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ATTORNEYS AT LAW

October 23, 2009

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, Respondent
CAA-02-2009-1215

Dear Ms. Maples:

Enclosed please find the original and two copies of Philadelphia Furniture, LLC's Motion for an Extension of Time to File Prehearing Exchanges, together with the Certificate of Service.

We would ask that you please date-stamp a copy of the Motion and return it to us in the enclosed, self-addressed, stamped envelope.

Thank you for your attention to this matter.

Very truly yours,

John T. Kolaga
for DAMON MOREY LLP

JTK:nb
Enclosures
#1381010

cc: Hon. Barbara A. Gunning (w/enclosures – via FedEx)
Ms. Denise C. Leong (w/enclosures – via FedEx)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

In the Matter of:

Philadelphia Furniture, LLC
Salamanca, New York

Respondent

In a proceeding under the Clean Air Act, 42 U.S.C. § 7401, et seq, 42 U.S.C. § 7413(d), Section 113(d)

CAA-02-2009-1215

Hon. Barbara A. Gunning,
Administrative Law Judge

MOTION FOR AN EXTENSION OF TIME TO FILE PREHEARING EXCHANGES

1. Respondent in this proceeding, Philadelphia Furniture, LLC, by and through their attorney, Damon Morey, LLP requests the Court grant a 60-day extension of time for the parties to file their prehearing exchanges, an extension concurred upon by Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, EPA, Region 2 (EPA). For the reasons set forth below, the parties submit that good cause exists, within the meaning of 40 C.F.R. § 22.7(b), for granting the motion.

2. On or about August 15, 2009, the United States Environmental Protection Agency ("EPA") served Michael Calimeri with a Complaint and Notice of Opportunity to Request a Hearing on behalf of Respondent. See **Exhibit A** hereto.

This Complaint alleges 4 Counts against Respondent.

3. On or about September 15, 2009, Respondent served its Answer, Affirmative Defenses & Request for Hearing in this proceeding. See **Exhibit B** hereto.

4. Since about late August, 2009, I have been discussing the prospects of settlement with EPA attorney Denise Leong. As I have advised Ms. Leong, Respondent began furniture manufacturing operations in about March 2007, after it acquired substantially all of the assets of Philadelphia Furniture Mfg. Co., LLC. Unfortunately, Respondent closed its doors and went out of business abruptly in about early January 2009 following the downturn in the United States economy and several years of substantial losses.

5. Notwithstanding this situation, settlement discussions between the EPA and Respondent are underway and on-going. During the past several weeks, I provided Ms. Leong with a copy of Respondent's 2007 tax returns. I am also in the process of obtaining financial information from Respondent's accountants for 2008, as requested by Ms. Leong. I am told from Respondent's accountants that this process may take several more weeks given the state of Respondent's books and records. In the meantime, Ms. Leong and I have both agreed in principle to participate in a teleconference with client representatives on settlement issues in or about late October to spare Respondent the expense of having to send a representative and counsel to New York while we gather the information necessary for a constructive settlement discussion.

6. On October 14, 2009, I received a copy of this tribunal's Prehearing Order (attached as **Exhibit C**), which set forth a November 3, 2009 deadline for the parties to

hold a settlement conference, and to report back to the body by November 17, 2009. The Prehearing Order also set a schedule for prehearing document exchanges between the parties; specifically, Complainant's initial Prehearing Exchange is due on December 15, 2009; Respondent's Prehearing Exchange is due on January 15, 2010; and Complainant's Rebuttal Prehearing Exchange (if any) is due on January 30, 2010.

7. With all due respect, and in light of the relevant facts summarized above and Respondent's financial situation, Respondent submits that the interests of the parties, as well as the interests of justice and the environment, would be best served if the EPA and Respondent were given an 60 day window of opportunity to explore and hopefully achieve a negotiated settlement of this dispute rather than having Respondent expend its limited financial resources by reviewing and/or preparing extensive prehearing filings.

8. For all of above reasons, Respondent moves this tribunal for a 60 day adjournment of all deadlines set forth in the October 7, 2009 Prehearing Order to give the parties an opportunity to achieve settlement and to avoid the considerable prehearing litigation costs required to comply with the Prehearing Order. Respondent submits that this application will not result in undue prejudice to the EPA, the environment, or any other party.

Dated: October 22, 2009
Buffalo, New York

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

TO: Honorable Barbara A. Gunning
Chief Administrative Law Judge
U.S. Environmental Protection Agency
Office of Administrative Law Judges
Mail Code 1900L
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

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

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

Exhibit A

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

In the Matter of: Philadelphia Furniture, LLC Slamanca, NY Respondent In a proceeding brought pursuant to Section 113(a) of the CAA	COMPLAINT AND NOTICE OF OPPORTUNITY TO REQUEST A HEARING CAA-02-2009-1215

COMPLAINT

The United States Environmental Protection Agency (EPA) issues this Complaint and Notice of Opportunity for Hearing (Complaint) to Philadelphia Furniture, LLC (Respondent) for violations of the Clean Air Act, 42 U.S.C § 7401 *et seq.* (CAA or the Act), 42 U.S.C. § 7413(d), Section 113(d), and proposes the assessment of penalties in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22 (Consolidated Rules of Practice). The Complainant in the matter, the Director of the Division of Enforcement and Compliance Assistance (DECA), EPA Region 2, is duly delegated the authority to issue administrative Complaints on behalf of EPA Region 2 for CAA violations that occurred in the States of New York and New Jersey, the Commonwealth of Puerto Rico, and the Territory of the U.S. Virgin Islands.

On June 2, 2009, EPA Region 2 requested that the Department of Justice (DOJ) waive the CAA § 113(d) twelve (12) month limitation on its authority to commence a civil

action for violations that occurred more than twelve (12) months prior to the initiation of an action, and to seek an administrative penalty that exceeds the amount provided by statute. On June 23, 2009, EPA Office of Enforcement and Compliance Assurance (OECA) concurred on the Region's Request. On July 24, 2009, DOJ granted EPA Region 2 the authority to issue this administrative penalty action.

EPA alleges that Respondent violated the Respondent's Federal Title V Operating Permit, issued pursuant to 40 C.F.R. Part 71, the Federal Title V Operating Permit Program, promulgated pursuant to Section 502(b) of the Act.

Statutory, Regulatory and Permitting Background

1. Section 113(a)(3) of the Act authorizes the Administrator of EPA to issue an administrative penalty order, in accordance with Section 113(d) of the Act, against any person that has violated or is in violation of the Act.

2. Section 113(d)(1)(B) of the Act, authorizes EPA to issue an administrative order against any person whenever, on the basis of any available information, the Administrator finds that such person has or is violating any requirements or prohibitions of Titles III, IV-A, V, or VI of the Act including but not limited to a requirement or prohibition of any rule, order, waiver, permit or plan promulgated, issued or approved under the Act.

3. Section 112 of the Act requires the EPA Administrator to publish a list of hazardous air pollutants (HAPs), a list of categories and subcategories of major and area sources of listed HAPs and to promulgate regulations establishing emission standards.

4. Section 112(b)(1) of the Act provides a list of HAPs.

5. Section 112(c) of the Act requires the Administrator to publish a list of source categories or subcategories of major and area sources of listed HAPs.

6. Section 112(d) of the Act requires the Administrator to promulgate regulations establishing National Emission Standards for Hazardous Air Pollutants (NESHAPs) for each category or subcategory of major and area sources of HAPs.

7. Section 112(a)(9) of the Act defines "owner or operator" as any person who owns, leases, operates, controls, or supervises a stationary source.

8. Section 112(a)(3) of the Act provides that "stationary source" shall have the same meaning as such term has under Section 111(a) of the Act.

9. Section 111(a) of the Act defines "stationary source" as any building, structure, facility, or installation which emits or may emit any air pollutant.

10. Section 112(a)(1) of the Act defines "major source" as any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant (HAP) or 25 tons per year or more of any combination of HAPs.

11. Section 112(a)(2) of the Act defines "area source" as any stationary source of HAPs that is not a major source.

12. Section 112(f)(4) of the Act provides that no air pollutant to which a standard under Section 112 of the Act applies shall be emitted from any stationary source in violation of such standard.

13. Section 114(a)(1) authorizes the EPA Administrator to require owners or operators of stationary emission sources to submit specific information regarding their

facilities, establish and maintain records, make reports, sample and analyze stack and fugitive emissions, and to install, use, and maintain such monitoring equipment or methods in order to determine whether any person is in violation of the Act.

14. Section 302(e) of the Act defines the term "person' as an individual, corporation, partnership, association, state municipality, political subdivision of a State, and any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof.

15. Pursuant to Sections 111 and 114 of the Act, EPA promulgated the Standards of Performance for Small Industrial-Commercial-Institutional Steam Generating Units, 40 C.F.R. Part 60, Subpart Dc, 40 C.F.R. §§ 60.40c - 60.48c (NSPS Subpart Dc), 55 Fed. Reg. 37683 (September 12, 1990).

16. 40 C.F.R. § 60.40c provides that 40 C.F.R. Part 60, Subpart Dc does not apply to a steam generating unit for which construction, modification, or reconstruction is commenced before June 9, 1989 and that has a maximum design heat input capacity of 29 megawatts or less, but greater than or equal to 2.9 megawatts.

17. Pursuant to Sections 112 and 114 of the Act, the Administrator of EPA promulgated the General MACT.

18. 40 C.F.R. § 63.1(c)(2)(iii) states that if a standard fails to specify what the permitting requirement will be for area sources affected by such a standard then area sources that are subject to the standard will be subject to the requirement to obtain a Title V permit without any deferral.

19. Pursuant to Sections 112 and 114 of the Act, EPA promulgated the Wood Furniture Manufacturing Maximum Achievable Control Technology (MACT),

40 C.F.R. §§ 63.800 – 63.820, 40 C.R.R. Part 63, Subpart JJ, (Wood furniture Manufacturing MACT), 60 Fed. Reg. 62,936 (December 7, 1995).

20. 40 C.F.R. § 63.800(b)(3) provides that the Wood Furniture Manufacturing MACT does not apply to any source that emits no more than 4.5 Mg (5 tons) of any one HAP per rolling 12-month period and no more than 11.4 Mg (12.5 tons) of any combination of HAPs per rolling 12-month period, and at least 90 percent of the plantwide emissions per rolling 12-month period are associated with the manufacture of wood furniture or wood furniture components. It also provides that a source that meets this criterion is an area source and is not subject to any other provision in 40 C.F.R. § 63.800.

21. The Wood Furniture Manufacturing MACT does not contain a provision that specifies the permitting requirement for area sources affected by the standard.

22. Section 502(a) of the Act provides that after the effective date of any permit program approved or promulgated pursuant to Title V of the Act, it shall be unlawful for any person to violate any requirement of a permit issued under Title V of the Act or to operate a Title V affected source, including a major source or any other source (including an area source) subject to standards or regulations under Section 112 of the Act, except in compliance with a permit issued by a permitting authority under Title V of the Act.

23. Section 502(b)(10) of the Act provides that a permit program shall have provisions to allow changes within a permitted facility without requiring a permit revision, if the changes are not modifications under any provision of subchapter I of the Act and the changes do not exceed the emissions allowable under the permit provided that the permittee provides the permitting authority with written notification.

24. Section 503(a) of the Act provides that any source specified in Section 502(a) of the Act shall become subject to a permit program and shall be required to have a permit to operate.

25. Section 503(b)(2) of the Act provides that a permittee certify periodically, but no less frequently than annually, that the facility is in compliance with any applicable requirements of the permit, and to promptly report any deviations from permit requirements to the permitting authority.

26. Section 504(a) of the Act provides that a Title V permit issued to a source must include enforceable emission limitations and standards, a schedule of compliance, a requirement that the permittee submit to the permitting authority, no less often than every 6 months, the results of any required monitoring, and such other conditions that are necessary to assure compliance with applicable requirements, including the requirements of the applicable implementation plan.

27. Section 504(c) of the Act provides that each permit issued under this subchapter shall set forth inspection, entry, monitoring, compliance certification, and reporting requirements to assure compliance with the permit terms and conditions.

28. The Title V Federal Operating Permit Program, promulgated pursuant to 40 C.F.R. Part 71 in accordance with Section 501 of the Act (published in 61 FR 34228, July 1, 1996), sets forth the comprehensive Federal air quality operating permit program consistent with the requirements of Title V of the Act and defines the requirements and the corresponding standards and procedures by which the Administrator will issue operating permits. This permitting program is designed to promote timely and efficient implementation of goals and requirements of the Act.

29. 40 C.F.R. § 71.4(b) provides that the Administrator will administer and enforce an operating permits program in Indian country, as defined in § 71.2, when an operating permits program that meets the requirements of 40 C.F.R. Part 70 has not been explicitly granted full or interim approval by the Administrator for Indian Country.

30. 40 C.F.R. § 71.2 defines "Indian country" to mean all land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state; and All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

31. 40 C.F.R. § 71.1(b) states that all sources subject to the operating permit requirements of Title V and 40 C.F.R. Part 71 shall have a permit to operate that assures compliance by the source with all applicable CAA requirements.

32. 40 C.F.R. § 71.3(a) provides the following list of sources that are subject to Part 71 permitting requirements:

a. Any major source;

b. Any source, including an area source, subject to a standard, limitation, or other requirement under section 111 of the Act;

c. Any source, including an area source subject to a standard or other requirement under section 112 of the Act, except that a source is not required to obtain a permit solely because it is subject to regulations or requirements under section 112(r) of the Act;

d. Any affected source; and

e. Any source in a source category designated by the Administrator.

33. 40 C.F.R. § 71.6(a)(1) provides that emission limitations and standards including operational requirements and limitations that assure compliance with all applicable requires at the time of permit issuance be included in permits.

34. 40 C.F.R. § 71.6(a)(3)(C)(iii)(A) provides that submittal of reports of any required monitoring at least every 6 months. All instances of deviations from permit requirements but be clearly identified in such reports. All required reports must be certified by a responsible official consistent with 40 C.F.R. § 71.5(d).

35. 40 C.F.R. § 71.6(c)(1) provides that submittal of compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit.

36. 40 C.F.R. § 71.6(c)(2) provides that the permittee shall allow inspection and entry requirements upon representation of credentials and other documents as may be required by law.

37. 40 C.F.R. § 71.7(e)(1) provides that minor permit modification procedures may be used only for those permit modifications that do not violate any applicable requirement, do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit, do not require or change a case-by-case determination of an emission limitation or other standard, or that do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement.

Findings of Fact

38. Paragraphs 1- 37 are re-alleged and incorporated herein by reference.

39. Respondent has a common ownership with Artone Manufacturing Company in Jamestown, New York.

40. Respondent is a domestic limited liability corporation.

41. Respondent is an owner and/or operator of a facility located at 100 Rochester Street in Salamanca, in Cattaraugus County New York (Facility).

42. The Facility is located on the Seneca Nation Indian Reservation.

43. On November 1, 2001, pursuant to 40 C.F.R. Part 71, EPA issued Respondent a Title V Permit to Operate, Number SEN001, to operate the Facility (Initial Facility Title V Permit or Initial Permit).

44. On January 4, 2007, pursuant to 40 C.F.R. Part 71, EPA issued Respondent an Amended Final Renewal of the Facility's Title V Permit to Operate, Number SEN001 (Facility Title V Permit or Permit).

45. Section I.B of Respondent's Title V Permit includes a table that lists the source emission units and identifies the control equipment for each emission unit. According to the list, the control equipment associated with each of the Facility's paint or spray booths is a filter.

46. Section III.B of Respondent's Title V Permit requires the permittee to submit to EPA all monitoring reports required under the permit every six months. The reports are due on April 1st and October 1st of every year during the permit term.

47. Section IV.D of the Facility Title V Permit requires the permittee to certify compliance with all permit terms and conditions and to provide to EPA compliance certifications on an annual basis.

48. Section IV.F of the Facility Title V Permit requires that permittee submit to EPA, among other things, an annual compliance certification (Annual Compliance Certification).

49. Section IV.I of the Facility Title V Permit requires the permittee to seek amendments or modifications of the Permit by meeting the criteria established and complying with the requirements for permit modifications provided under 40 C.F.R. § 71.7(e)(1).

50. On July 29, 2008, pursuant to Section 114(a) of the Act, an EPA inspector conducted an inspection (Inspection) of Respondent's Facility.

51. EPA conducted the Inspection to determine the Facility's compliance status with respect to the Facility's Title V Permit conditions.

52. During the Inspection, the EPA inspector met with individuals who identified themselves as the plant manager, environmental manager, human resources manager, and vice president of the Facility (together the "Facility Representatives").

53. During the Inspection, the EPA inspector observed that Respondent had installed one new molder machine and was told by a Facility Representative that the initial date of operation was July 15, 2008.

54. During the Inspection, the EPA inspector observed that Respondent had installed two new or used wide-belt sander machines and was told by a Facility Representative that the initial date of operation of both machines was July 16, 2008.

55. During and prior to the Inspection, the EPA inspector reviewed the Facility's Title V Permit, which did not include any references to the new molder machine and the two new or used wide-belt sander machines.

56. During the Inspection, a Respondent Facility Representative told the EPA inspector that the Facility had not sought amendments to the Facility's Title V Permit to include the new molder machine and the two new or used wide-belt sander machines.

57. During the Inspection, the EPA inspector observed that Respondent had not installed filters on spray booths numbers 38, 40, 41, 45, and 51.

58. During the Inspection, the EPA inspector requested copies of Annual Compliance Certifications submitted to EPA. In response to the request, a Facility Representative stated the Facility did not submit the Annual Title V Certifications but had sent the required Annual Title V fees.

59. After the Inspection, a review of EPA files revealed that the Facility submitted the required Annual Title V fees for the years 2004 through 2008.

60. In a December 12, 2008 e-mail to EPA, a Respondent Facility Representative indicated that the Facility had installed filters on some of the spray booths and planned to install filters on the remaining spray booths within two months.

61. In a letter to EPA, dated December 28, 2008, a Respondent Facility Representative indicated that the Facility had installed all the filters on the spray booths and submitted pictures of the filters on the spray booths to demonstrate that the Facility had completed installation.

Count 1

62. Paragraphs 1 through 61 are repeated and re-alleged as if set forth fully herein.

63. Respondent is a 'person' within the meaning of Section 302(e) of the Act and is therefore subject to the assessment of administrative penalties pursuant to Section 113(d) of the Act.

64. Respondent owns and/or operates a wood furniture manufacturing facility, which is an area source within the meaning of 40 C.F.R. § 63.800(b).

65. Respondent is subject to a Federal Title V Operating Permit issued pursuant to 40 C.F.R. Part 71, the Federal Title V Operating Permit Program, promulgated pursuant to Section 502(b) of the Act.

66. EPA finds from the Findings of Fact set forth above, Respondent's failure to install filters on paint and glaze spray booths numbers 38, 40, 41, 45, and 51 is a violation of Section I.B of the Facility's Title V Operating Permit, issued pursuant to the Federal Title V Operating Permit Program, promulgated pursuant to Section 502(b) of the Act.

67. Respondent's violation of Section I.B of the Facility's Title V Permit is a violation of its Title V Operating Permit, which is issued pursuant to 40 C.F.R. Part 71 Federal Title V Operating Permit Program and Title V of the Act.

68. Each of Respondent's violations of the Facility's Title V Operating Permit is a violation of the 40 C.F.R. Part 71 Federal Title V Operating Permit promulgated pursuant to Section 502(b) of the Act, which results in Respondent being subject to the assessment of administrative penalties pursuant to Section 113(d) of the Act.

Count 2

69. Paragraphs 1 through 68 are repeated and re-alleged as if set forth fully herein.

70. Respondent's failure to seek an amendment to the Facility's Title V Permit to Operate to install and operate a new molder machine and two new or used wide-belt sanders is a violation of Section IV.I of the Facility's Title V Operating Permit, issued pursuant to the 40 C.F.R. Part 71 Federal Title V Operating Permit Program and Title V of the Act.

71. Each of Respondent's violations of the Facility's Title V Operating permit is a violation of the Federal Title V Operating Permit promulgated pursuant to Section 502(b) of the Act, which results in Respondent being subject to the assessment of administrative penalties pursuant to Section 113(d) of the Act.

Count 3

72. Paragraphs 1 through 71 are repeated and re-alleged as if set forth fully herein.

73. Respondent's failure to submit required Annual Title V Compliance Certification is a violation of Section IV.D of the Facility's Title V Permit to Operate, issued pursuant to the 40 C.F.R. Part 71 Federal Title V Operating Permit Program and Title V of the Act.

74. Respondent's violation of Section IV.D of the Facility's Title V Permit is a violation of Section 114 of the Act.

75. Respondent's violation of Section IV.D of the Facility's Title V Operating permit is a violation of the Federal Title V Operating Permit promulgated pursuant to Section 502(b) of the Act, which results in Respondent being subject to the assessment of administrative penalties pursuant to Section 113(d) of the Act.

Count 4

76. Paragraphs 1 through 75 are repeated and re-alleged as if set forth fully herein.

77. Respondent's failure to submit semi-annual monitoring reports is a violation of Section III.B of the Facility's Title V Permit to Operate, issued pursuant to the 40 C.F.R. Part 71 Federal Title V Operating Permit Program and Title V of the Act.

78. Respondent's violation of Section III.B of the Facility's Title V Permit to Operate is a violation of Section 114 of the Act.

79. Respondent's violation of Section III.B of the Facility's Title V Operating Permit is a violation of the Federal Title V Operating Permit promulgated pursuant to Section 502(b) of the Act, which results in Respondent being subject to the assessment of administrative penalties pursuant to Section 113(d) of the Act.

Proposed Civil Penalty

Section 113(d) of the Act provides that the Administrator may assess a civil administrative penalty of up to $25,000 per day for each violation of the Act. The Debt Collection Improvement Act of 1996 (DCIA) requires EPA to periodically adjust its civil monetary penalties for inflation. On December 31, 1996, February 13, 2004, and December 11, 2008, EPA adopted regulations entitled Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. Part 19 (Part 19). The DCIA provides that the maximum civil penalty per day should be adjusted up to $27,500 for violations that occurred on or after January 30, 1997, up to $32,500 for violations that occurred March 15, 2004 through January 12, 2009 and up to $37,500 for violations that occurred after January 12, 2009. Part 19 provides that the maximum civil penalty should be upwardly adjusted 10% for violations that occurred on or after January 30, 1997, further adjusted upwardly 17.23% for violations that occurred

March 15, 2004 through January 12, 2009 for a total of 28.95% and further upwardly adjusted 9.83% for violations that occurred after January 12, 2009 for a total of 41.63%.

In determining the amount of penalty to be assessed, Section 113(e) of the Act requires that the Administrator consider the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence, the payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, the seriousness of the violation and other factors as justice may require. EPA considered these factors and proposes a total penalty, for the violations alleged in this Complaint, of **$241,137.**

Respondent's violations alleged in Counts 1, 2, 3 and 4 result in Respondents being subject to the assessment of administrative penalties pursuant to Section 113(d) of the Act. The proposed penalty has been prepared in accordance with the criteria in Section 113(e) of the Act, and in accordance with the guidelines set forth in EPA's "Clean Air Act Stationary Source Civil Penalty Policy" (CAA Penalty Policy). The CAA Penalty Policy sets forth EPA's guidelines concerning the application of the factors to be considered, under Section 113(e) of the CAA, in proposing the penalty.

Below are short narratives explaining the reasoning behind the penalties proposed in this Complaint, and the reasoning behind various general penalty factors and adjustments that were used in the calculation of the total penalty amount.

Gravity Based Penalties

Count 1: Violations of Section I.B of Facility's Title V Permit to Operate: Failure to install filters on spray booths numbers 38, 40, 41, 45, and 51.

The CAA Penalty Policy directs that a penalty of $15,000 be proposed for an emission control equipment violation. In addition, the CAA Penalty Policy directs that where a violation persists, a penalty be proposed for length of violation. The emission control equipment violation persisted over a period of one month and ceased in August 2008 when the Facility submitted documentation demonstrating installation of filters. The CAA Penalty Policy directs that a penalty of $5,000 be proposed for a one month period of non-compliance. Therefore, EPA proposes **$20,000** as the unaggravated and unadjusted gravity component of the penalty for the emission control equipment violation alleged in this Count.

Count 2: Violation of Section IV.I of Facility's Title V Permit to Operate: Failure to seek amendment of the Facility's Title V Operating Permit to include three new machines.

The CAA Penalty Policy directs that a penalty of $15,000 be proposed for failure to obtain a modification of the Facility's title V Operating Permit to list three new machines as emission sources. The CAA Penalty Policy directs that where a violation persists, a penalty be proposed for length of violation. This violation began on July 15, 2008 when the Facility began operation of the new machines. The violation persisted for five (5) months, ceasing on December 18, 2008, the date when the Respondent submitted to EPA an application to amend the Permit. The CAA Penalty Policy directs that a penalty of $12,000 be proposed for a violation that has persisted between four (4) and six (6) months. Therefore, EPA proposes **$27,000** as the

unaggravated and unadjusted gravity component of the penalty for the violation alleged in this Count.

Count 3: Violation of Section IV.D of Facility's Title V Permit to Operate: Failure to submit Annual Title V Compliance Certification.

The CAA Penalty Policy directs that a penalty of $15,000 be proposed for failure to submit required Annual Title V Compliance Certifications. The CAA Penalty Policy directs that where a violation persists, a penalty be proposed for length of violation. Within the statute of limitation period, the failure to submit the required Annual Title V Compliance Certification persisted from October 2004 until October 2008, when the Respondent submitted an Annual Title V Compliance Certification. Within the statute of limitation, the violation persisted for a period of forty-eight (48) months. The CAA Penalty Policy directs that a penalty of $45,000 be proposed for a violation that persisted between forty-three (43) and forty-eight (48) months. Therefore, EPA proposes **$60,000** for the unaggravated and unadjusted gravity component of the penalty for the compliance certification violations alleged in this Count.

Count 4: Violation of Section III.B of Facility's Title V Permit to Operate: Failure to submit semi-annual monitoring reports.

The CAA Penalty Policy directs that a penalty of $15,000 be proposed for failure to submit the required semi-annual monitoring reports. The CAA Penalty Policy directs that where a violation persists, a penalty be proposed for length of violation. Within the statute of limitation period, the failure to submit semi-annual monitoring reports persisted from October 2004 until September 2008. The Facility began submitting semi-annual reports in September 2008. Within the statute of limitation, the violation persisted for a period of forty-seven (47) months. The CAA Penalty Policy directs that a

penalty of $45,000 be proposed for a violation that persisted between forty-three (43) and forty-eight (48) months. Therefore, EPA proposes **$60,000** for the unaggravated and unadjusted gravity component of the penalty for the semi-annual reporting violations alleged in this Count.

Size of Violator

The CAA Penalty Policy directs that a penalty be proposed that takes into account the size of violator determined by the violator's net worth for corporations or net current assets for partnerships. EPA estimates the combined net worth of the Respondent to be between 5 and 20 million dollars. In such circumstances, the CAA Penalty Policy directs that EPA propose a penalty for the size of violator of **$20,000**. The size of violator component of the penalty may be adjusted should information be discovered that indicates the Respondent's net worth is less or more than estimated.

Economic Benefit

In addition to the Gravity component of the proposed penalties, the CAA Penalty Policy directs that EPA determine the economic benefit derived from non-compliance. The policy explains that the economic benefit component of the penalty should be derived by calculating the amount the violator benefited from delayed and/or avoided costs. The CAA Penalty Policy provides EPA the discretion for not seeking economic benefit where the benefit derived is less than $5,000. In this instance, EPA is using its discretion and will not seek penalties for the economic benefit because it has determined that such economic benefit is de minimus.

Inflation Adjustment

Pursuant to the Debt Collection Improvement Act (DCIA), 31 U.S.C. §§ 3701 *et seq.*, and 40 C.F.R. Part 19, promulgated pursuant to the DCIA, the CAA Penalty Policy "preliminary deterrence" amount should be adjusted 10% for inflation for all violations occurring prior to March 15, 2004 further adjusted an additional 17.23% for all violations occurring on March 15, 2004 through January 12, 2009, for a total adjustment of 28.95% and further upwardly adjusted 9.83% for violations that occurred after January 12, 2009 for a total of 41.63%. Within the statute of limitations, Respondent's violations began, as early as, August 2004 and continued through September 2008. Calculated in accordance with the DCIA requirements, the violations were upwardly adjusted by 28.95% which results in the proposed inflation adjustment totaling **$54,137**.

Notice of Opportunity to Request a Hearing

Any hearing in this matter is subject to the Administrative Procedure Act, 5 U.S.C. § 552 *et seq.* The administrative procedures relevant to this matter are found in EPA's Consolidated Rules of Practice, a copy of which is enclosed with the transmittal of this Complaint. References to specific procedures in this Complaint are intended to inform you of your right to contest the allegations of the Complaint and the proposed penalty and do not supersede any requirement of the Consolidated Rules of Practice.

You have a right to request a hearing to: (1) contest any material facts set forth in the Complaint; (2) contend that the amount of the penalty proposed in the Complaint is inappropriate; or (3) seek a judgment with respect to the law applicable to this matter.

In order to request a hearing you must file a written Answer to this Complaint along with the request for a hearing with the EPA Regional Hearing Clerk within thirty (30) days of your receipt of this Complaint. The Answer and request for a hearing must be filed at the following address:

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

A copy of the Answer and the request for a hearing, as well as copies of all other papers filed in this matter, are to be served on EPA to the attention of EPA counsel at the following address:

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

Your Answer should, clearly and directly, admit, deny, or explain each factual allegation contained in this Complaint with regard to which you have any knowledge. If you have no knowledge of a particular factual allegation of the Complaint, you must so state and the allegation will be deemed to be denied. The Answer shall also state: (1) the circumstances or arguments which you allege constitute the grounds of a defense; (2) whether a hearing is requested; and (3) a concise statement of the facts that you intend to place at issue in the hearing.

If you fail to serve and file an Answer to this Complaint within thirty (30) days of its receipt, Complainant may file a motion for default. A finding of default constitutes an admission of the facts alleged in the Complaint and a waiver of your right to a hearing.

The total proposed penalty becomes due and payable without further proceedings thirty (30) days after the issue date of a Default Order.

Settlement Conference

EPA encourages all parties against whom the assessment of civil penalties is proposed to pursue the possibilities of settlement by informal conferences. However, conferring informally with EPA in pursuit of settlement does not extend the time allowed to answer the Complaint and to request a hearing. Whether or not you intend to request a hearing, you may confer informally with the EPA concerning the alleged violations or the amount of the proposed penalty. If settlement is reached, it will be in the form of a written Consent Agreement that will be forwarded to the Regional Administrator with a proposed Final Order. You may contact EPA counsel, Denise Leong, at (212) 637-3214 or at the address listed above, to discuss settlement. If Respondent is represented by legal counsel in this matter, Respondent's counsel should contact EPA.

Payment of Penalty in lieu of Answer, Hearing and/or Settlement

Instead of filing an Answer, requesting a hearing, and/or requesting an informal settlement conference, you may choose to pay the full amount of the penalty proposed in the Complaint. Such payment should be made by a cashier's or certified check payable to the Treasurer, United States of America, marked with the docket number

CAA-02-2009-1215 and the name of the Respondent(s), which appear on the first page of this Complaint. The check must be mailed to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

A copy of your letter transmitting the check and a copy of the check must be sent simultaneously to EPA counsel assigned to this case at the address provided under the section of this Complaint entitled Notice of Opportunity to Request a Hearing. Payment of the proposed penalty in this fashion does not relieve one of responsibility to comply with any and all requirements of the Clean Air Act.

Dated: August 13, 2009 _____

Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

TO: Doug Kirchner, President
Philadelphia Furniture, LLC
100 Rochester Street
Salamanca, New York 14779

Michael Calimeri, Owner
Philadelphia Furniture, LLC
549 Hunt Road
Jamestown, NY 14701

Sebastian Calimeri, Owner
Philadelphia Furniture, LLC
1280 S. Main Street Extension
Jamestown, NY 14701

cc: Adrian Stevens, Director
Seneca Nation of Indians
Environmental Protection Department
84 Iroquois Drive
Irving, NY 14081

Christine Yost
Regional Indian Program Coordinator
U.S. Environmental Protection Agency
290 Broadway
New York, New York 10007

Rebecca Jarnison, EPA Region 2
Division of Enforcement and Compliance Assistance
Ground Water Compliance Section
U.S. Environmental Protection Agency
290 Broadway - 20th floor
New York, NY 10007

Exhibit B

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

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

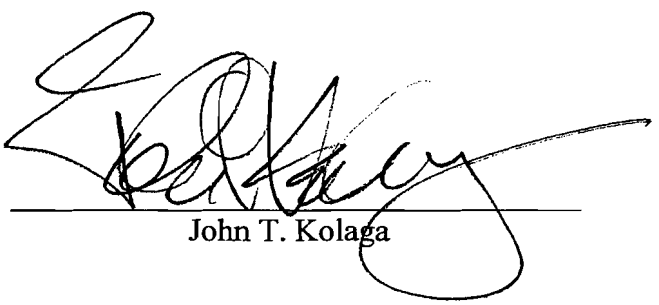
This is to certify that I have this day caused to be mailed by FedEx a copy of the foregoing Answer, Affirmative Defenses and Request for Hearing, bearing the Docket No. CAA-02-2009-1215, and this Certificate of Service to:

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

Exhibit C

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTER OF	)	
	)	
PHILADELPHIA FURNITURE, LLC,	)	DOCKET NO. CAA-02-2009-1215
	)	
	)	
RESPONDENT	)	

PREHEARING ORDER

As you previously have been notified, I have been designated by the October 2, 2009 Order of the Chief Administrative Law Judge to preside in the above captioned matter. This proceeding arises under the authority of Section 113(a) of the Clean Air Act ("CAA"), as amended, 42 U.S.C. § 7413(a), and is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (the "Rules of Practice"), 40 C.F.R. §§ 22.1-32. The parties are advised to familiarize themselves with both the applicable statute(s) and the Rules of Practice.

United States Environmental Protection Agency ("EPA") policy, found in the Rules of Practice at Section 22.18(b), 40 C.F.R. § 22.18(b), encourages settlement of a proceeding without the necessity of a formal hearing. The benefits of a negotiated settlement may far outweigh the uncertainty, time, and expense associated with a litigated proceeding.

There is no indication in the file that settlement discussions have been held in this matter.[1/] The parties are directed to hold a settlement conference on this matter on or before **November 3, 2009**, to attempt to reach an amicable resolution of this matter. *See* Section 22.4(c)(8) of the Rules of Practice, 40 C.F.R. § 22.4(c)(8). Complainant shall file a

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[1/] Complainant and Respondent declined to participate in the Alternate Dispute Resolution ("ADR") process offered by this office.

status report regarding such conference and the status of settlement on or before **November 17, 2009.**

In the event that the parties fail to reach a settlement by that date, they shall strictly comply with the requirements of this order and prepare for a hearing. The parties are advised that extensions of time will not be granted absent a showing of good cause. The pursuit of settlement negotiations or an averment that a settlement in principle has been reached will not constitute good cause for failure to comply with the prehearing requirements or to meet the schedule set forth in this Prehearing Order. Of course, the parties are encouraged to initiate or continue to engage in settlement discussions during and after preparation of their prehearing exchange.

The following requirements of this Order concerning prehearing exchange information are authorized by Section 22.19(a) of the Rules of Practice, 40 C.F.R. § 22.19(a). As such, it is directed that the following prehearing exchange takes place:

1. Each party shall submit:

   (a) the names of any expert or other witnesses it intends to call at the hearing, together with a brief narrative summary of each witness' expected testimony, or a statement that no witnesses will be called; and

   (b) copies of all documents and exhibits which each party intends to introduce into evidence at the hearing. The exhibits should include a curriculum vitae or resume for each proposed expert witness. If photographs are submitted, the photographs must be actual unretouched photographs. The documents and exhibits shall be identified as "Complainant's" or "Respondent's" exhibit, as appropriate, and numbered with Arabic numerals (e.g., "Complainant's Exhibit 1"); and

   (c) a statement expressing its view as to the place for the hearing and the estimated amount of time needed to present its direct case.

See Sections 22.19(a),(b),(d) of the Rules of Practice, 40 C.F.R. §§ 22.19(a),(b),(d); *see also* Section 22.21(d) of the Rules of Practice, 40 C.F.R. § 22.21(d).

2. Complainant shall submit a statement explaining in detail how the proposed penalty was determined, including a description of how the specific provisions of any Agency penalty or enforcement policies and/or guidelines were applied in calculating the penalty.

3. Respondent shall submit a statement explaining why the proposed penalty should be reduced or eliminated. If Respondent intends to take the position that it is unable to pay the proposed penalty or that payment will have an adverse effect on its ability to continue to do business, Respondent shall furnish supporting documentation such as certified copies of financial statements or tax returns.

4. Complainant shall submit a statement regarding whether the Paperwork Reduction Act of 1980 ("PRA"), 44 U.S.C. §§ 3501 et seq., applies to this proceeding, whether there is a current Office of Management and Budget control number involved herein and whether the provisions of Section 3512 of the PRA are applicable in this case.

See Section 22.19(a)(3) of the Rules of Practice, 40 C.F.R. § 22.19(a)(3).

The prehearing exchanges delineated above shall be filed *in seriatim* manner, according to the following schedule:

December 15, 2009 - Complainant's Initial Prehearing Exchange

January 15, 2010 - Respondent's Prehearing Exchange, including any direct and/or rebuttal evidence

January 29, 2010 - Complainant's Rebuttal Prehearing Exchange (if necessary)

In its Answer to the Complaint, Respondent exercised its right to request a hearing pursuant to Section 554 of the Administrative Procedure Act ("APA"), 5 U.S.C. § 554. If the parties cannot settle with a Consent Agreement and Final Order, a hearing will be held in accordance with Section 556 of the APA, 5 U.S.C. § 556. Section 556(d) of the APA provides that a party is entitled to present its case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-

examination as may be required for a full and true disclosure of the facts. Thus, Respondent has the right to defend itself against Complainant's charges by way of direct evidence, rebuttal evidence, or through cross-examination of Complainant's witnesses. Respondent is entitled to elect any or all three means to pursue its defense. If Respondent elects only to conduct cross-examination of Complainant's witnesses and to forgo the presentation of direct and/or rebuttal evidence, that Respondent shall serve a statement to that effect on or before the date for filing its prehearing exchange. Each party is hereby reminded that failure to comply with the prehearing exchange requirements set forth herein, including a Respondent's statement of election only to conduct cross-examination of Complainant's witnesses, can result in the entry of a default judgment against the defaulting party. *See* Section 22.17 of the Rules of Practice, 40 C.F.R. § 22.17.

The original and one copy of all pleadings, statements and documents (with any attachments) required or permitted to be filed in this Order (including a ratified Consent Agreement and Final Order) shall be filed with the Regional Hearing Clerk, and copies (with any attachments) shall be sent to the undersigned and all other parties. The parties are advised that E-mail correspondence with the Administrative Law Judge is not authorized. *See* Section 22.5(a) of the Rules of Practice, 40 C.F.R. § 22.5(a).

The prehearing exchange information required by this Order to be sent to the Presiding Judge, as well as any other further pleadings, shall be addressed as follows:

Judge Barbara A. Gunning
Office of Administrative Law Judges
U.S. Environmental Protection Agency
Mail Code 1900L
1200 Pennsylvania Ave., NW
Washington, DC 20460-2001

Hand-delivered packages transported by Federal Express or another delivery service which x-rays their packages as part of their routine security procedures, may be delivered directly to the Offices of the Administrative Law Judges at 1099 14th Street, NW, Suite 350, Washington, DC 20005.

Telephone contact may be made with my legal staff assistant, Mary Angeles at (202) 564-6281. The facsimile number is (202) 565-0044.

Barbara A. Gunning
Administrative Law Judge

Dated: October 7, 2009
Washington, DC

In the Matter of Philadelphia Furniture, LLC
Docket No. CAA-02-2009-1215

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the **Prehearing Order**, dated October 7, 2009 was sent this day in the following manner to the addressees listed below:

Original + 1 Copy by Regular Mail to:

Karen Maples
Regional Hearing Clerk
U.S. EPA
290 Broadway
New York, NY 10007

Copy by Regular Mail to:

Attorney for Complainant:

John T. Kolaga, Esq.
Office of Regional Counsel
U.S. EPA
290 Broadway
New York, NY

Attorney for Respondent:

John Kolaga
Damon Morey, LLP
The Avant Building- Suite 1200
200 Delaware Avenue
Buffalo, NY 14202-2150

Knolyn R. Jones
Legal Staff Assistant

Dated: October 8, 2009

CERTIFICATE OF SERVICE

This is to certify that I have this day caused to be mailed by FedEx a copy of the foregoing Motion for an Extension of Time to File Prehearing Exchanges, bearing the Docket No. CAA-02-2009-1215, and this Certificate of Service to:

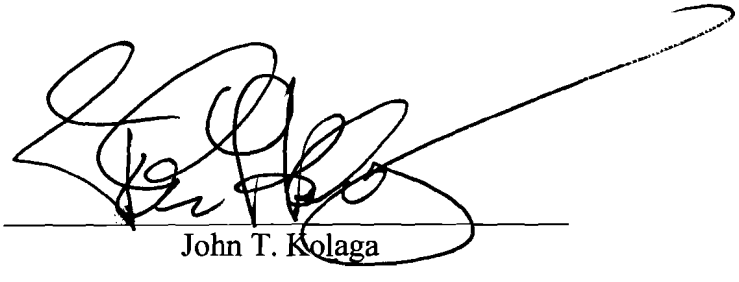
Ms. Denise C. Leong
Office of Regional Counsel, Air Branch
U.S. Environmental Protection Agency – Region 2
290 Broadway – 16th Floor
New York, New York 10007-1866

Honorable Barbara A. Gunning
Chief Administrative Law Judge
U.S. Environmental Protection Agency
Office of Administrative Law Judges
Mail Code 1900L
Ariel Rios Building
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

I also certify that I have this day caused the original and one (1) copy of the above-referenced Motion, 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: October 23, 2009
Buffalo, New York



John T. Kolaga

#1368927