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May 1, 2013

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Wanda I. Santiago
Paralegal/Regional Hearing Clerk
U.S. EPA Region I
5 Post Office Square, Suite 100
Mail code (ORA 18-1)
Boston, Massachusetts 02109-3912

VIA FEDERAL EXPRESS

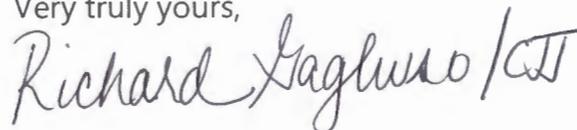
In the Matter of New Hampshire Glass
Docket No. TSCA-01-2013-0010

Dear Clerk Santiago:

Enclosed please find the original and one copy of an Answer to Complaint and Request for Hearing for filing in the above-referenced matter.

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

Very truly yours,



Richard C. Gagliuso

RCG/cjj

Enclosure

cc: Andrea Simpson, Senior Enforcement Counsel

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 1



IN THE MATTER OF:
New Hampshire Glass
1 Mirona Road
Portsmouth, NH

EPA Docket Number
TSCA-01-2013-0010

ANSWER TO COMPLAINT
AND REQUEST FOR HEARING

New Hampshire Plate Glass Corp. (the "Respondent" or "NH Glass") hereby submits the following answer to the Complaint filed by the Legal Enforcement Manager of the Office of Environmental Stewardship, U.S. Environmental Protection Agency, Region 1 (the "Complainant" or "EPA"), in numbered paragraphs corresponding to the paragraphs of the Complaint. NH Glass further requests a hearing on all factual and legal issues raised by its responses and defenses, including all alleged violations and the civil penalty proposed by EPA.

1. Paragraph 1 of the Complaint merely introduces and characterizes the Complaint and requires no response. If and to the extent a response may be required, however, the Respondent denies the allegations of paragraph 1 and states that the statutes and regulations cited in paragraph 1 speak for themselves.

2. Paragraph 2 of the Complaint states legal conclusions to which no response is required. If and to the extent a response may be required, however, the Respondent denies the

allegations of paragraph 2 and states that the statutes and regulations cited in paragraph 2 speak for themselves.

3. Paragraph 3 of the Complaint states legal conclusions to which no response is required. If and to the extent a response may be required, however, the Respondent denies the allegations of paragraph 3 and states that the statutes and regulations cited in paragraph 3 speak for themselves.

4. Paragraph 4 of the Complaint states legal conclusions to which no response is required. If and to the extent a response may be required, however, the Respondent denies the allegations of paragraph 4 and states that the statutes and regulations cited in paragraph 4 speak for themselves.

5. Paragraph 5 of the Complaint states legal conclusions to which no response is required. If and to the extent a response may be required, however, the Respondent denies the allegations of paragraph 5 and states that the statutes and regulations cited in paragraph 5 speak for themselves.

6. Paragraph 6 of the Complaint states legal conclusions to which no response is required. If and to the extent a response may be required, however, the Respondent denies the allegations of paragraph 6 and states that the statutes and regulations cited in paragraph 6 speak for themselves.

7. Paragraph 7 of the Complaint states legal conclusions to which no response is required. If and to the extent a response may be required, however, the Respondent denies the allegations of paragraph 7 and states that the statutes and regulations cited in paragraph 7 speak for themselves.

8. Paragraph 8 of the Complaint states legal conclusions to which no response is required. If and to the extent a response may be required, however, the Respondent denies the allegations of paragraph 8 and states that the statutes and regulations cited in paragraph 8 speak for themselves.

9. The Respondent denies that the products and services it offers are limited to northern New England, but the Respondent otherwise admits the allegations of paragraph 9.

10. The Respondent admits that it entered into a contract with James J. Welch & Son, Inc. (“JJ Welch”) on or about August 18, 2011, which contract called for NH Glass to furnish and install windows in connection with the construction, by JJ Welch, of a project referred to as the Kittery Community Center (the “Project”) in Kittery, Maine. The Respondent further admits that JJ Welch was the general contractor on the Project. The Respondent denies that its contract called for the Respondent to perform window renovations. The Respondent is without knowledge as to the remaining allegations of paragraph 10, and therefore denies the same.

11. The Respondent is without knowledge as to whether the Project undertaken by JJ Welch was a renovation, and therefore denies the same, but the Respondent denies that the work it was contracted to perform constituted a renovation. See paragraph 10 above. The Respondent admits that the site of the Project contained two buildings. The Respondent is without knowledge as to the remaining allegations of paragraph 11, and therefore denies the same.

12. The Respondent is without knowledge as to whether the Project undertaken by JJ Welch was a renovation, and therefore denies the same, but the Respondent denies that the work it was contracted to perform constituted a renovation. See paragraph 10 above. The Respondent is without knowledge as to the remaining allegations of paragraph 12, and therefore denies the same.

13. Paragraph 13 of the Complaint states a legal conclusion to which no response is required. If and to the extent a response may be required, however, the Respondent denies the allegations of paragraph 13 of the Complaint.

14. The Respondent admits that certain employees completed an accredited course regarding the RRP Rule. The remaining allegations of paragraph 14 of the Complaint state a legal conclusion to which no response is required. If and to the extent a response may be required, however, the Respondent states that its contract with JJ Welch did not require it to serve as a “certified firm” on the Project.

15. The Respondent denies the allegations of paragraph 15 of the Complaint.

16. Paragraph 16 of the Complaint states a legal conclusion to which no response is required. If and to the extent a response may be required, however, the Respondent is without knowledge as to whether the Project undertaken by JJ Welch was a “renovation,” and therefore denies the same.

17. Paragraph 17 of the Complaint states legal conclusions to which no response is required. If and to the extent a response may be required, however, the Respondent is without knowledge as to whether the Project undertaken by JJ Welch was a “renovation for compensation,” subject to the RRP Rule, or as to whether certain exemptions applied, and therefore denies the same.

18. Paragraph 18 of the Complaint states a legal conclusion to which no response is required. If and to the extent a response may be required, however, the Respondent is without knowledge as to the allegations of paragraph 18 of the Complaint, and therefore denies the same.

19. The Respondent is without knowledge as to the allegations of paragraph 19 of the Complaint, and therefore denies the same.

20. The Respondent is without knowledge as to the allegations of paragraph 20 of the Complaint, and therefore denies the same.

21. The Respondent admits that Nick Raitt, a foreman for NH Glass, was interviewed by two or more individuals who represented that they were state or federal officials, and that he told the officials that he had been informed by JJ Welch that the areas of the building in which NH Glass was working did not contain lead paint. The Respondent denies the allegation contained in the last sentence of paragraph 21 of the Complaint. The Respondent is without knowledge as to the remaining allegations of paragraph 21, and therefore denies the same.

22. The Respondent is without knowledge as to the allegations of paragraph 22 of the Complaint as to what Mr. Crook may have said, and therefore denies the same. The Respondent denies the remaining allegations of paragraph 22.

23. The Respondent denies that the Complainant's characterization of the Project as a "window replacement project" is fair and accurate. The Respondent admits that Nick Raitt and Roy Palmer acted as foremen for NH Glass, albeit at different times. The remaining allegations of paragraph 23 of the Complaint state legal conclusions to which no response is required. If and to the extent a response may be required, however, the Respondent denies the remaining allegations of paragraph 23.

24. The Respondent denies the allegations of paragraph 24 of the Complaint.

25. The Respondent denies that it has committed any of the alleged violations, but the Respondent is without knowledge as to the remaining allegations of paragraph 25, and therefore denies the same.

26. The Respondent repeats and incorporates herein by reference its responses to paragraphs 1 through 25 of the Complaint.

27. Paragraph 27 of the Complaint states legal conclusions to which no response is required. If and to the extent a response is required, however, the Respondent denies the allegations of paragraph 27 and states that the statutes and regulations cited in paragraph 27 speak for themselves.

28. The Respondent admits that it employed Nick Raitt and Roy Palmer to serve, at different times, as foremen to supervise the Respondent's work. The Respondent admits that neither Nick Raitt nor Roy Palmer was a certified renovator. The Respondent denies, however, that its work entailed window replacement, and denies that the Respondent was required to have a certified renovator on site.

29. The Respondent denies the allegations of paragraph 29 of the Complaint.

30. The Respondent repeats and incorporates herein by reference its responses to paragraphs 1 through 29 of the Complaint.

31. Paragraph 31 of the Complaint states legal conclusions to which no response is required. If and to the extent a response may be required, however, the Respondent denies the allegations of paragraph 31 and states that the statutes and regulations cited in paragraph 31 speak for themselves.

32. The Respondent denies the allegations of paragraph 32 of the Complaint.

33. The Respondent denies the allegations of paragraph 33 of the Complaint.

34. The Respondent repeats and incorporates herein by reference its responses to paragraphs 1 through 33 of the Complaint.

35. Paragraph 35 of the Complaint states legal conclusions to which no response is required. If and to the extent a response may be required, however, the Respondent denies the

allegations of paragraph 35 and states that the statutes and regulations cited in paragraph 35 speak for themselves.

36. The Respondent is without knowledge as to whether the Project undertaken by JJ Welch was a renovation, and therefore denies the same. The Respondent admits that it did not use any means of containment during its work, but denies that it was required to use some means of containment.

37. The Respondent denies the allegations of paragraph 37.

38. Paragraph 38 of the Complaint states legal conclusions to which no response is required. If and to the extent a response may be required, however, the Respondent denies the allegations of paragraph 38 and states that the statutes and regulations cited in paragraph 38 speak for themselves.

39. The Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 39 as to the steps taken by the Complainant in assessing a penalty, and therefore denies the same. Paragraph 39 of the Complaint states legal conclusions to which no response is required. If and to the extent a response may be required, however, the Respondent denies the allegations of paragraph 39 and states that the statutes and regulations cited in paragraph 39 speak for themselves. The Respondent denies that the LBP Consolidated ERPP provides a rational, consistent, and equitable calculation methodology. The Respondent denies that the penalty proposed by EPA is fair, rational or justified, and further denies that EPA has correctly applied the applicable statutes, rules and regulations in calculating a proposed penalty.

40. Paragraph 40 of the Complaint states legal conclusions to which no response is required. If and to the extent a response may be required, however, the Respondent admits that it

has the right to request a hearing, but otherwise denies the allegations of paragraph 40 and states that the statutes and regulations cited in paragraph 40 speak for themselves.

41. Paragraph 41 of the Complaint states legal conclusions to which no response is required. If and to the extent a response may be required, however, the Respondent denies the allegations of paragraph 41 and states that the statutes and regulations cited in paragraph 41 speak for themselves.

42. Paragraph 42 of the Complaint states legal conclusions to which no response is required. If and to the extent a response may be required, however, the Respondent denies the allegations of paragraph 42 and states that the statutes, rules and regulations cited or referred to in paragraph 42 speak for themselves.

43. Paragraph 43 of the Complaint states legal conclusions to which no response is required. If and to the extent a response may be required, however, the Respondent denies the allegations of paragraph 43 and states that the statutes, rules and regulations cited or referred to in paragraph 43 speak for themselves.

44. Paragraph 44 of the Complaint states legal conclusions to which no response is required. If and to the extent a response may be required, however, the Respondent denies the allegations of paragraph 44 and states that the statutes, rules and regulations cited or referred to in paragraph 44 speak for themselves.

45. Paragraph 45 of the Complaint states legal conclusions to which no response is required. If and to the extent a response is required, however, the Respondent denies the allegations of paragraph 45 and states that the statutes, rules and regulations cited or referred to in paragraph 45 speak for themselves.

BY WAY OF FURTHER ANSWER, THE RESPONDENT RAISES THE FOLLOWING SPECIFIC DEFENSES:

First Defense

46. The Complaint fails to state a claim of violation of the cited statutes, rules and regulations.

Second Defense

47. The work performed by NH Glass did not constitute a “renovation” within the meaning of applicable statutes, rules and regulations.

Third Defense

48. The work performed by NH Glass did not constitute a “renovation for compensation” within the meaning of applicable statutes, rules and regulations.

Fourth Defense

49. The work performed by NH Glass was not performed in a “child-occupied facility” within the meaning of applicable statutes, rules and regulations.

Fifth Defense

50. The work performed by NH Glass was not a renovation for compensation in target housing or a child-occupied facility, and accordingly, the “Renovation, Repair and Painting Rule” and the other regulations cited by the Complainant are inapplicable.

Sixth Defense

51. JJ Welch, and not NH Glass, was the certified renovator on the Project, and as such, was solely responsible for compliance with any and all applicable rules and regulations.

Seventh Defense

52. At all times during the performance of its work, NH Glass acted reasonably and in reliance upon the representations of JJ Welch, the general contractor on the Project.

Eighth Defense

53. At all times during the performance of its work, NH Glass acted in accordance with the directives of JJ Welch, the general contractor on the Project.

Ninth Defense

54. The penalty proposed by the Complainant is unfair, unreasonable, excessive and contrary to applicable law.

Tenth Defense

55. The calculation by EPA of a proposed civil penalty, as reflected in Attachment 1 to the Complaint, failed to follow applicable EPA policies and guidelines, including but not limited to the LBP Consolidated ERPP. In particular, without limiting the foregoing, EPA failed to assign appropriate “circumstance levels” to the conduct alleged in the Complaint, and EPA failed to accurately assess the potential for harm related to the alleged violations. EPA also improperly increased its proposed penalty by 10% for “culpability,” and failed to take into account certain mitigating factors.

56. Notwithstanding anything to the contrary contained in this Answer, any allegation in the Complaint not specifically admitted by the Respondent is denied.

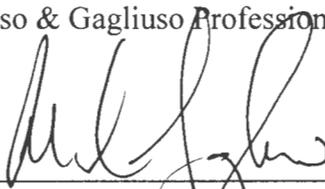
57. As no discovery has been conducted to date, the Respondent reserves the right to amend this Answer and to plead additional defenses as the future course of this matter dictates.

Request for Hearing

58. NH Glass respectfully requests a hearing on all factual and legal issues raised by the responses and defenses set forth above, including all alleged violations and the civil penalty proposed by EPA.

Respectfully submitted,
New Hampshire Glass
By its attorneys,
Gagliuso & Gagliuso Professional Association

Dated: May 1, 2013

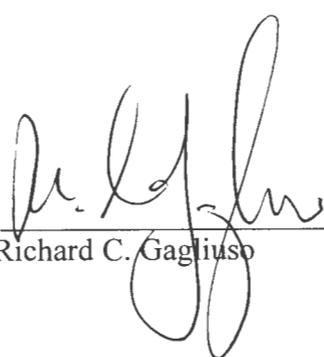
By: 

Richard C. Gagliuso
NH Bar No. 874
32 Daniel Webster Highway, Suite 14
Merrimack, New Hampshire 03054
Tel: (603) 595-4500

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of May, 2013 I served the foregoing Answer to Complaint and Request for Hearing on the complainant by forwarding a copy thereof, by first-class mail, postage prepaid to Andrea Simpson, Senior Enforcement Counsel, at the following address:

Andrea Simpson
Senior Enforcement Counsel
U.S. EPA, Region 1
5 Post Office Square – Suite 100
Mail Code: OES04-2
Boston, Massachusetts 02109-3912


Richard C. Gagliuso