

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

HOLLY LLOYD,

Plaintiff,

vs.

COVANTA PLYMOUTH RENEWABLE ENERGY,
LLC,

Defendant.

No. 2:20-cv-4330-HB

[Electronically filed]

JUDGE HARVEY BARTLE III

DEFENDANT'S ANSWER AND AFFIRMATIVE DEFENSES

Defendant Covanta Plymouth Renewable Energy, LLC (“Covanta Plymouth”), through undersigned counsel, submits its Affirmative Defenses and Answer to the parts of Plaintiff’s Class Action Complaint (“Complaint”) that were not dismissed by the Court on February 3, 2021 (*see* ECF Nos. 21-22).

PRELIMINARY STATEMENT AND GENERAL DENIAL

Covanta Plymouth denies in all material respects Plaintiff’s allegations in the Complaint. Covanta Plymouth diligently manages its operations to minimize and avoid the types of impacts alleged in the Complaint, and has acted appropriately and responsibly in operating its facility. The closely regulated waste-to-energy facility is also actively monitored by Pennsylvania Department of Environmental Protection (“DEP”) personnel.

ANSWER TO COMPLAINT

INTRODUCTION

1. Covanta Plymouth admits that it operates a waste-to-energy facility at 1155 Conshohocken Road in Conshohocken, Pennsylvania, but denies the remaining allegations in Paragraph 1.

2. Covanta Plymouth denies the allegations in Paragraph 2.

3. Covanta Plymouth denies the allegations in Paragraph 3. By way of further response, this Paragraph sets forth legal conclusions and questions of law to which no response is required.

PARTIES

4. Covanta Plymouth does not have knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 4. Therefore, the allegations are denied and strict proof thereof is demanded at trial.

5. Covanta Plymouth admits that it is a Delaware business corporation, and that it operates and maintains a waste-to-energy facility located at 1155 Conshohocken Rd., Conshohocken, Pennsylvania 19428. The remaining allegations in Paragraph 5 are legal conclusions that require no response and are denied.

JURISDICTION AND VENUE

6. Covanta Plymouth does not have knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 6. By way of further response, this Paragraph sets forth legal conclusions and questions of law to which no response is required.

7. Paragraph 7 asserts legal conclusions and questions of law to which no response is required. To the extent that Paragraph 7 requires a response, the allegations of Paragraph 7 are denied.

8. Paragraph 8 asserts legal conclusions and questions of law to which no response is required. To the extent that Paragraph 8 requires a response, the allegations of Paragraph 8 are denied.

9. Paragraph 9 asserts legal conclusions and questions of law to which no response is required. To the extent that Paragraph 9 requires a response, the allegations of Paragraph 9 are denied.

10. Paragraph 10 asserts legal conclusions and questions of law to which no response is required. To the extent that Paragraph 10 requires a response, the allegations of Paragraph 10 are denied.

GENERAL ALLEGATIONS

9. Covanta Plymouth admits that it owns and operates a facility that processes solid waste to produce electric energy for sale, but denies the remaining allegations and characterizations in Paragraph 9.¹

10. Covanta Plymouth admits that it owns and operates a facility that processes solid waste to produce electric energy for sale, but denies the remaining allegations and characterizations in Paragraph 10. By way of further response, this Paragraph sets forth legal conclusions and questions of law to which no response is required.

11. Covanta Plymouth admits that it owns and operates a waste-to-energy facility, at which it accepts waste, but denies the remaining allegations and characterizations in Paragraph 11. By way of further response, this Paragraph sets forth legal conclusions and questions of law to which no response is required.

¹ Plaintiff's Complaint includes a Paragraph numbered 9 and 10 twice on page 2. For the sake of consistency, Covanta Plymouth maintains Plaintiff's numbering sequence.

12. Covanta Plymouth admits that it owns and operates a waste-to-energy facility, at which it accepts waste, but denies the remaining allegations and characterizations in Paragraph 12.

13. Paragraph 13 asserts legal conclusions and questions of law to which no response is required.

14. Covanta Plymouth admits that it employs multiple emission control processes at its facility, but denies the remaining allegations and characterizations in Paragraph 14.

15. Covanta Plymouth denies the allegations and characterizations in Paragraph 15.

16. Covanta Plymouth denies the allegations and characterizations in Paragraph 16. By way of further response, this Paragraph sets forth legal conclusions and questions of law to which no response is required.

17. Covanta Plymouth denies the allegations and characterizations in Paragraph 17. By way of further response, this Paragraph sets forth legal conclusions and questions of law to which no response is required.

18. Covanta Plymouth denies the allegations and characterizations in Paragraph 18. By way of further response, this Paragraph sets forth legal conclusions and questions of law to which no response is required.

19. Covanta Plymouth denies the allegations and characterizations in Paragraph 19. By way of further response, this Paragraph sets forth legal conclusions and questions of law to which no response is required.

20. Covanta Plymouth denies the allegations and characterizations in Paragraph 20. By way of further response, this Paragraph sets forth legal conclusions and questions of law to which no response is required.

21. Covanta Plymouth denies the allegations and characterizations in Paragraph 21. By way of further response, this Paragraph sets forth legal conclusions and questions of law to which no response is required.

22. Covanta Plymouth denies the allegations and characterizations in Paragraph 22.

23. Covanta Plymouth lacks knowledge sufficient to admit or deny the allegations of Paragraph 23. To the extent a response is required, these allegations are denied. Strict proof thereof is demanded at trial.

24. Covanta Plymouth lacks knowledge sufficient to admit or deny the allegations of Paragraph 24. To the extent a response is required, these allegations are denied. Strict proof thereof is demanded at trial.

25. To the extent the allegations of Paragraph 25 relate to Plaintiff's negligence claim, no response is required because the claim was dismissed with prejudice. Covanta Plymouth denies the remaining allegations and characterizations set forth in Paragraph 25. Strict proof thereof is demanded at trial. By way of further response, this Paragraph sets forth legal conclusions and questions of law to which no response is required.

26. To the extent the allegations of Paragraph 26 relate to Plaintiff's negligence claim, no response is required because the claim was dismissed with prejudice. Covanta Plymouth denies the remaining allegations and characterizations set forth in Paragraph 26. By way of further response, this Paragraph sets forth legal conclusions and questions of law to which no response is required.

27. To the extent the allegations of Paragraph 27 relate to Plaintiff's negligence claim, no response is required because the claim was dismissed with prejudice. Covanta Plymouth denies the remaining allegations and characterizations of the alleged regulatory events

set forth in Paragraph 27. By way of further response, this Paragraph sets forth legal conclusions and questions of law to which no response is required.

28. Covanta Plymouth denies the allegations and characterizations in Paragraph 28. By way of further response, this Paragraph sets forth legal conclusions and questions of law to which no response is required.

29. Covanta Plymouth denies the allegations and characterizations in Paragraph 29. By way of further response, this Paragraph sets forth legal conclusions and questions of law to which no response is required.

30-37. Covanta Plymouth lacks sufficient knowledge or information regarding what putative class members may say to Plaintiff's counsel, but denies that putative class members are affected by odors as described emitted from Covanta Plymouth's facility. Strict proof thereof is demanded at trial. To the extent that Paragraphs 30-37 contain legal conclusions, no response is required. The allegations of Paragraph 37 relate to Plaintiff's negligence claim and do not require a response because the claim was dismissed with prejudice.

CLASS ALLEGATIONS

38-47. Paragraphs 38-47 allege a proposed class definition and assert legal conclusions and questions of law to which no response is required. To the extent a response is required, Covanta Plymouth denies the allegations and further states that Plaintiff cannot meet the rigorous burden of satisfying each of the requirements for class certification under Federal Rule of Civil Procedure 23, including numerosity, commonality, typicality, adequacy of representation, and superiority.

CLAIM 1: PRIVATE NUISANCE

48. In response to Paragraph 48, Covanta Plymouth repeats and incorporates its answers to Paragraph 1 through Paragraph 47 of the Complaint.

49. To the extent the allegations of Paragraph 49 relate to Plaintiff's negligence claim, no response is required because the claim was dismissed with prejudice. Paragraph 49 also asserts legal conclusions and questions of law to which no response is required. To the extent a response is required, Covanta Plymouth denies any remaining allegations in this Paragraph.

50. Paragraph 50 asserts legal conclusions and questions of law to which no response is required. To the extent a response is required, Covanta Plymouth denies any remaining allegations in this Paragraph.

51. Paragraph 51 asserts legal conclusions and questions of law to which no response is required. To the extent a response is required, Covanta Plymouth denies any remaining allegations in this Paragraph.

52. Paragraph 52 asserts legal conclusions and questions of law to which no response is required. To the extent a response is required, Covanta Plymouth denies any remaining allegations in this Paragraph.

53. Covanta Plymouth lacks knowledge or information regarding what putative class members may have said to Plaintiff's counsel, but denies that putative class members are affected by "odors," "pollutants," or "air contaminants" emitted from Covanta Plymouth's facility. Strict proof is demanded. By way of further response, this Paragraph sets forth legal conclusions and questions of law to which no response is required.

54. To the extent the allegations of Paragraph 54 relate to Plaintiff's negligence claim, no response is required because the claim was dismissed with prejudice. Paragraph 54 also asserts legal conclusions and questions of law to which no response is required. To the extent a response is required, Covanta Plymouth denies any remaining allegations in this Paragraph.

55. Paragraph 55 asserts legal conclusions and questions of law to which no response is required. To the extent a response is required, Covanta Plymouth denies any remaining allegations in this Paragraph.

56. Paragraph 56 asserts legal conclusions and questions of law to which no response is required. To the extent Paragraph 56 does contain allegations, Covanta Plymouth denies them.

CLAIM 2: PUBLIC NUISANCE

57. In response to Paragraph 57, Covanta Plymouth repeats and incorporates its answers to Paragraph 1 through Paragraph 56 of the Complaint.

58. Covanta Plymouth denies the allegations in Paragraph 58.

59. Covanta Plymouth denies the allegations in Paragraph 59.

60. Covanta Plymouth denies the allegations in Paragraph 60. By way of further response, this Paragraph sets forth legal conclusions and questions of law to which no response is required.

61. To the extent the allegations of Paragraph 61 relate to Plaintiff's negligence claim, no response is required because the claim was dismissed with prejudice. Paragraph 61 also asserts legal conclusions and questions of law to which no response is required. To the extent a response is required, Covanta Plymouth denies any remaining allegations in this Paragraph.

62. Covanta Plymouth denies the allegations in Paragraph 62. By way of further response, this Paragraph sets forth legal conclusions and questions of law to which no response is required.

63. Covanta Plymouth denies the premises and allegations in Paragraph 63. By way of further response, this Paragraph sets forth legal conclusions and questions of law to which no response is required.

64. To the extent the allegations of Paragraph 64 relate to Plaintiff's negligence claim, no response is required because the claim was dismissed with prejudice. Paragraph 64 also asserts legal conclusions and questions of law to which no response is required. To the extent a response is required, Covanta Plymouth denies any remaining allegations in this Paragraph.

65. To the extent the allegations of Paragraph 65 relate to Plaintiff's negligence claim, no response is required because the claim was dismissed with prejudice. Paragraph 65 also asserts legal conclusions and questions of law to which no response is required. To the extent a response is required, Covanta Plymouth denies any remaining allegations in this Paragraph.

66. To the extent the allegations of Paragraph 66 relate to Plaintiff's negligence claim, no response is required because the claim was dismissed with prejudice. Paragraph 66 also asserts legal conclusions and questions of law to which no response is required. To the extent a response is required, Covanta Plymouth denies any remaining allegations in this Paragraph.

67. To the extent the allegations of Paragraph 67 relate to Plaintiff's negligence claim, no response is required because the claim was dismissed with prejudice. Paragraph 67

also asserts legal conclusions and questions of law to which no response is required. To the extent a response is required, Covanta Plymouth denies any remaining allegations in this Paragraph.

68. Covanta Plymouth denies the premises and allegations in Paragraph 68. By way of further response, this Paragraph sets forth legal conclusions and questions of law to which no response is required.

69. To the extent the allegations of Paragraph 69 relate to Plaintiff's negligence claim, no response is required because the claim was dismissed with prejudice. Paragraph 69 also asserts legal conclusions and questions of law to which no response is required. To the extent a response is required, Covanta Plymouth denies any remaining allegations in this Paragraph.

70. Paragraph 70 asserts legal conclusions and questions of law to which no response is required. To the extent a response is required, Covanta Plymouth denies any remaining allegations in this Paragraph.

71. Paragraph 71 asserts legal conclusions and questions of law to which no response is required. To the extent a response is required, Covanta Plymouth denies any remaining allegations in this Paragraph.

72. Covanta Plymouth lacks knowledge or information regarding what putative class members may have said to Plaintiff's counsel, but denies that putative class members are affected by "odors" emitted from Covanta Plymouth's facility. Strict proof thereof is demanded at trial. By way of further response, this Paragraph sets forth legal conclusions and questions of law to which no response is required.

73. Paragraph 73 asserts legal conclusions and questions of law to which no response is required. To the extent Paragraph 73 does contain allegations, Covanta Plymouth denies them.

74. Paragraph 74 asserts legal conclusions and questions of law to which no response is required. To the extent Paragraph 74 does contain allegations, Covanta Plymouth denies them.

CLAIM 3: NEGLIGENCE

75.-85. The Court dismissed Plaintiff's negligence claim with prejudice on February 3, 2021. Therefore, no response is required and all allegations are denied.

PRAYER FOR RELIEF

WHEREFORE, Covanta Plymouth denies that Plaintiff is entitled to the relief and damages she seeks from her remaining nuisance claims in subparagraphs A, B, C, D, E, F and G of her prayer for relief, for the reasons stated above. As it concerns any relief and damages Plaintiff seeks from her negligence claim, the Court dismissed the negligence claim with prejudice on February 3, 2021.

AFFIRMATIVE DEFENSES

Covanta Plymouth asserts the following affirmative and other defenses, and reserves the right to amend the Answer as additional information becomes available and additional defenses become apparent.

1. Plaintiff fails to state a claim upon which relief can be granted.
2. Any alleged odors are not more than an inconvenience or petty annoyance.
3. Covanta Plymouth owes no specific or general duty to Plaintiff.
4. Covanta Plymouth was not the proximate or actual cause of the damages claimed by Plaintiff.
5. Plaintiff's claims are proscribed and/or barred in whole or in part by the applicable statute of limitations.

6. Plaintiff's claims are barred in whole or in part by the doctrines of unclean hands, waiver and/or estoppel.

7. Plaintiff's claims are barred in whole or in part by the doctrine of laches.

8. Plaintiff's claims are barred in whole or in part by the doctrines of assumption of the risk and/or coming to the nuisance.

9. Plaintiff's claims are barred in whole or in part by the doctrine of primary jurisdiction.

10. Plaintiff's claims are preempted by federal or state law and Covanta Plymouth's activities are authorized by law, precluding a finding of nuisance.

11. Plaintiff's damages are not ascertainable or measurable.

12. Plaintiff's claims are barred or limited by preexisting injuries.

13. Plaintiff's damages, if any, were sustained as a result of intervening or superseding causes, including but not limited to the acts of third parties.

14. Any damages that Plaintiff may be entitled to recover are subject to reduction by the amounts they are entitled to receive from collateral sources for the same injuries.

15. Plaintiff's claims are barred or diminished to the extent that her damages were due to her own fault or the comparative fault of third parties who were not under the control of Covanta Plymouth.

16. Plaintiff failed to mitigate her alleged damages.

17. Plaintiff has failed to join all required parties.

18. Plaintiff does not meet the standards for class certification.

19. Plaintiff cannot recover attorneys' fees or costs.

20. Covanta Plymouth reserves the right to assert additional defenses not raised herein of which it may become aware through disclosure, further investigation, or otherwise, and reserves the right to amend or supplement its Answer to the Complaint to assert any other defenses.

WHEREFORE, Defendant Covanta Plymouth, having now answered Plaintiff's Complaint after obtaining dismissal of Plaintiff's negligence claim with prejudice, respectfully requests that this Court deny Plaintiff's attempt to certify the proposed class, deny Plaintiff's requests for relief in their entirety, and enter judgment in Covanta Plymouth's favor and against Plaintiff, along with costs of suit, reasonable attorneys' fees, and all such further relief as this Court deems just and proper.

Dated: February 17, 2021

Respectfully submitted:

BY: /s/ Robert M. Donchez

BY: /s/ Collin Gannon

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CERTIFICATE OF SERVICE

I hereby certify that on February 17, 2021 a true and correct copy of Defendant Covanta Plymouth Renewable Energy, LLC's Answer was electronically filed via the Court's CM/ECF system, which will provide electronic notifications of such filing to all counsel of record.

Dated: February 17, 2021

Respectfully submitted,

BY: /s/ Collin Gannon

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