UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
BEFORE THE PRESIDING OFFICER

In the Matter of:	)	**EPA Docket No. RCRA-01-2015-0052**
	)	
C.E. Bradley Laboratories, Inc.	)	
56 Bennett Drive	)	
Brattleboro, Vermont 05301	)	

RESPONDENT'S ANSWER, DEFENSES AND REQUEST FOR HEARING

Pursuant to 40 C.F.R. § 22.15(b), C.E. Bradley Laboratories, Inc. ("Respondent") respectfully submits its Answer, Defenses and Request for Hearing in response to the Complaint, Compliance Order and Notice of Opportunity for Hearing ("Complaint") dated September 29, 2015.

ANSWER

In reply to the Complaint, Respondent states as follows[1]:

"I. Introduction"

1. The first and second sentences of Paragraph 1 of the Complaint state legal conclusions to which no response is necessary; to the extent a response is required, Respondent DENIES the allegations of those sentences. As to the third sentence of Paragraph 1 of the Complaint, Respondent ADMITS that EPA has provided notice of Respondent's opportunity to request a hearing, which request Respondent is making herein.

"II. Nature of Action"

2. Paragraph 2 of the Complaint states a legal conclusion to which no response is necessary; to the extent a response is required, Respondent DENIES the allegations contained therein.

---

[1] The corresponding headings and paragraph numbers of the Complaint are utilized herein for purposes of reference only. Respondent's utilization should not be construed as or otherwise considered an admission of any sort, or as an agreement with the characterizations being made by the EPA in the Complaint.

3. Respondent is without sufficient knowledge as to the allegations of Paragraph 3 of the Complaint, and therefore DENY them.

"III. Statutory and Regulatory Framework"

4. As to Paragraph 4 of the Complaint, Respondent ADMITS that RCRA Subtitle C, 42 U.S.C. § 6921 *et seq.* and 40 C.F.R. Parts 260-270 speak for themselves. Otherwise, Paragraph 4 of the Complaint states a legal conclusion to which no response is necessary; to the extent a response is required, Respondent DENIES the allegations contained therein.

5. As to Paragraph 5 of the Complaint, Respondent ADMITS that Section 3001 of RCRA, 42 U.S.C. § 6921, and the regulations set forth at 40 C.F.R. Part 261 speak for themselves. Otherwise, Paragraph 5 of the Complaint states a legal conclusion to which no response is necessary; to the extent a response is required, Respondent DENIES the allegations contained therein.

6. As to Paragraph 6 of the Complaint, Respondent ADMITS that Section 3002 of RCRA, 42 U.S.C. § 6922, and the regulations set forth at 40 C.F.R. Part 262 speak for themselves. Otherwise, Paragraph 6 of the Complaint states a legal conclusion to which no response is necessary; to the extent a response is required, Respondent DENIES the allegations contained therein.

7. As to Paragraph 7 of the Complaint, Respondent ADMITS that Section 3005 of RCRA, 42 U.S.C. § 6925, speaks for itself. Otherwise, Paragraph 7 of the Complaint states a legal conclusion to which no response is necessary; to the extent a response is required, Respondent DENIES the allegations contained therein.

8. As to Paragraph 8 of the Complaint, Respondent ADMITS that Section 3004(c)-(p) of RCRA, 42 U.S.C. § 6924(c)-(p) speaks for itself. Otherwise, Paragraph 8 of the Complaint

states a legal conclusion to which no response is necessary; to the extent a response is required, Respondent DENIES the allegations contained therein.

9. As to Paragraph 9 of the Complaint, Respondent ADMITS that the regulations set forth at 40 C.F.R. Part 265 speak for themselves. Otherwise, Paragraph 9 of the Complaint states a legal conclusion to which no response is necessary; to the extent a response is required, Respondent DENIES the allegations contained therein.

10. As to Paragraph 10 of the Complaint, Respondent ADMITS that Section 3006 of RCRA, 42 U.S.C. § 6926, speaks for itself. Otherwise, Paragraph 10 of the Complaint states a legal conclusion to which no response is necessary; to the extent a response is required, Respondent DENIES the allegations contained therein.

11. As to Paragraph 11 of the Complaint, Respondent is without sufficient knowledge as to the allegations of Paragraph 11 of the Complaint, and therefore DENY them.

12. As to Paragraph 12 of the Complaint, Respondent ADMITS that Vermont hazardous waste management regulations are codified at VHWMR, Subchapters 1-9, § 7-101 through § 7-916, which regulations speak for themselves, but is without sufficient knowledge as to whether those regulations are "federally authorized," which allegation also states a legal conclusion to which no response is necessary; to the extent a response is required, Respondent DENIES that the regulations are "federally authorized."

13. As to Paragraph 13 of the Complaint, Respondent ADMITS that Section 3006 of RCRA, 42 U.S.C. § 6926, speaks for itself. Otherwise, Paragraph 13 of the Complaint states a legal conclusion to which no response is necessary; to the extent a response is required, Respondent DENIES the allegations contained therein.

14. As to Paragraph 14 of the Complaint, Respondent ADMITS that Sections 3006(g) and 3008(a) of RCRA, 42 U.S.C. §§ 6926(g) and 6928(a), speak for themselves. Otherwise, Paragraph 14 of the Complaint states a legal conclusion to which no response is necessary; to the extent a response is required, Respondent DENIES the allegations contained therein.

15. As to Paragraph 15 of the Complaint, Respondent ADMITS that Sections 3008(a) and 3008(g) of RCRA, 42 U.S.C. §§ 6928(a) and 6928(g), 31 U.S.C. § 3701 *et seq.*, and 40 C.F.R. Part 19, all speak for themselves. Otherwise, Paragraph 15 of the Complaint states a legal conclusion to which no response is necessary; to the extent a response is required, Respondent DENIES the allegations contained therein.

"IV. General and Factual Allegations"

16. As to Paragraph 16 of the Complaint, Respondent ADMITS that it is a corporation established under the laws of the State of Vermont, but DENIES that it has a principal place of business located at 55 Bennett Drive, Brattleboro, Vermont. Rather, Respondent's principal place of business is located at 56 Bennett Drive, Brattleboro, Vermont.

17. As to Paragraph 17 of the Complaint, Respondent ADMITS that it is a "person" as defined in Section 1004(5) of RCRA, 42 U.S.C. § 6903(15), and VHWMR § 7-103.

18. As to Paragraph 18 of the Complaint, Respondent ADMITS that it owns the property, structures and appurtenances located at 56 Bennett Drive, Brattleboro, Vermont (hereinafter referred to as "Respondent's Property"). Otherwise, Paragraph 18 of the Complaint states legal conclusions to which no response is necessary; to the extent a response is required, Respondent DENIES the allegations contained therein.

19. As to Paragraph 19 of the Complaint, Respondent ADMITS that in addition to owning Respondent's Property, it operates the business located there. Otherwise, Paragraph 19 of the

Complaint states a legal conclusion to which no response is necessary; to the extent a response is required, Respondent DENIES the allegations contained therein.

20. As to Paragraph 20 of the Complaint, Respondent ADMITS that C.E. Bradley Laboratories, Inc. and its family of related companies were and are manufacturers and sellers at Respondent's Property of coatings for the wood, metal, graphic arts and plastic industries. Respondent is without knowledge as to the meaning of the undefined phrase referring to "[a]t all times relevant to the allegations set forth in this Complaint," and therefore DENIES that portion of Paragraph 20 of the Complaint absent clarification.

21. As to Paragraph 21 of the Complaint, Respondent is without sufficient information as to the allegations, and therefore DENIES them. Otherwise, Paragraph 21 of the Complaint states a legal conclusion to which no response is necessary; to the extent a response is required, Respondent DENIES the allegations contained therein.

22. Respondent is without knowledge as to the meaning of the undefined phrase referring to "[a]t all times relevant to this Complaint," and therefore DENIES that portion of Paragraph 22 of the Complaint absent clarification. As to the first sentence of Paragraph 22 of the Complaint, Respondent ADMITS that it has generated and continues to generate certain hazardous waste at Respondent's Property; otherwise, that sentence states a legal conclusion to which no response is necessary, and to the extent a response is required, Respondent DENIES the allegations contained therein. As to the second sentence of Paragraph 22 of the Complaint, Respondent ADMITS that the hazardous waste that is currently generated at or has been generated at Respondent's Property include waste solvents and solvent-based waste-related material; otherwise, that sentence states a legal conclusion to which no response is necessary, and to the extent a response is required, Respondent DENIES the allegations contained therein.

23. As to Paragraph 23 of the Complaint, Respondent ADMITS that it owns and operates Respondent's Property, and that certain hazardous waste is generated at that location. Otherwise, Paragraph 23 of the Complaint states a legal conclusion to which no response is necessary; to the extent a response is required, Respondent DENIES the allegations contained therein.

24. As to Paragraph 24 of the Complaint, Respondent ADMITS that it owns and operates Respondent's Property, and that certain hazardous waste is generated at that location. Otherwise, Paragraph 24 of the Complaint states a legal conclusion to which no response is necessary; to the extent a response is required, Respondent DENIES the allegations contained therein. Respondent is without knowledge as to the meaning of the undefined phrase referring to "[a]t all times relevant to the allegations set forth in this Complaint," and therefore DENIES that portion of Paragraph 24 of the Complaint absent clarification.

25. As to Paragraph 25 of the Complaint, Respondent ADMITS that on August 11 and 12, 2014, persons purporting to be duly authorized representatives of EPA purported to conduct an inspection at Respondent's Property (hereinafter, the "Inspection"). Respondent is without knowledge as to the purpose of the Inspection, and therefore DENIES that the Inspection occurred "to determine Respondent's compliance with RCRA and the federal and state regulations promulgated thereunder." Respondent ADMITS that during the Inspection, the inspectors observed conditions at Respondent's Property and reviewed documents, but otherwise DENIES the second sentence of Paragraph 25 of the Complaint.

"V. Violations[2]"

"Count I: Treatment and Storage of Hazardous Waste without Certification"

26. As to Paragraph 26 of the Complaint, Respondent incorporates by reference, as if set forth fully herein, its answers to Paragraphs 1 through 25 of the Complaint.

27. As to Paragraph 27 of the Complaint, Respondent ADMITS that Section 3005 of RCRA and the regulations set forth at VHWMR § 7-504(a) speak for themselves. Otherwise, Paragraph 27 of the Complaint states a legal conclusion to which no response is necessary; to the extent a response is required, Respondent DENIES the allegations contained therein.

28. In response to Paragraph 28 of the Complaint, Respondent states as follows:

- As to Paragraph 28(a), Respondent ADMITS that at the time of the Inspection, Respondent was operating at Respondent's Property a carbon adsorption system on site to treat solvent-contaminated wastewater generated in the solvent paint manufacturing process, and ADMITS that it did so "without obtaining certification from the Secretary," but DENIES the implication in that allegation that Respondent somehow was obligated by law to obtain such certification in the first place.

- As to Paragraph 28(b), Respondent DENIES that at the time of the Inspection, Respondent was operating at Respondent's Property "steam stripping (treatment) of carbon from the carbon adsorption system," and otherwise DENIES the allegations in that part of the paragraph.

- As to Paragraph 28(c), Respondent ADMITS that at the time of the Inspection it hung solvent-contaminated wipes, DENIES that such hanging constitutes "treating", ADMITS that it

---

[2] Respondent DENIES the prefatory remark to this section of the Complaint, which states: "Based on the Inspection and document review, EPA identified the following violations of RCA, 10 Vermont Annotated Statutes chapter 159, and VHWMR."

did so "without obtaining certification from the Secretary," but DENIES the implication in that allegation that Respondent somehow was obligated by law to obtain such certification in the first place.

- As to Paragraph 28(d)(i), Respondent ADMITS that at the time of the Inspection there were "two 10-gallon salvage containers in the road Paint Area marked 'paint, flammable' with the following dates: 1/31/14 and 2/3/14," but DENIES that the containers contained any material and DENIES that such containers constituted "storing . . . containers of hazardous waste for greater than 90 days." Respondent ADMITS that it had those containers "without obtaining certification from the Secretary," but DENIES the implication in that allegation that Respondent somehow was obligated by law to obtain such certification in the first place. Plaintiff DENIES that an employee of Respondent advised the inspector that "the containers held waste clean-up residue and had been sent to Respondent by a client."

- As to Paragraph 28(d)(ii), Respondent ADMITS that there were "approximately 70 55-gallon containers and 20[3] five-gallon containers in the Bulk Accumulation Storage Area," but DENIES that they were "identified by an employee of Respondent as solvent-contaminated hazardous waste being accumulated for bulk waste shipment" and DENIES that "[a]ccording to the employee, the containers had been stored there for a few years." Respondent ADMITS that it had those containers "without obtaining certification from the Secretary," but DENIES the implication in that allegation that Respondent somehow was obligated by law to obtain such certification in the first place.

29. Respondent DENIES Paragraph 29 of the Complaint.

---

[3] More specifically, Respondent admits that there were about 20 five-gallon containers, but notes that this estimate by EPA varies in other paragraphs of the Complaint. *See* Paragraphs 36(d), 40(b), 49(a), 57(a). Respondent's admission, therefore, is to the estimated range of 20-25 such containers, not to any exact number.

"Count II: Failure to Keep Hazardous Waste Containers Closed"

30. As to Paragraph 30 of the Complaint, Respondent incorporates by reference, as if set forth fully herein, its answers to Paragraphs 1 through 29 of the Complaint.

31. As to Paragraph 31 of the Complaint, Respondent ADMITS that VHWMR § 7-311(f)(4)(A) speaks for itself. Otherwise, Otherwise, Paragraph 31 of the Complaint states a legal conclusion to which no response is necessary; to the extent a response is required, Respondent DENIES the allegations contained therein.

32. In response to Paragraph 32 of the Complaint, Respondent states as follows:

- As to Paragraph 32(a), Respondent is without sufficient information and therefore DENIES that at the time of the Inspection there were two 55-gallon containers of paint-related material in the road-paint area[4], and otherwise DENIES that any such material, to the extent it was present in those containers, constituted "waste," DENIES that it "was storing . . . containers of hazardous waste," and is without information concerning and therefore DENIES that "[w]aste was not being added or removed from the containers at the time of the Inspection" and that the containers were "open."

- As to Paragraph 32(b), Respondent ADMITS that at the time of the Inspection there were approximately 60 five-gallon contains but is without sufficient information and therefore DENIES that there was one 55-gallon container of paint and solvent in the paint drain operation

[4] Respondent also notes that the EPA's stated number of alleged 55-gallon containers in or near the road paint area varies across other paragraphs of the Complaint. *See* Paragraphs 36(a) and 57(b).

area[5], and otherwise DENIES that this material constituted "waste," DENIES that it "was storing . . . containers of hazardous waste," and is without information concerning and therefore DENIES that "[w]aste was not being added or removed from the containers at the time of the Inspection."

- As to Paragraph 32(c), Respondent is without sufficient information and therefore DENIES that at the time of the Inspection there was one 55-gallon container to the left of the distillation unit[6], and DENIES that it "was storing . . . containers of hazardous waste," is without information concerning and therefore DENIES that the container was "marked as hazardous waste solids," and is without information concerning and therefore DENIES that "[w]aste was not being added or removed from the containers at the time of the Inspection."

- As to Paragraph 32(d), Respondent is without sufficient information and therefore DENIES that at the time of the Inspection there was one 55-gallon container of solvent-contaminated water with a hose into the drum behind the distillation unit, and DENIES that it "was storing . . . containers of hazardous waste" and is without information concerning and therefore DENIES that "[w]aste was not being added or removed from the containers at the time of the Inspection."

---

5 Respondent also notes that the EPA's stated number of alleged 55-gallon containers in the paint drain operation area varies across the Complaint. *Compare* Paragraphs 36(b), 40(a), 49(b), 57(d) and 57(e).

6 The Complaint variously refers to one 55-gallon container "marked as hazardous waste solids" to the left of the distillation unit (Paragraph 32(c)), one 55-gallon container of "solvent-contaminated water with a hose into the drum" behind the distillation unit (Paragraph 32(d)), one 55-gallon container of "used solvent" behind the distillation unit (Paragraphs 36(e) and 40(c)), and one 55-gallon container "of solvent-contaminated water immediately in front of the distillation unit" (Paragraph 36(c)). Whether any of these alleged containers are describing the same alleged container or containers is unclear.

- As to Paragraph 32(e), Respondent ADMITS that at the time of the Inspection there were thirteen 55-gallon containers holding solvent-contaminated water in front of the carbon treatment system, but DENIES that it "was storing . . . containers of hazardous waste" and is without information concerning and therefore DENIES that "[w]aste was not being added or removed from the containers at the time of the Inspection."

33. Respondent DENIES Paragraph 33 of the Complaint.

"Count III:
Failure to Label Containers Storing Hazardous Waste with the Accumulation Date"

34. As to Paragraph 34 of the Complaint, Respondent incorporates by reference, as if set forth fully herein, its answers to Paragraphs 1 through 33 of the Complaint.

35. As to Paragraph 35 of the Complaint, Respondent ADMITS that VHWMR § 7-311(f)(1)(C) speaks for itself. Otherwise, Otherwise, Paragraph 35 of the Complaint states a legal conclusion to which no response is necessary; to the extent a response is required, Respondent DENIES the allegations contained therein.

36. In response to Paragraph 36 of the Complaint, Respondent states as follows:

- As to Paragraph 36(a), Respondent is without sufficient information and therefore DENIES that at the time of the Inspection, there were two 55-gallon containers of paint-related material in the road paint area, but DENIES that they contained "waste," DENIES that they were "containers of hazardous waste that were not at or near the point where the waste was generated," and is without information concerning and therefore DENIES that they "were not labeled with the beginning accumulation date."

- As to Paragraph 36(b), Respondent ADMITS that at the time of the Inspection, there were approximately 60 five-gallon containers but is without sufficient information and therefore DENIES that there were three 55-gallon containers of paint and five 55-gallon containers of

paint related material, all in the paint drain operation area, and DENIES that they contained "waste," DENIES that they were "containers of hazardous waste that were not at or near the point where the waste was generated," and is without information concerning and therefore DENIES that they "were not labeled with the beginning accumulation date."

- As to Paragraph 36(c), Respondent is without sufficient information and therefore DENIES that at the time of the Inspection, there was one 55-gallon container of solvent-contaminated water immediately in front of the distillation unit, and DENIES that it was a "container[] of hazardous waste that [was] not at or near the point where the waste was generated," and is without information concerning and therefore DENIES that they it "[was] not labeled with the beginning accumulation date."

- As to Paragraph 36(d), Respondent ADMITS that at the time of the Inspection, there were approximately 70 55-gallon containers and 25 five-gallon containers of paint in the bulk storage area, but DENIES that they contained "waste," DENIES that they were "containers of hazardous waste that were not at or near the point where the waste was generated," and is without information concerning and therefore DENIES that they "were not labeled with the beginning accumulation date."

- As to Paragraph 36(e), Respondent is without sufficient information and therefore DENIES that at the time of the Inspection, there was one 55-gallon container of used solvent behind the distillation unit, but DENIES that it was a "container[] of hazardous waste that [was] not at or near the point where the waste was generated," and is without information concerning and therefore DENIES that they it "[was] not labeled with the beginning accumulation date."

- As to Paragraph 36(f), Respondent ADMITS that at the time of the Inspection, there were thirteen 55-gallon containers holding solvent-contaminated waste in front of the carbon

treatment system, but DENIES that they were "containers of hazardous waste that were not at or near the point where the waste was generated," and is without information concerning and therefore DENIES that they "were not labeled with the beginning accumulation date."

37. Respondent DENIES Paragraph 37 of the Complaint.

"Count IV: Failure to Label Containers of Hazardous Waste"

38. As to Paragraph 38 of the Complaint, Respondent incorporates by reference, as if set forth fully herein, its answers to Paragraphs 1 through 37 of the Complaint.

39. As to Paragraph 39 of the Complaint, Respondent ADMITS that VHWMR § 7-311(f)(1) speaks for itself. Otherwise, Otherwise, Paragraph 39 of the Complaint states a legal conclusion to which no response is necessary; to the extent a response is required, Respondent DENIES the allegations contained therein.

40. In response to Paragraph 40 of the Complaint, Respondent states as follows:

- As to Paragraph 40(a), Respondent ADMITS that at the time of the Inspection there were approximately 60 five-gallon containers of solvent-based paint, but is without sufficient information and therefore DENIES that there were "one 55-gallon container of solvent-based paint-related material and one 55-gallon container of solvent-based paint in the paint drain area," and DENIES that the material constituted "waste" and DENIES that it "stored . . . unlabeled and improperly labeled containers of hazardous waste."

- As to Paragraph 40(b), Respondent ADMITS that at the time of the Inspection there were approximately 70 55-gallon containers and 25 five-gallon containers of paint-related material in the bulk storage area, but DENIES that the material constituted "waste" and DENIES that it "stored . . . unlabeled and improperly labeled containers of hazardous waste."

- As to Paragraph 40(c), Respondent is without sufficient information and therefore DENIES that at the time of the Inspection there was one 55-gallon container of used solvent behind the distillation unit, and DENIES that it "stored . . . unlabeled and improperly labeled containers of hazardous waste."

- As to Paragraph 40(d), Respondent ADMITS that at the time of the Inspection there were thirteen 55-gallon containers holding solvent-contaminated water in front of the carbon treatment system, but DENIES that it "stored . . . unlabeled and improperly labeled containers of hazardous waste."

41. Respondent DENIES Paragraph 41 of the Complaint.

"Count V: Failure to Minimize the Potential for Release of Hazardous Waste"

42. As to Paragraph 42 of the Complaint, Respondent incorporates by reference, as if set forth fully herein, its answers to Paragraphs 1 through 41 of the Complaint.

43. As to Paragraph 43 of the Complaint, Respondent ADMITS that VHWMR § 7-309(a) speaks for itself. Otherwise, Otherwise, Paragraph 43 of the Complaint states a legal conclusion to which no response is necessary; to the extent a response is required, Respondent DENIES the allegations contained therein.

44. As to Paragraph 44 of the Complaint, Respondent ADMITS that at the time of the Inspection there was a "concrete containment pad," but DENIES all the remaining allegations of Paragraph 44.

45. As to the first sentence of Paragraph 45 of the Complaint, Respondent ADMITS that in the drain operation area, there was dried paint on the floor, but is without information and therefore DENIES that "there were . . partially dried, and wet paints in and all around the floor." Respondent DENIES the second sentence of Paragraph 45. As to the third sentence of Paragraph

45, Respondent ADMITS that "the draining operation was located close to the outside of the building," but DENIES the remaining allegations of that sentence. Respondent ADMITS the fourth sentence of Paragraph 45. Respondent is without information and therefore DENIES that its "employee stated that the company tries to leave them open to help control the volatile organic compounds from the paint manufacturing processes in the area."

46. Respondent DENIES Paragraph 46 of the Complaint.

"Count VI – Failure to Maintain Adequate Aisle Space"

47. As to Paragraph 47 of the Complaint, Respondent incorporates by reference, as if set forth fully herein, its answers to Paragraphs 1 through 46 of the Complaint.

48. As to Paragraph 48 of the Complaint, Respondent ADMITS that VHWMR § 7-311(b)(3) speaks for itself. Otherwise, Otherwise, Paragraph 48 of the Complaint states a legal conclusion to which no response is necessary; to the extent a response is required, Respondent DENIES the allegations contained therein.

49. In response to Paragraph 49 of the Complaint, Respondent states as follows:

- As to Paragraph 49(a), Respondent ADMITS that at the time of the Inspection, there were 70 55-gallon contains and 25 five-gallon containers in the Bulk Accumulation Storage Area, which held paint-related materials and were being stored along the outside wall of the production building, but DENIES that those materials were "wastes," DENIES that they were "being accumulated for bulk waste shipment," DENIES that it "was not maintaining aisle space . . . where hazardous waste was stored," and DENIES that there was "no aisle space to be inspected or accessed in the event of a spill or other incident in the area."

- As to Paragraph 49(b), Respondent ADMITS that at the time of the Inspection, there were approximately 60 five-gallon containers of paint located in the Drain Operation area, but

DENIES that it "was not maintaining aisle space . . . where hazardous waste was stored" and is without information concerning and therefore DENIES that the containers were "open."

- As to Paragraph 49(c), Respondent ADMITS that at the time of the Inspection, there were 13 55-gallon containers holding contaminated water located in front of the Carbon Adsorption System, but DENIES that it "was not maintaining aisle space . . . where hazardous waste was stored" and is without information concerning and therefore DENIES that the containers were "open."

50. Respondent DENIES Paragraph 50 of the Complaint.

"Count VII – Failure to Maintain an Inventory of All Hazardous Wastes in Storage"

51. As to Paragraph 51 of the Complaint, Respondent incorporates by reference, as if set forth fully herein, its answers to Paragraphs 1 through 50 of the Complaint.

52. As to Paragraph 52 of the Complaint, Respondent ADMITS that VHWMR § 7-311(d)(1) speaks for itself. Otherwise, Otherwise, Paragraph 52 of the Complaint states a legal conclusion to which no response is necessary; to the extent a response is required, Respondent DENIES the allegations contained therein.

53. Respondent DENIES Paragraph 53 of the Complaint.

54. Respondent DENIES Paragraph 54 of the Complaint.

"Count VIII – Failure to Conduct and Document Inspections"

55. As to Paragraph 55 of the Complaint, Respondent incorporates by reference, as if set forth fully herein, its answers to Paragraphs 1 through 54 of the Complaint.

56. As to Paragraph 56 of the Complaint, Respondent ADMITS that VHWMR § 7-311(d)(2) speaks for itself. Otherwise, Otherwise, Paragraph 56 of the Complaint states a legal conclusion

to which no response is necessary; to the extent a response is required, Respondent DENIES the allegations contained therein.

57. In response to Paragraph 57 of the Complaint, Respondent states as follows:

- As to Paragraph 57(a), Respondent ADMITS that at the time of the Inspection, in the "Bulk Accumulation Storage Area," Respondent stored approximately 70 55-gallon containers and 25 five-gallon containers, but DENIES that the area was one "where hazardous wastes were stored," DENIES that "Respondent was not conducting inspections" there, and DENIES that the area was "identified by Respondent's employee as waste paint related materials being accumulated for bulk shipment."

- As to Paragraph 57(b), Respondent is without sufficient information and therefore DENIES that at the time of the Inspection, in the Road Paint Area, Respondent stored one 55-gallon container, and DENIES that it was "marked as hazardous waste, waste paint-related material, D001, F003, F005," DENIES that the area was one "where hazardous wastes were stored," and DENIES that "Respondent was not conducting inspections" there.

- As to Paragraph 57(c), Respondent ADMITS that at the time of the Inspection, in the Drain Operation Area, there were approximately 60 five-gallon containers, but DENIES that they were "holding small amounts of waste paint," DENIES that the area was one "where hazardous wastes were stored," and DENIES that "Respondent was not conducting inspections" there.

- As to Paragraph 57(d), Respondent is without sufficient information and therefore DENIES that at the time of the Inspection, there were three 55-gallon containers of paint in the vicinity of the drain operation, but DENIES that they contained "waste," DENIES that the area was one "where hazardous wastes were stored," and DENIES that "Respondent was not conducting inspections" there.

- As to Paragraph 57(e), Respondent is without sufficient information and therefore DENIES that at the time of the Inspection, there were five 55-gallon containers in the vicinity of the drain operation area, but DENIES that they "marked as hazardous waste, D001, D006, D035, F003, and F005," DENIES that they were "identified by Respondent as awaiting distillation in Respondent's distillation system," DENIES that the area was one "where hazardous wastes were stored," and DENIES that "Respondent was not conducting inspections" there.

58. Respondent DENIES Paragraph 58 of the Complaint.

"Count IX –
Failure to Determine the Average Volatile Organic Concentration of a Hazardous Waste"

59. As to Paragraph 59 of the Complaint, Respondent incorporates by reference, as if set forth fully herein, its answers to Paragraphs 1 through 58 of the Complaint.

60. As to Paragraph 60 of the Complaint, Respondent ADMITS that 40 C.F.R. §§ 262.34(a)(1) and 265.1084(a)(1) speaks for themselves. Otherwise, Otherwise, Paragraph 60 of the Complaint states a legal conclusion to which no response is necessary; to the extent a response is required, Respondent DENIES the allegations contained therein.

61. As to Paragraph 61 of the Complaint, Respondent ADMITS that at the time of the Inspection, it was treating organically contaminated wastewater on site in the carbon adsorption system that did not have air emission controls, but DENIES that it did so "without having determined the average VO concentration of the contaminated wastewater at its point of generation."

62. Respondent DENIES Paragraph 62 of the Complaint.

"VI. Compliance Order"

63. Paragraph 63 of the Complaint sets forth a legal conclusion and term of a compliance order to which no response is necessary; to the extent a response is required, Respondent

DENIES Paragraph 63. Respondent further DENIES that it is out of compliance with any applicable requirements of RCRA and VHWMR § 7-301 *et seq.*

64. Paragraph 64 of the Complaint sets forth a legal conclusion and term of a compliance order to which no response is necessary; to the extent a response is required, Respondent DENIES Paragraph 64. Respondent further DENIES the implications in Paragraph 64 that it has been "treating hazardous waste and storing hazardous waste for greater than 90 days without obtaining a certificate from the Secretary, in accordance with VHWMR § 7-504(a)," and that it has not been "ship[ping] off site any hazardous wastes that have been stored for more than 90 days."

65. Paragraph 65 of the Complaint sets forth a legal conclusion and term of a compliance order to which no response is necessary; to the extent a response is required, Respondent DENIES Paragraph 65. Respondent further DENIES the implication in Paragraph 65 that it has not been "keep[ing] containers of hazardous waste closed, except when adding or removing waste from the containers, in accordance with VHWMR § 7-311(f)(4)(A)."

66. Paragraph 66 of the Complaint sets forth a legal conclusion and term of a compliance order to which no response is necessary; to the extent a response is required, Respondent DENIES Paragraph 66. Respondent further DENIES the implication in Paragraph 66 that it has not been "properly label[ing] containers of hazardous waste with the accumulation date, in accordance with VHWMR § 7-311(f)(1)(c)."

67. Paragraph 67 of the Complaint sets forth a legal conclusion and term of a compliance order to which no response is necessary; to the extent a response is required, Respondent DENIES Paragraph 67. Respondent further DENIES the implication in Paragraph 67 that it has

not been "mark[ing] or label[ing] each container of hazardous waste, in accordance with VHWRM § 7-311(f)(1)(A), (B) and (D)."

68. Paragraph 68 of the Complaint sets forth a legal conclusion and term of a compliance order to which no response is necessary; to the extent a response is required, Respondent DENIES Paragraph 68. Respondent further DENIES the implication in Paragraph 68 that it has not "minimize[d] the possibility of fire, explosion or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, groundwater or surface water which could threaten human health or the environment with respect to the situations described in paragraph 45 and 46 above, in accordance with VHWMR § 7-309(a)."

69. Paragraph 69 of the Complaint sets forth a legal conclusion and term of a compliance order to which no response is necessary; to the extent a response is required, Respondent DENIES Paragraph 69. Respondent further DENIES the implication in Paragraph 69 that it has not "maintain[ed] adequate aisle space in short term storage areas sufficient to allow the unobstructed movement of personnel, fire protection equipment, spill control environment and decontamination equipment to any are [*sic*: area] of the facility operation, such that each row of containers can be inspected to ensure compliance with the container management standards, in accordance with violated VHWMR § 7-311(b)(3)."

70. Paragraph 70 of the Complaint sets forth a legal conclusion and term of a compliance order to which no response is necessary; to the extent a response is required, Respondent DENIES Paragraph 70. Respondent further DENIES the implication in Paragraph 70 that it has not "establish[ed] and maintain[ed]" at Respondent's Property "an inventory of all hazardous waste containers in storage, in accordance with VHWMR § 7-311(d)(1)."

71. Paragraph 71 of the Complaint sets forth a legal conclusion and term of a compliance order to which no response is necessary; to the extent a response is required, Respondent DENIES Paragraph 71. Respondent further DENIES the implication in Paragraph 71 that it has not "conduct[ed] daily inspections of all areas where hazardous wastes are stored, and record[ed] those inspections in a log or summary, in accordance with the requirements of § 7-311(d)(2)."

72. Paragraph 72 of the Complaint sets forth a legal conclusion and term of a compliance order to which no response is necessary; to the extent a response is required, Respondent DENIES Paragraph 72. Respondent further DENIES the implication in Paragraph 72 that it has not "determine[d] the average VO concentration of the waste stream being treated in the carbon adsorption unit at the point of origination of the waste, in accordance with 40 C.F.R. § 265.1084(a)(1)."

73. Paragraph 73 of the Complaint sets forth a legal conclusion and term of a compliance order to which no response is necessary; to the extent a response is required, Respondent DENIES Paragraph 73. Because Respondent contests liability, Respondent DENIES that it is obligated to provide EPA with "a written confirmation of compliance . . . or noncompliance."

74. Paragraph 74 of the Complaint sets forth a legal conclusion to which no response is necessary; to the extent a response is required, Respondent DENIES Paragraph 74.

75. As to Paragraph 75 of the Complaint, Respondent ADMITS that the addresses of Drew Meyer and Andrea Simpson are correct, but otherwise states that Paragraph 75 of the Complaint sets forth a term of a compliance order to which no response is necessary; to the extent a response is required, Respondent DENIES Paragraph 75. Respondent further DENIES that it is obligated to "submit the copies of any information, reports, and/or notices required by [EPA's] Order."

76. Paragraph 76 of the Complaint sets forth a legal conclusion to which no response is necessary; to the extent a response is required, Respondent DENIES Paragraph 76.

77. Paragraph 77 of the Complaint sets forth a legal conclusion to which no response is necessary; to the extent a response is required, Respondent DENIES Paragraph 77.

78. As to Paragraph 78 of the Complaint, Respondent ADMITS that 40 C.F.R. Part 22, 5 U.S.C. §§ 701-706, and RCRA Section 3008 speak for themselves, and Respondent reserves all rights to administrative and/or judicial review provided for therein. Otherwise, Paragraph 78 of the Complaint sets forth a legal conclusion to which no response is necessary; to the extent a response is required, Respondent DENIES Paragraph 78.

79. Paragraph 79 of the Complaint sets forth a legal conclusion to which no response is necessary; to the extent a response is required, Respondent DENIES Paragraph 79.

" VII. Proposed Penalty"

80. As to Paragraph 80 of the Complaint, Respondent ADMITS that a copy of Region I's Penalty Policy was enclosed with the Complaint as served on Respondent. Otherwise, Respondent DENIES the remaining allegations of Paragraph 80. In particular:

- Respondent DENIES that Region 1's RCRA Civil Penalty Policy, dated June 2003, as revised, "provides a rational, consistent and equitable calculation methodology for applying the statutory penalty factors" set forth in Section 3008(a) of RCRA.

- As to Paragraph 80(a), Respondent DENIES that any violations "for treatment and storage of hazardous waste without certification" occurred, and even if they did, DENIES that they "are significant," and DENIES that they represented "one hundred eighty-three violations." Respondent DENIES that solvent-contaminated wipes underwent "treatment . . . through evaporation," but even if they did, such evaporation is covered by Respondent's fugitive air

emissions limits in its air permit from ANR. Respondent otherwise DENIES the remainder of Paragraph 80(a), which contains argument and legal conclusions.

- As to Paragraph 80(b), Respondent DENIES that any violation "for failing to keep hazardous waste containers closed, except when necessary to add or remove waste" occurred, and even if it did, DENIES that it "is significant." Respondent DENIES that there was a "failure [to] keep such containers closed" that "increases the potential for direct contact of personnel with hazardous wastes, emissions of volatile wastes, reaction, ignition, spills, and/or commingling of incompatible wastes." Respondent otherwise DENIES the remainder of Paragraph 80(b), which contains argument and legal conclusions.

- As to Paragraph 80(c), Respondent DENIES that any violation "for failing to properly date hazardous waste containers" occurred, and even if it did, DENIES that it "is significant." Respondent DENIES that there was a "failure to mark hazardous waste containers with the accumulation start date" that "increases the potential that such wastes would be stored for more than the 90 days allowed under the regulations." Respondent otherwise DENIES the remainder of Paragraph 80(c), which contains argument and legal conclusions.

- As to Paragraph 80(d), Respondent DENIES that any violation "for failure to label containers of hazardous waste" occurred, and even if it did, DENIES that it "is significant." Respondent DENIES that there was a "failure to label contains of hazardous waste" that "can lead to improper management of such containers." Respondent otherwise DENIES the remainder of Paragraph 80(d), which contains argument and legal conclusions.

- As to Paragraph 80(e), Respondent DENIES that there were any violations "for failing to maintain and operate a facility in order to minimize the possibility of a fire, explosion or any unplanned release of hazardous waste," and even if there were, DENIES that they "are

significant," and DENIES that they represented "[t]wo violations." Respondent DENIES that there was a "failure to properly maintain the containment pad in its hazardous waste storage area and properly clean the drain operation area" such that "hazardous wastes could have been released to the environment." Respondent otherwise DENIES the remainder of Paragraph 80(e), which contains argument and legal conclusions.

- As to Paragraph 80(f), Respondent DENIES that there was a violation "for failing to maintain adequate aisle space," and even if there was, DENIES that it "is significant." Respondent DENIES that that was "inadequate aisle space." Respondent otherwise DENIES the remainder of Paragraph 80(f), which contains argument and legal conclusions.

- As to Paragraph 80(g), Respondent DENIES that there was a violation "for failing to maintain an inventory of all hazardous wastes in storage," and even if there was, DENIES that it "is significant." Respondent otherwise DENIES the remainder of Paragraph 80(g), which contains argument and legal conclusions.

- As to Paragraph 80(h), Respondent DENIES that there was a violation for "failing to adequately conduct and document inspections," and even if there was, DENIES that it "is significant." Respondent otherwise DENIES the remainder of Paragraph 80(h), which contains argument and legal conclusions.

- As to Paragraph 80(i), Respondent DENIES that there was a violation for "failing to determine the average volatile organic compound concentration at the point of waste origination for a hazardous waste placed in a tank," and even if there was, DENIES that it "is significant." Respondent DENIES that it "fail[ed] to make the requisite determination." Respondent otherwise DENIES the remainder of Paragraph 80(i), which contains argument and legal conclusions.

81. As to Paragraph 81 of the Complaint, Respondent ADMITS that the addresses set forth therein are correct. Otherwise, Paragraph 81 of the Complaint sets forth a legal conclusion to which no response is necessary; to the extent a response is required, Respondent DENIES Paragraph 81. Respondent further DENIES that EPA has "calculate[d] a proposed penalty based, in part, on its current knowledge of Respondents' financial condition."

82. As to Paragraph 82 of the Complaint, Respondent ADMITS that Section 3008(b) of RCRA, 42 U.S.C. § 6928(b) and 40 C.F.R. § 22.15 speak for themselves, and ADMITS that the address set forth in Paragraph 82 is correct. **Respondent hereby requests a hearing on the issues raised in the Complaint.** Otherwise, Paragraph 82 of the Complaint sets forth a legal conclusion to which no response is necessary; to the extent a response is required, Respondent DENIES Paragraph 82.

83. Respondent ADMITS that it was provided with the Complaint a copy of Region 1's "Standing Order Authorizing Filing and Service by E-mail in Proceedings Before the Region 1 Regional Judicial Officer." Otherwise, Paragraph 83 of the Complaint sets forth a legal conclusion to which no response is necessary; to the extent a response is required, Respondent DENIES Paragraph 83.

"IX. Default Order"

84. Paragraph 84 of the Complaint sets forth a legal conclusion to which no response is necessary; to the extent a response is required, Respondent DENIES Paragraph 84.

85. Respondent ADMITS that it has been afforded the opportunity to confer informally with Andrea Simpson of the EPA concerning the alleged violations, but DENIES that it has been given the opportunity "to provide whatever additional information may be relevant to the disposition of this matter," insomuch as discovery from EPA and Vermont ANR has not yet

commenced. Otherwise, Paragraph 85 of the Complaint sets forth a legal conclusion to which no response is necessary; to the extent a response is required, Respondent DENIES Paragraph 85.

All remaining allegations in the Complaint not specifically admitted by Respondent are DENIED.

II. REQUEST FOR HEARING

Pursuant to 42 U.S.C. § 6928(b) and 40 C.F.R. § 22.15, Respondent respectfully requests a hearing on the issues raised in the Complaint.

III. DEFENSES

A. Respondent denies that it is in violation of RCRA and the hazardous waste regulations promulgated to implement RCRA.

B. Respondent denies that, under the facts and circumstances relevant to this matter, EPA is entitled to seek civil penalties under Sections 3008(a) and 3008(g) of RCRA, 42 U.S.C. §§ 6928(a) and 6928(g).

C. All counts against Respondent are barred in whole or in part by one or more of the doctrines of administrative laches and/or administrative estoppel. Respondent's current owners have operated Respondent's Property in its current manner and configuration for many years, disclosing its operations fully to Vermont's Agency of Natural Resources ("ANR") in, among other ways, Respondent's air permit applications and through inspections by Vermont ANR inspectors. Prior to the EPA's post-inspection letter and subsequent filing of its Complaint, Respondent had not received any prior indication that the operation of Respondent's Property was in any way in violation of RCRA statutes or regulations in the manner specified in the Complaint.

D. All counts against Respondent concerning its carbon adsorption system are barred in whole or in part by virtue of that operation being disclosed to Vermont ANR as part of Respondent's air permit application, and ANR's subsequent requirement that the system be operated in the manner described by Respondent as a condition of ANR's air permit issued to Respondent.

E. Count I against Respondent is barred in whole or in part by virtue of: (1) the exemption from regulation set forth at VHWMR, Section 7-204(a)(1); and/or (2) one or more applicable exemptions to the certification regime, namely VHWMR, Sections 7-502(b), 7-502(g), 7-502(k), and 7-502(o).

F. All counts against Respondent are barred in whole or in part because some portions of the challenged materials referenced in the Complaint do not constitute "waste" as that term is defined at VHWMR, Section 7-103, and therefore cannot constitute "hazardous waste." Most of the containers that EPA concerns itself with in its Complaint actually contain off-spec material being retained by Respondent for use as ingredients in future batches of product.

G. Count IX against Respondent is barred in whole or in part by virtue of Respondent's compliance with 40 C.F.R. § 265.1084(a)(2) and 265.1084(a)(4).

H. Count V against Respondent is barred in whole or in part by virtue of the fact that the main storage area and drain operation area of Respondent's Property do not present a potential for release of hazardous waste, but to the extent they do, such potential has been effectively minimized by Respondent.

I. EPA has overcharged Respondent, in that Count III and Count IV each allege that the required marking was inadequate. Either the marking was in compliance with the requirements listed in VHWMR 7-311(f)(1), or it was not. EPA may not separately charge Respondent for

each subset of ways in which the marking was allegedly inadequate. EPA is improperly stacking duplicative charges to artificially inflate the penalty, to its own pecuniary benefit.

J. Respondent lacked the requisite scienter to warrant the penalties proposed by EPA in this matter. Furthermore, given the other factors set forth in the penalty matrix and related guidance, the facts and circumstances presented by this dispute do not justify the penalties proposed by EPA in this matter.

K. Under 42 U.S.C. 6926(b & d), EPA could not itself bring this enforcement action in the previously authorized state of Vermont. EPA has failed to allege and establish that ANR action was inadequate; that Vermont was notified and afforded an opportunity to cure any alleged inadequacy; and that EPA withdrew the authorization of the state's hazardous waste program.

DATE: March 2, 2016

Respectfully submitted,

C.E. Bradley Laboratories, Inc.

By its attorneys,

Zachary R. Gates
David Rosenblatt
125 Summer Street
Boston, MA 02110
Email: zgates@burnslev.com
Telephone: (617) 345-3000
Facsimile: (617) 345-3299

CERTIFICATE OF SERVICE

Pursuant to 40 C.F.R. §§ 22.5(a)(3), and in accordance with the Region's *Standing Order Authorizing Filing and Service by E-Mail in Proceedings Before the Region 1 Regional Judicial Officer* (October 9, 2014), I hereby certify that this day, March 2, 2016, a true and correct copy of this Answer, Defenses and Request for Hearing is being served on Complainant's counsel, Andrea Simpson, by electronic mail.

Zachary R. Gates

4812-8088-9390.3