judge  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Mail Code 1900L  
Washington, DC 20005

Office of Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16<sup>th</sup> floor  
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3400 HSBC Center  
Buffalo, New York 14203

***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 Motion To Extend Time for Finalizing Consent Agreement, dated May 29, 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

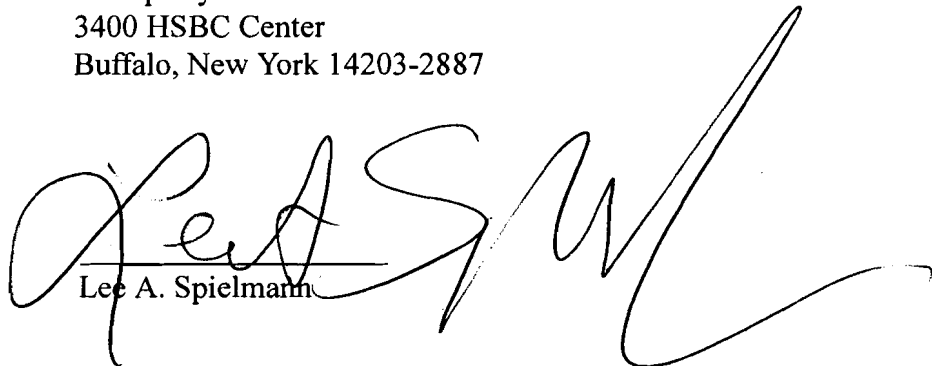
Copy by FAX transmission,  
202-565-0044, and  
Pouch Mail:

Honorable William B. Moran  
Administrative Law Judge  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Mail Code 1900 L  
Washington, DC 20005

Copy by FAX transmission,  
716-852-6100, and  
First Class Mail:

Michael C. Murphy, Esq.  
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Buffalo, New York 14203-2887

Dated: May 29, 2008  
New York, New York

  
Lee A. Spielmann