

# BARNES & THORNBURG LLP

11 South Meridian Street  
Indianapolis, IN 46204-3535 U.S.A.  
(317) 236-1313  
Fax (317) 231-7433

Anthony C. Sullivan  
(317) 231-7472  
tony.sullivan@btlaw.com

www.btlaw.com

April 21, 2009

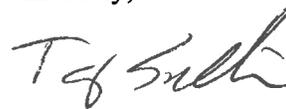
Regional Hearing Clerk  
Attn: Ms. Ladawn Whitehead  
U.S. Environmental Protection Agency (E-19J)  
77 West Jackson Boulevard  
Chicago, Illinois 60604

**Re: In the Matter of:  
Wayne Metals, LLC  
Docket No. CAA-05-2009-0014**

Dear Ms. Whitehead:

Enclosed please find an original and a copy of the "Answer" to the Complaint in connection with the above-referenced matter. Please return a file-stamped copy of the document to me in the postage prepaid envelope enclosed for your convenience. If you have any questions, please call. Thank you for your assistance in this matter.

Sincerely,



Anthony C. Sullivan

ACS:naw  
Enclosures  
Via Federal Express

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**REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY**

INDS01 TCS 1119136v1

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

<b>In the Matter of:</b>	)	Docket No. CAA-05-2009-0014
	)	
<b>Wayne Metals, LLC</b>	)	<b>Proceeding to Assess a Civil Penalty</b>
<b>Markle, Indiana,</b>	)	<b>Under Section 113(d) of the Clean Air</b>
	)	<b>Act, 42 U.S.C. 9 7413(d)</b>
<b>Respondent.</b>	)	
_____	)	

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**ANSWER**

**REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY**

Respondent, Wayne Metals, LLC (“Wayne Metals”), by counsel, provides the following answer to the Complaint in this cause.

**Admissions and Denials**

**Statutory and Regulatory Background**

1. Wayne Metals can neither admit nor deny the allegations contained in paragraph 1 of the Complaint.
2. Wayne Metals can neither admit nor deny the allegations contained in paragraph 2 of the Complaint.
3. Wayne Metals admits the allegations contained in paragraph 3 of the Complaint.
4. The regulations cited in paragraph 4 of the Complaint speak for themselves.
5. The regulation cited in paragraph 5 of the Complaint speaks for itself.
6. The regulation cited in paragraph 6 of the Complaint speaks for itself.
7. The regulation cited in paragraph 7 of the Complaint speaks for itself.
8. The regulation and statutory provision cited in paragraph 8 of the Complaint speak for themselves.
9. The regulation cited in paragraph 9 of the Complaint speaks for itself.

10. The regulation cited in paragraph 10 of the Complaint speaks for itself.
11. The regulation cited in paragraph 11 of the Complaint speaks for itself.
12. Wayne Metals admits the allegation contained in paragraph 12 of the Complaint.
13. Wayne Metals admits the allegation contained in paragraph 13 of the Complaint.
14. The regulation cited in paragraph 14 of the Complaint speaks for itself.

**General Allegations**

15. Wayne Metals admits the allegation contained in paragraph 15 of the Complaint.
16. Wayne Metals admits the allegation contained in paragraph 16 of the Complaint.
17. Wayne Metals admits the allegation contained in paragraph 17 of the Complaint.
18. The referenced statutory provision contained in paragraph 18 of the Complaint speaks for itself.
19. The referenced statutory provision contained in paragraph 19 of the Complaint speaks for itself.
20. The referenced statutory provision contained in paragraph 20 of the Complaint speaks for itself.
21. Wayne Metals admits the allegation contained in paragraph 21 of the Complaint.
22. Wayne Metals admits the allegation contained in paragraph 22 of the Complaint.

**Count I**

23. Wayne Metals incorporates by reference its responses to paragraphs 1 through 22 above as its response to paragraph 23 of the Complaint.
24. The regulation cited in paragraph 24 of the Complaint speaks for itself.
25. The regulation cited in paragraph 25 of the Complaint speaks for itself.

26. Wayne Metals states that its Notification of Compliance Status speaks for itself.
27. Wayne Metals denies that it is in violation of the referenced standard.

**Count II**

28. Wayne Metals incorporates by reference its responses to paragraphs 1 through 27 above as its response to paragraph 28 of the Complaint.

29. Wayne Metals states that its Notification of Compliance Status speaks for itself.
30. Wayne Metals denies that it is in violation of the referenced standard.

**Proposed Civil Penalty**

31. Wayne Metals believes the proposed penalty is excessive since the alleged emission exceedances were de minimis, that no harm to the environment occurred, and that the company has eliminated use of *all* solvents associated with this process.

32. Wayne Metals is without knowledge sufficient to form a belief as to the allegation contained in paragraph 32 of the Complaint.

33. Wayne Metals is without knowledge sufficient to form a belief as to the allegation contained in paragraph 33 of the Complaint.

**Rules Governing This Proceeding**  
**Filing and Service of Documents**  
**Penalty Payment**  
**Answer and Opportunity to Request a Hearing**  
**Settlement Conference**

34-45. Paragraphs 34 through 45 of the Complaint purport to paraphrase and characterize various procedural requirements governing this proceeding as set forth in the Clean Air Act and the Consolidated Rules of Practice to be codified at 40 C.F.R. Part 22. Wayne Metals admits that these requirements speak for themselves, and states that no further response is required.

### **Continuing Obligation to Comply**

46. Admitted, except that Wayne Metals does not waive such defenses as collateral estoppel, res judicata, or other rights and defenses that it may assert with respect to this or any other matter.

#### **FIRST DEFENSE**

Wayne Metals believes that the imposition of any administrative penalty is inappropriate given the circumstances of this case and Wayne Metals' history of efforts to comply. Wayne Metals has made continuous good faith efforts to cooperate and to comply with its Clean Air Act emission requirements. Wayne Metals continually updated and improved its air emissions equipment and practices on a voluntary basis to maintain and improve its compliance record.

#### **SECOND DEFENSE**

Wayne Metals has made good faith efforts to adhere to state and federal regulations and has always acted in full cooperation with representatives of state and federal agencies.

#### **THIRD DEFENSE**

Wayne Metals is not a major source of hazardous air pollutants. As reflected in *Attachment 1*, Wayne Metals has reduced/eliminated HAP emissions from its plant, to a level of 0.075 tons in 2008, and 0.0 in 2009.

#### **FOURTH DEFENSE**

No penalty should be imposed because Wayne Metals submitted an application to the relevant permitting authority (IDEM) to remove the applicability of the relevant MACT standard from Wayne Metals' permit, and IDEM should have removed these requirements from the permit.

### **FIFTH DEFENSE**

The proposed penalty is arbitrary and improper and seeks a much larger penalty than imposed on other sources with greater emissions.

### **SIXTH DEFENSE**

EPA acted arbitrarily and improperly in preliminarily rejecting a proposed supplemental environmental project which would enhance energy efficiency.

### **SEVENTH DEFENSE**

EPA's proposed penalty fails to properly account for Wayne Metals' proactive environmental efforts, its voluntary elimination of HAPs at significant time and expense, and the complete lack of environmental harm associated with the alleged violation.

### **FACTS DISPUTED BY RESPONDENT**

There are no disputed facts at this time, but Wayne Metals reserves its rights to review facts and identify disputed facts as this case proceeds forward.

### **REQUEST FOR HEARING**

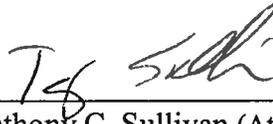
Wayne Metals hereby requests a hearing to contest the factual allegations set forth in the Complaint and proposed order assessing a civil penalty and to contest the appropriateness of any proposed penalty and/or the magnitude of the penalty.

### **REQUEST FOR SETTLEMENT CONFERENCE**

Wayne Metals has met with representatives from EPA, has engaged in settlement negotiations, and requests that such informal settlement conferences with EPA continue.

WHEREFORE, Respondent Wayne Metals prays that the Complaint be dismissed with prejudice, that judgment be awarded for Respondent and against Complainant, for its costs and attorney's fees, and for all other appropriate relief.

Respectfully submitted,



Anthony C. Sullivan (Attorney No. 14974-53)  
BARNES & THORNBURG LLP  
11 South Meridian Street  
Indianapolis, Indiana 46204  
Phone: (317) 231-7472  
Fax: (317) 231-7433  
E-mail: [tony.sullivan@btlaw.com](mailto:tony.sullivan@btlaw.com)

Attorney for Wayne Metals, LLC

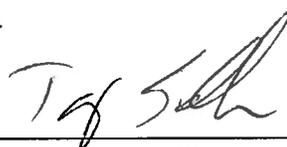
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U.S. ENVIRONMENTAL  
PROTECTION AGENCY.

### CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing has been served this 21<sup>st</sup> day of April, 2009, by depositing a copy of the same in the United States mail, first class postage prepaid and properly addressed to the following counsel of record:

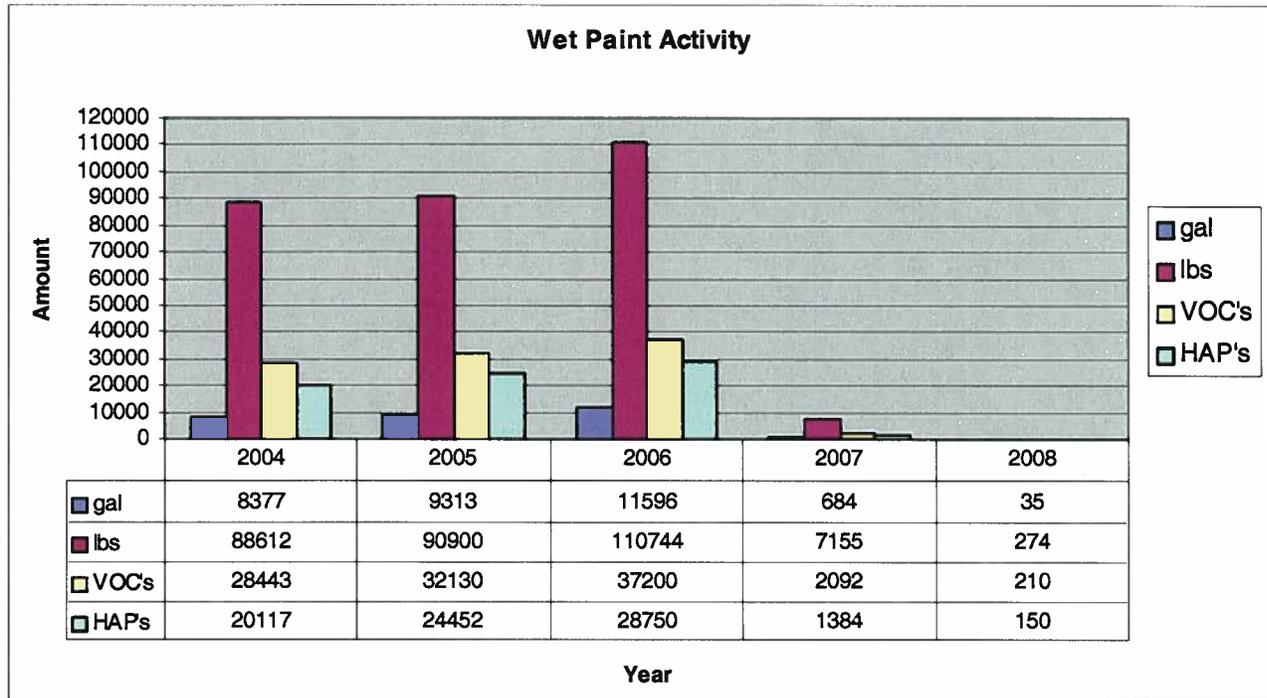
Kathleen Schneiders  
Associate Regional Counsel (C-14J)  
77 West Jackson Boulevard  
Chicago, Illinois 60604



Anthony C. Sullivan

## DATA OF SOLVENT COATING USAGE

The following graph illustrates the dramatic reduction and ultimate elimination of solvent borne finishes at Wayne Metals, LLC.



NOTE: 2008 numbers too minimal to register on graph when compared to previous year's data.

There will be no usage in 2009.