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September 24, 2009

Via Overnight Delivery

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency
Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

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SEP 25 2009

REGIONAL HEARING CLERK
USEPA
REGION 5

Re: In the Matter of: Creative Liquid Coatings, Inc., Elite Enterprises, Inc. and Randall Geist
Docket Nos. RCRA-05-2009-0012 and RCRA-05-2009-0013

Dear Clerk:

Enclosed for filing please find an original and two copies of the following documents:

- Creative Liquid's and Randall Geist's Answer and Request for Hearing (Docket No. RCRA-05-2009-0012)
- Creative Liquid's and Randall Geist's Answer and Request for Hearing (Docket No. RCRA-05-2009-0013)

Please file-stamp the documents and return one file-stamped copy of each in the enclosed self-addressed, stamped envelope. Thank you very much for your assistance. Please do not hesitate to contact me if you have any questions or concerns.

Sincerely,



David L. Hatchett

DLH:djl
Enclosures

Cc: Richard J. Clarizio, U.S. EPA

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:)

Elite Enterprises, Inc.)
2701 S. Coliseum Blvd.)
Suite 1158)
Fort Wayne, IN 46803)

U.S. EPA ID No. IND 985 102 607)

Creative Liquid Coatings, Inc. (formerly doing)
business as Creative Coatings, Inc.))

AND)

Randall Geist)
Respondents)

) DOCKET NO. RCRA-05-2009-0013

)
)
) Complaint and Compliance Order and
) Notice of Opportunity for Hearing
) pursuant to Section 3008(a) of the
) Resource Conservation and Recovery
) Act, 42 U.S.C. §6928(a)

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REGIONAL HEARING CLERK
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CREATIVE LIQUID'S AND RANDALL GEIST'S ANSWER
AND REQUEST FOR HEARING

Creative Liquid Coatings, Inc. ("CLC") and Randall Geist (collectively, "Answering Respondents") answer the U.S. EPA's Complaint and Compliance Order ("Complaint") and request a hearing in this matter:

I. COMPLAINT

1. This a civil administrative action instituted under Section 3008(a) of the Solid Waste Disposal Act, as amended, also known as the Resource Conservation and Recovery Act of 1976, as amended (RCRA), 42 U.S.C. §6928(a). RCRA was amended in 1984 by the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. §§ 6921-6939. This action is also instituted under Section 22.1(a)(4), 22.13 and 22.37 of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits" (Consolidated Rules), codified at 40 C.F.R. Part 22.

ANSWER: Answering Respondents admit that U.S. EPA is bringing an administrative action under Section 3008(a) of RCRA. The remaining allegations of this paragraph set forth legal conclusions to which no answer is required.

2. Jurisdiction for this action is conferred upon the United States Environmental Protection Agency (EPA) by Section 2002(a)(1), 3006(b), and 3008 of RCRA; 42 U.S.C. §§ 6912(a)(1), 6926(b), and 6928.

ANSWER: The allegations of this paragraph set forth legal conclusions to which no answer is required.

3. The Complainant is, by lawful delegation, the Director, Land and Chemicals Division, Region 5, EPA.

ANSWER: The allegations of this paragraph set forth legal conclusions to which no answer is required. To the extent an answer is required, Answering Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

4. The Respondents are Elite Enterprises, Inc., Creative Liquid Coatings, Inc., formerly doing business as Creative Coatings, Inc. and Randall Geist. For the purpose of this Complaint the location of the alleged violations is 2701 South Coliseum Blvd. Suite 1158, Fort Wayne, Indiana 46803 (Suite 1158 or Elite Enterprises, Inc.).

ANSWER: Answering Respondents admit that EPA has named CLC and apparently Mr. Geist as respondents in the instant administrative action and that U.S. EPA's allegations involve 2701 South Coliseum Blvd. Suite 1158, Fort Wayne, Indiana 46803. Mr. Geist states there is no colorable claim against him individually and asserts that EPA should remove him as a respondent immediately. Answering Respondents deny the remaining allegations of this paragraph.

5. EPA provided notice of commencement of this action to the State of Indiana pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. §6928(a)(2).

ANSWER: The allegations of this paragraph set forth legal conclusions to which no answer is required. To the extent an answer is required, Answering Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

6. EPA promulgated regulations, codified at 40 C.F.R. Parts 260 through 279, governing generators and transporters of hazardous waste and facilities that treat, store and dispose of hazardous waste, including used oil.

ANSWER: The allegations of this paragraph set forth legal conclusions to which no answer is required. Further, the referenced statutes or regulations speak for themselves.

7. Under Section 3006 of RCRA, 42 U.S.C. § 6926, the Administrator of EPA may authorize a state to administer the RCRA hazardous waste program in lieu of the federal program when the Administrator finds that the state program meets certain conditions. Any violation of regulations promulgated under Subtitle C (Sections 3001-3023) of RCRA, 42 U.S.C. §§ 6921-6939(e) or of any state provision authorized under Section 3006 of RCRA, constitutes a violation of RCRA, subject to the assessment of civil penalties and issuance of compliance orders as provided in Section 3008 of RCRA, 42 U.S.C. § 6928.

ANSWER: The allegations of this paragraph set forth legal conclusions to which no answer is required. Further, the referenced statutes or regulations speak for themselves.

8. Under Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the Administrator of EPA granted the State of Indiana final authorization to administer a state hazardous waste program in lieu of the federal government's base RCRA program effective January 31, 1986. 51 Fed. Reg. 3953 (January 31, 1986). The Administrator of EPA granted Indiana final authorization to administer certain HSWA and additional RCRA requirements effective January 4, 2001, 66 Fed. Reg. 733 (January 4, 2001); October 21, 1996, 61 Fed. Reg. 43018 (August 20, 1996); January 19, 1999, 63 Fed. Reg. 56086 (October 21, 1998); October 30, 1999, 64 Fed. Reg. 47692 (September 1, 1999); January 4, 2001, 66 Fed. Reg. 733 (January 4, 2001); December 6, 2001, 66 Fed. Reg. 63331 (December 6, 2001); July 1, 2002, 67 Fed. Reg. 44069 (July 1, 2002). The Indiana regulations, authorized by EPA, and incorporated by reference, are codified at 329 Indiana Administrative Code (IAC) Article 3.1 *et seq.* See also, 40 C.F.R. § 272.751.

ANSWER: The allegations of this paragraph set forth legal conclusions to which no answer is required. To the extent an answer is required, Answering Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

9. Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), provides EPA with the authority to enforce State regulations in those States authorized to administer a hazardous waste program.

ANSWER: The allegations of this paragraph set forth legal conclusions to which no answer is required. Further, the referenced statutes or regulations speak for themselves. To the extent a response is required, Answering Respondents deny that the cited provision necessarily allows EPA to enforce state regulations.

10. Under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), EPA may issue an order assessing a civil penalty for any past or current violation, requiring compliance immediately or within a specified period of time, or both.

ANSWER: The allegations of this paragraph set forth legal conclusions to which no answer is required. Further, the referenced statutes or regulations speak for themselves.

11. Any violation of regulations promulgated pursuant to Subtitle C, Section 3001-3023 of RCRA, 42 U.S.C. §§ 6921-6039, or any State program approved by EPA pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, constitutes a violation of RCRA, subject to the assessment of civil or criminal penalties and compliance orders as provided in § 3008 of RCRA, 42 U.S.C. § 6928.

ANSWER: The allegations of this paragraph set forth legal conclusions to which no answer is required. Further, the referenced statutes or regulations speak for themselves. Answering Respondents note that a portion of the referenced regulations is incorrect.

12. Under 329 IAC §§ 3.1-1-7, 4-1, 6-1, a *solid waste* is defined as any discarded material that is not excluded by 40 C.F.R. § 261.4(a) or that is not excluded pursuant to 40 C.F.R. §§ 260.30 and 260.31. See also, 40 C.F.R. § 261.2.

ANSWER: The allegations of this paragraph set forth legal conclusions to which no answer is required. Further, the referenced statutes or regulations speak for themselves. Answering Respondents note that the definition has not been quoted *verbatim* from the cited regulation.

13. Under 329 IAC §§ 3.1-1-7, 4-1, and 6-1, a *hazardous waste* is defined as a solid waste, as defined in 40 C.F.R. § 261.3, that is not excluded from regulation as a hazardous waste under 40 C.F.R. § 261.4; and meets any of the criteria in 40 C.F.R. 261.21, 40 C.F.R. § 261.22, 40 C.F.R. § 261.23, 40 C.F.R. § 261.24, 40 C.F.R. § 261.31, AND 40 C.F.R. § 261.32. See also 40 C.F.R. § 261.3.

ANSWER: The allegations of this paragraph set forth legal conclusions to which no answer is required. Further, the referenced statutes or regulations speak for themselves. Answering Respondents note that a portion of the referenced regulations is incorrect and that the definition has not been quoted *verbatim* from the cited regulation.

14. Under 329 IAC §§ 3.1-1-7 and 4-1, a *facility* includes all contiguous land and structures, other appurtenances, and improvements on the land used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units. See also, 40 C.F.R. § 260.10.

ANSWER: The allegations of this paragraph set forth legal conclusions to which no answer is required. Further, the referenced statutes or regulations speak for themselves. Answering Respondents note that the definition has not been quoted *verbatim* from the cited regulation.

15. Under 329 IAC §§ 3.1-1-7 and 4-1, a *hazardous waste management unit* is a contiguous area of land on or in which hazardous waste is placed. It includes a container storage area. See also, 40 C.F.R. § 260.10.

ANSWER: The allegations of this paragraph set forth legal conclusions to which no answer is required. Further, the referenced statutes or regulations speak for themselves. Answering Respondents note that the definition has not been quoted *verbatim* from the cited regulation.

16. Under 329 IAC § 3.1-4-20, a *person* is defined to include an individual, partnership, corporation, association and other entities. See also, 40 C.F.R. § 260.10.

ANSWER: The allegations of this paragraph set forth legal conclusions to which no answer is required. Further, the referenced statutes or regulations speak for themselves. Answering Respondents note that the definition has not been quoted *verbatim* from the cited regulation.

17. Under 329 IAC §§ 3.1-1-7 and 4-1, an *operator* is defined as the person responsible for the overall operation of a facility. See also, 40 C.F.R. § 260.10.

ANSWER: The allegations of this paragraph set forth legal conclusions to which no answer is required. Further, the referenced statutes or regulations speak for themselves.

18. Under 329 IAC §§ 3.1-1-7 and 4-1, an *owner* is defined as the person who owns a facility or part of a facility. See also, 40 C.F.R. § 260.10.

ANSWER: The allegations of this paragraph set forth legal conclusions to which no answer is required. Further, the referenced statutes or regulations speak for themselves.

19. Under 329 IAC §§ 3.1-1-7 and 4-1, *storage* is defined as the holding of hazardous waste for a temporary period at the end of which the hazardous waste is treated, disposed of, or stored elsewhere. *See also*, 40 C.F.R. 260.10.

ANSWER: The allegations of this paragraph set forth legal conclusions to which no answer is required. Further, the referenced statutes or regulations speak for themselves.

20. Under 329 IAC §§ 3.1-1-7 and 13-1, the treatment, storage, or disposal of hazardous waste by any person who has not applied for or received a permit for the hazardous waste management activity is prohibited. *See also*, 40 C.F.R. § 270.1(c).

ANSWER: The allegations of this paragraph set forth legal conclusions to which no answer is required. Further, the referenced statutes or regulations speak for themselves.

21. Under 329 IAC 3.1-1-7 and 4-1 a *generator* is defined as any person, by site, whose act or process produces hazardous waste identified or listed in part 261 or whose act first causes a hazardous waste to become subject to regulation. *See also*, 40 C.F.R. 260.10.

ANSWER: The allegations of this paragraph set forth legal conclusions to which no answer is required. Further, the referenced statutes or regulations speak for themselves.

22. Under 329 IAC §§ 3.1-1-7 and 7-1, a generator of hazardous waste may accumulate or store hazardous waste on-site for 90 days or less without a permit or without having interim status, provided that the generator marks or clearly labels each container and tank containing hazardous waste with the words *Hazardous Waste* during the hazardous waste accumulation period, and complies with, among other things, the requirements for owners or operators in 40 C.F.R. § Part 265, Subpart I, and with 40 C.F.R. 265.174. *See also*, 40 C.F.R. § 262.34(a).

ANSWER: The allegations of this paragraph set forth legal conclusions to which no answer is required. Further, the referenced statutes or regulations speak for themselves.

23. Under 320 IAC §§ 3.1-1-7 and 7-1, a generator may accumulate hazardous waste on-site for less than 90-days without a permit or without having interim status provided it satisfies certain requirements. *See also*, 40 C.F.R. § 262.34(a) and (b).

ANSWER: The allegations of this paragraph set forth legal conclusions to which no answer is required. Further, the referenced statutes or regulations speak for themselves.

24. Under 329 IAC §§ 3.1-1-7 and 7-1, a generator of hazardous waste who accumulates hazardous wastes on-site in containers must label each container with the date on which each period of accumulation begins and it must be visible for inspection. *See also*, 40 C.F.R. § 262.34(a)(2).

ANSWER: The allegations of this paragraph set forth legal conclusions to which no answer is required. Further, the referenced statutes or regulations speak for themselves.

25. Under 329 IAC §§ 3.1-1-7 and 7-1, the generator must have a contingency plan that lists names, addresses, and phone numbers (office and home) of all persons qualified to act as

emergency coordinator, and this list must be kept up to date. *See also*, 40 C.F.R. §§ 262.34(a)(4) and 265.52 (d).

ANSWER: The allegations of this paragraph set forth legal conclusions to which no answer is required. Further, the referenced statutes or regulations speak for themselves.

26. Under 329 IAC §§ 3.1-1-7, 7-1, and 10-1 a generator must have a contingency plan that lists all emergency equipment (such as fire extinguishing systems, spill control equipment, communications and alarm systems (internal and external), and decontamination equipment where this equipment is required. This list must be kept up to date. In addition, the plan must include the location and a physical description of each item on the list and a brief outline of its capabilities. *See also*, 40 C.F.R. §§ 262.34(a)(4) and 265.52(e).

ANSWER: The allegations of this paragraph set forth legal conclusions to which no answer is required. Further, the referenced statutes or regulations speak for themselves.

27. Under 329 IAC §§ 3.1-1-7, 7-1 and 10-1, a generator must have a contingency plan that includes an evacuation plan for the facility personnel. *See also* 40 C.F.R. §§ 262.34(a)(4) and 265.52(f).

ANSWER: The allegations of this paragraph set forth legal conclusions to which no answer is required. Further, the referenced statutes or regulations speak for themselves.

28. Under 329 IAC §§ 3.1-1-7, 7-1, and 10-1, a generator must have personnel training that is designed to ensure the employees' ability to respond effectively to emergencies. *See also*, 40 C.F.R. §§ 262.34(a)(4) and 265.16(a).

ANSWER: The allegations of this paragraph set forth legal conclusions to which no answer is required. Further, the referenced statutes or regulations speak for themselves.

29. Under 329 IAC §§ 3.1-1-7, 7-1 and 10-1, a generator must require facility personnel to take part in an annual review of the initial training required in 40 C.F.R. § 265.16(a). *See also*, 40 C.F.R. §§ 262.34(a)(4) and 265.16(c).

ANSWER: The allegations of this paragraph set forth legal conclusions to which no answer is required. Further, the referenced statutes or regulations speak for themselves.

30. Under 329 IAC §§ 3.1-1-7, 7-1 and 10-1, a generator must retain at the facility specific documents and records. Further, it requires that training records be kept for existing employees until the closure. *See also*, 40 C.F.R. §§ 262.34(a)(4) and 265.16(d) and (e).

ANSWER: The allegations of this paragraph set forth legal conclusions to which no answer is required. Further, the referenced statutes or regulations speak for themselves.

31. Elite Enterprises, Inc. is a corporation organized under the laws of the state of Indiana.

ANSWER: As these allegations are not directed toward Answering Respondents, Answering Respondents make no response.

32. Randall Geist has a home located at 2715 Clifford Lane, Fort Wayne, Indiana, 46825-7133. He has owned 80% of the stock of Elite Enterprises, Inc. since approximately 1994.

ANSWER: Answering Respondents admit that Randall Geist has a home located at 2715 Cliffwood Lane, Fort Wayne, Indiana. Geist admits the allegation in the last sentence.

33. Creative Liquid Coatings, Inc. and Creative Coatings, Inc. are corporations organized under the laws of the state of Indiana.

ANSWER: Answering Respondents admit that CLC is an Indiana corporation. Answering Respondents deny the remaining allegations of this paragraph.

34. Creative Coatings, Inc. was founded in 1995.

ANSWER: Answering Respondents admit that Creative Coatings, Inc. filed articles of incorporation with the State of Indiana in 1996 and had operations at 7505 Freedom Way in Fort Wayne, Indiana. Answering Respondents deny the remaining allegations of this paragraph.

35. Creative Coatings, Inc. changed its name to Creative Liquid Coatings, Inc. in 2005. References to Creative Liquid Coatings, Inc. shall include Creative Coatings, Inc. unless indicated otherwise.

ANSWER: Answering Respondents admit that Creative Coatings, Inc. changed its name to "Creative Liquid Coatings, Inc." in 2005. Regarding the remaining allegations in this paragraph, the Complaint speaks for itself.

36. Randall Geist owns more than 50% of the stock of Creative Liquid Coatings, Inc. He is the President of Creative Liquid Coatings, Inc.

ANSWER: Answering Respondents admit the allegations of this paragraph.

37. Richard Lain was the Vice-President of Finance and Chief Financial Officer (CFO) of Creative Coatings, Inc., Creative Liquid Coatings, Inc. and Elite Enterprises, Inc.

ANSWER: Answering Respondents admit that Richard Lain was as some point Vice-President of Finance and Chief Financial Officer (CFO) of CLC and of Elite.

38. Elite Enterprises, Inc. and Creative Liquid Coatings, Inc. provided custom painting of plastic and metal parts and components.

ANSWER: Answering Respondents admit that CLC's operations at various times involved custom painting of plastic and/or metal parts and components. As the remaining allegations are not directed toward Answering Respondents, Answering Respondents make no response.

39. Elite Enterprises, Inc. and Creative Liquid Coatings, Inc. conducted painting operations at 2701 South Coliseum Boulevard, Fort Wayne, Indiana. This is the site of the former International Harvester truck manufacturing complex in Fort Wayne, Indiana (complex).

ANSWER: Answering Respondents deny that Creative Coatings, Inc. conducted painting operations at a suite within 2701 South Coliseum Boulevard and admits that CLC conducted painting operations there some time in or after September 2005. Answering Respondents admit that the complex, which currently includes various unaffiliated business operations within the much larger complex, is sometimes referred to as the former International Harvester complex. As the remaining allegations are not directed toward Answering Respondents, Answering Respondents make no response.

40. The complex is presently known as the International Park Commerce and Industrial Business Center (International Park). It is owned by Wayne Coliseum Limited Partnership (Wayne Coliseum).

ANSWER: Answering Respondents admit that the complex is sometimes referred to as the International Park Commerce and Industrial Business Center. Answering Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

41. The complex consists of approximately 103 acres. It includes approximately 3 million square feet of various buildings and structures. There are no street names or numbers within the complex. There are suite numbers associated with various locations within International Park. Tenants retain the original suite number regardless of where they relocate within International Park.

ANSWER: Answering Respondents deny that tenants necessarily maintain the original suite number after relocation, and lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations of this paragraph.

42. Elite Enterprizes, Inc. operated in Building 5 within International Park from approximately 1992-1993. It used suite number 1158 at that time. Elite Enterprizes, Inc. changed its name to Elite Enterprises, Inc. and moved to Building 13 within International Park in 1993. It retained Suite number 1158 for operations within Building 13. Elite Enterprises, Inc. continued operations within Building 13 but changed suite numbers to Suite 1284 in 2003.

ANSWER: As these allegations are not directed toward Answering Respondents, Answering Respondents make no response. To the extent an answer is required, Answering Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

43. Building 13 within International Park contained operations that were identified as Suite 1158 (1993-2002) and Suite 1284 (after 2003).

ANSWER: Answering Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

44. Creative Coatings, Inc. subleased space within International Park to Elite Enterprises, Inc. from January 3, 2003, to December 31, 2004. At that time Creative Coatings, Inc. purchased Elite Enterprises, Inc.'s paint and related equipment located within International Park.

ANSWER: Answering Respondents admit that Creative Coatings subleased space within International Park to Elite Enterprises, Inc. from January 3, 2004, to March 1, 2006. Answering Respondents admit that CLC purchased from Elite Enterprises, Inc. and then leased back to Elite Enterprises, Inc. certain paint-related equipment on or around January 3, 2004. Answering Respondents deny the remaining allegations of this paragraph.

45. On or about March 31, 2004, Creative Coatings, Inc. took over from Elite Enterprises, Inc. the operation of two surface coating lines located within International Park. The operations included one overhead conveyor paint line and one floor conveyor paint line.

ANSWER: Answering Respondents deny the allegations of this paragraph.

46. Respondents have referred to Suite 1158 as Building or Plant 1. There were four paint booths (PB1-4) at Suite 1158 by April of 2003.

ANSWER: Answering Respondents admit that Suite 1158 is sometimes referred to as Plant 1 and lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations of this paragraph.

47. Respondents have referred to Suites 1284 and 1206 as Building or Plant 2. By April of 2003 there were overhead and floor painting lines located within Suite 1284.

ANSWER: Answering Respondents admit that Suite 1284 and is sometimes referred to as Plant 2 and lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations of this paragraph.

48. Elite Enterprises, Inc. conducted painting operations at Suite 1284 from approximately 1994 to April of 2003.

ANSWER: As these allegations are not directed toward Answering Respondents, Answering Respondents make no response. To the extent an answer is required, Answering Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

49. Elite Enterprises, Inc. moved its painting work to Suite 1158 in April 2003.

ANSWER: As these allegations are not directed toward Answering Respondents, Answering Respondents make no response. To the extent an answer is required, Answering Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

50. Elite Enterprises, Inc. moved its prime painting operations from Suite 1158 to Suite 1284 in August 2003.

ANSWER: As these allegations are not directed toward Answering Respondents, Answering Respondents make no response. To the extent an answer is required, Answering Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

51. By October 2004 a dual use paint booth (base coat and clear coat) was permitted for operation at Building 2, Suite 1206 under the name Creative Liquid Coatings.

ANSWER: Answering Respondents admit that an October 2004 administrative amendment amended Part 70 Permit No. T003-7588-00205, which amendment describes a dual use paint booth at "Plant 2 (Creative Coatings, Inc., Suite 1206)." Answering Respondents deny the remaining allegations of this paragraph.

52. Elite Enterprises, Inc. discontinued operations at Suite 1158 in February 2006.

ANSWER: As these allegations are not directed toward Answering Respondents, Answering Respondents make no response. To the extent an answer is required, Answering Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

53. Elite Enterprises, Inc. conducted painting operations at Suite 1158 from approximately April 2003 to February 2006.

ANSWER: As these allegations are not directed toward Answering Respondents, Answering Respondents make no response. To the extent an answer is required, Answering Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

54. On May 25, 1993, Elite Enterprises, Inc. signed a First Notification of Hazardous Waste Activity form (EPA Form 8700-22 - Notification form) showing that Elite Enterprises, Inc. was doing business at Suite 1158. It was assigned identification number IND 985 102 607. It identified itself as a small quantity generator of hazardous waste with hazardous waste codes D001 and F005. It revised its generator status to a large quantity generator on June 18, 1998.

ANSWER: The referenced document speaks for itself. As these allegations are not directed toward Answering Respondents, Answering Respondents make no response. To the extent an answer is required, Answering Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

55. On February 14, 2006, Richard Lain, as CFO submitted an amended Notification as part of Elite Enterprises, Inc.'s Annual Report. The amended Notification showed Elite Enterprises, Inc. doing business at Suite 1158. It identified Elite Enterprises, Inc. as the owner of the operations and as a large quantity generator of hazardous waste in 2005 and 2006 with hazardous waste codes D001, D007, D008, D0035, F003 and F005.

ANSWER: The referenced document speaks for itself. As these allegations are not directed toward Answering Respondents, Answering Respondents make no response. To the extent an answer is required, Answering Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

56. On April 5, 2006, Richard Lain as CFO on Creative Coatings stationary informed the Indiana Department of Environmental Management (IDEM) that Elite Enterprises, Inc.'s operations at Suite 1158 were discontinued and the identification number should be deactivated.

ANSWER: The referenced document speaks for itself. As these allegations are not directed toward Answering Respondents, Answering Respondents make no response. To the extent an answer is required, Answering Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

57. October 5, 2005, EPA sent separate requests for information to Elite Enterprises, Inc. and Creative Coatings, Inc. for operations at Suite 1158 (Elite Enterprises, Inc.) and 1284 (Creative Coatings, Inc.), respectively. These requests were pursuant to Section 3007 of the Resource Conservation and Recovery Act ("RCRA").

ANSWER: The referenced documents speak for themselves. The remainder of this paragraph sets forth legal conclusions for which no answer is required.

58. On October 25, 2005, Richard Lain, as CFO of Elite Enterprises, Inc. and on letterhead with the Elite Enterprises, Inc.'s name on it submitted a response for both Elite Enterprises, Inc. and Creative Coatings, Inc.

ANSWER: The referenced document speaks for itself. As these allegations are not directed toward Answering Respondents, Answering Respondents make no response. To the extent an answer is required, Answering Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

59. On June 22, 2005, EPA inspected Elite Enterprises, Inc. and Creative Liquid Coatings, Inc. At that time the EPA inspector viewed the hazardous waste storage areas located at both locations.

ANSWER: Answering Respondents deny that EPA inspected Creative Coatings, Inc. on June 22, 2005 and lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations of this paragraph.

60. On June 22, 2005, there were sixteen 55-gallon drums located in the hazardous waste storage area at Elite Enterprises, Inc. (Suite 1158). All but one of the drums was labeled hazardous waste. The contents of the drums were further described as "Paint Solvent" or "Catalyzed Paint."

ANSWER: As the allegations are not directed toward Answering Respondents, Answering Respondents make no response. To the extent an answer is required, Answering Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

61. On June 22, 2005, seven of the 55-gallon drums in the storage area were marked with accumulation start dates more than 90 days before June 22, 2005. The drums were marked with accumulation start dates of July 1, August 10, September 23, and October 19, 2004, and March 9 and 14, 2005. All of these drums, except one, were marked "catalyzed paint." One drum was marked as "paint solvent" with an accumulation start date of February 24, 2005.

ANSWER: As the allegations are not directed toward Answering Respondents, Answering Respondents make no response. To the extent an answer is required, Answering Respondents

lack knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

62. On June 22, 2005, one drum in the storage area incorrectly identified the accumulation start date as two years after the inspection – July 14, 2007. It was labeled as containing “catalyzed paint.”

ANSWER: As the allegations are not directed toward Answering Respondents, Answering Respondents make no response. To the extent an answer is required, Answering Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

63. During the June 22, 2005, inspection hazardous waste manifests, training records, inspection logs and contingency plans for Elite Enterprises, Inc. and Creative Coatings, Inc. were located and reviewed at Elite Enterprises, Inc.

ANSWER: As the allegations are not directed toward Answering Respondents, Answering Respondents make no response. To the extent an answer is required, Answering Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

64. The EPA inspector reviewed ten hazardous waste manifests for calendar year 2003-2005 that were available at Elite Enterprises, Inc. There was one manifest for calendar year 2005; six manifests for calendar year 2004; and three manifests for calendar year 2003.

ANSWER: As the allegations are not directed toward Answering Respondents, Answering Respondents make no response. To the extent an answer is required, Answering Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

65. The latest manifest was dated as signed by the generator on March 21, 2005.

ANSWER: As the allegations are not directed toward Answering Respondents, Answering Respondents make no response. To the extent an answer is required, Answering Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

66. All of the manifests were completed with the generator identified as Elite Enterprises, Inc. The address was identified as 2701 Coliseum Boulevard, Fort Wayne, Indiana. No Suite number was provided.

ANSWER: As the allegations are not directed toward Answering Respondents, Answering Respondents make no response. To the extent an answer is required, Answering Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

67. All of the manifests identified the wastes as either spent solvent or catalyzed paint. All of them had the hazardous waste codes F003, F005, D001 and D035. The manifests with catalyzed

paint wastes had the additional hazardous waste codes D007 and D008. The amounts identified as shipped on the manifests ranged from 715 gallons to 4,500 pounds.

ANSWER: As the allegations are not directed toward Answering Respondents, Answering Respondents make no response. To the extent an answer is required, Answering Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

68. EPA Hazardous Waste Identification Number IND985102607 was listed on all of the manifests. This is the EPA Hazardous Waste Identification Number for Suite 1158.

ANSWER: As the allegations are not directed toward Answering Respondents, Answering Respondents make no response. To the extent an answer is required, Answering Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

69. The EPA inspector reviewed the inspection logs for both Elite Enterprises, Inc. and Creative Coatings, Inc. The same form was used for both companies.

ANSWER: As the allegations are not directed toward Answering Respondents, Answering Respondents make no response. To the extent an answer is required, Answering Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

70. Inspection logs for Suite 1158 were available for the period December 27, 2004 – March 1, 2005.

ANSWER: As the allegations are not directed toward Answering Respondents, Answering Respondents make no response. To the extent an answer is required, Answering Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

71. The EPA inspector reviewed the employee training records. The same form was used for both Elite Enterprises, Inc. and Creative Coatings, Inc. to document employee training and the job description of the hazardous waste positions.

ANSWER: As the allegations are not directed toward Answering Respondents, Answering Respondents make no response. To the extent an answer is required, Answering Respondents deny that the EPA inspector reviewed employee training records for Creative Coatings during the June 22, 2005 inspection and lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations of this paragraph.

72. The EPA inspector reviewed the contingency plan. The same plan was used for both Elite Enterprises, Inc. and Creative Coatings, Inc.

ANSWER: As the allegations are not directed toward Answering Respondents, Answering Respondents make no response. To the extent an answer is required, Answering Respondents deny that the EPA inspector reviewed a contingency plan for Creative Coatings during the June

22, 2005 inspection and lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations of this paragraph.

73. The EPA inspector reviewed the 2004 Annual Manifest Summary Report. It listed both Elite Enterprises, Inc. and Creative Coatings, Inc. as the generator of hazardous waste. It identified a single waste stream – paint process residues, solids, spent solvents and thinners with the hazardous waste codes D001, D007, D008, D035, F003 and F005.

ANSWER: Answering Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

74. Operations at Elite Enterprises, Inc. were not in existence in 1980 and therefore do not qualify for interim status.

ANSWER: The allegations of this paragraph set forth legal conclusions for which no answer is required.

75. Respondents do not have a permit with EPA or IDEM for the storage of hazardous waste at Elite Enterprises, Inc.

ANSWER: As the allegations are not directed toward Answering Respondents, Answering Respondents make no response. To the extent an answer is required, Answering Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

76. Elite Enterprises, Inc., Creative Coatings, Inc. and Creative Liquid Coatings, Inc. were the same company operating under the name Elite Enterprises, Inc. from 1994 to 2005 and the name Creative Liquid Coatings, Inc. since 2005.

ANSWER: Answering Respondents deny the allegations of this paragraph.

77. On September 3, 1999, IDEM's Office of Air Management (OAM) issued to Elite Enterprises, Inc. a Part 70 Operating Permit. The permit included air emission limitation from painting operations located at Suite 1284.

ANSWER: The referenced document speaks for itself. Further, Answering Respondents make no response to the allegations not directed toward Answering Respondents, and lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations of this paragraph.

78. On January 23, 2004, IDEM, Office of Air Quality (OAQ) issued a Part 70 Operating Permit which included air emission limitations for painting operations.

ANSWER: The referenced document speaks for itself.

79. On January 27, 2004, Richard Lain, as Chief Financial Office (CFO) for Elite Enterprises, Inc. and Creative Coatings, Inc., requested a modification to the Part 70 Operating Permit to include air emissions from painting operations at Suite 1284 and 1158. The request

was on stationary with the name Elite Enterprises, Inc and Creative Coatings, Inc. and the address Suite 1158.

ANSWER: Answering Respondents deny the allegations of this paragraph.

80. On March 31, 2004, Creative Coatings, Inc. notified IDEM that Creative Coatings, Inc. took over portions of the paint operations formerly used and permitted to Elite Enterprises, Inc. and the Creative Coatings, Inc. was operating at Suite 1284 and Elite Enterprises, Inc. was operating at Suite 1158.

ANSWER: Answering Respondents deny that Creative Coatings was operating a paint shop at Suite 1284 on March 31, 2004. Answering Respondents lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations of this paragraph.

81. On November 15, 2004, Richard Lain, as CFO of Elite Enterprises, Inc. submitted to IDEM, OAQ an "Initial Notification, NESHAP Applicability, Elite Enterprises, Inc. (NESHAP Notification)." In the NESHAP Notification Elite Enterprises, Inc. identified the facility as including paint booths 1-4 at Suite 1158, the overhead and floor conveyor lines at Suite 1284 and the dual use wet paint booths at Suite 1206.

ANSWER: Answering Respondents make no response to the allegations not directed toward Answering Respondents. To the extent an answer is required, Answering Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

82. Prior to April 2005, Elite Enterprises, Inc. submitted to IDEM, OAQ a request to modify its Part 70 Operating Permit seeking a consolidating plant-wide annual VOC limit for operations at Suite 1158 and 1284.

ANSWER: Answering Respondents make no response to the allegations not directed toward Answering Respondents. To the extent an answer is required, Answering Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

83. On January 13, July 12 and October 14, 2005, Richard Lain, as CFO of Elite Enterprises, Inc. submitted to IDEM, OAQ the "Quarterly Compliance Monitoring Reports" for the source it identified as Elite Enterprises, Inc. The Quarterly Compliance Monitoring Reports included emissions from Suite 1158 and the overhead and floor lines at Suite 1284.

ANSWER: Answering Respondents make no response to the allegations not directed toward Answering Respondents. To the extent an answer is required, Answering Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

84. Elite Enterprises, Inc. reported "VOC usage" from October-December 2004 and July-September 2005 at Suite 1158.

ANSWER: Answering Respondents make no response to the allegations not directed toward Answering Respondents. To the extent an answer is required, Answering Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

85. Elite Enterprises, Inc. reported "VOC usage" at Suite 1284 from November-December 2004 and July-September 2005.

ANSWER: Answering Respondents make no response to the allegations not directed toward Answering Respondents. To the extent an answer is required, Answering Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

86. On May 16, July 20 and August 12, 2005, Richard Lain as CFO of Elite Enterprises, Inc. submitted to IDEM, OAQ "Notice of Excess Air Emissions, Elite Enterprises." The Notice was on stationary with the names Elite Enterprises, Inc. and Creative Coatings, Inc. located at Suite 1284 and 1158.

ANSWER: The referenced documents speak for themselves. Answering Respondents deny that CLC operated at Suite 1284 at any time relevant to the EPA inspection.

87. The Notice of Excess Air Emissions identified the plant as consisting of operations at Suites 1148 and Suite 1284.

ANSWER: The referenced documents speak for themselves. Answering Respondents deny that CLC operated at Suite 1284 at any time relevant to the EPA inspection.

88. The Notice of Excess Air Emissions reported "VOC usage" from Suite 1158 from January of 2003 and from Suite 1284 from November 2004.

ANSWER: The referenced documents speak for themselves. Answering Respondents deny that CLC operated at Suite 1284 at any time relevant to the EPA inspection.

89. On March 17, 2006, Richard Lain, as CFO of Elite Enterprises, Inc. notified IDEM, OAQ that Suite 1158 operations were shut down and requested that the Suite 1158 emission limits be assigned to the Suite 1284 operations. He also requested that all company names be switched to Elite Enterprises, Inc.

ANSWER: The referenced document speaks for itself. Answering Respondents make no response to the allegations not directed toward Answering Respondents. To the extent an answer is required, Answering Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

90. On April 11, 2006, Richard Lain, as CFO of Creative Liquid Coatings, Inc. submitted an "application for an air permit revision requesting simplification of the Building 1/Building 2 existing air permit structure..." In the application he reported that Creative Liquid Coatings, Inc. had recently operated under the name Elite Enterprises, Inc.

ANSWER: Answering Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

91. On April 19, 2006, Creative Liquid Coatings, Inc. submitted to IDEM, OAQ a Notice of Excess Air Emissions stating "Creative Liquid Coatings (formerly Elite Enterprises) provides custom painting services..." The cover letter was on stationary identifying Creative Liquid Coatings at Suite 1284.

ANSWER: The referenced document speaks for itself. To the extent an answer is required, Answering Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

92. On June 6, 2006, Randall Geist as President of Elite Enterprises, Inc. submitted to IDEM, OAQ and "Annual Compliance Certification Letter January 1, 2005 through October 13, 2005." The Certification covered operations at Suite 1158 and 1284 and was on letterhead with the names Elite Enterprises/Creative Liquid Coatings, Inc.

ANSWER: The referenced document speaks for itself. To the extent an answer is required, Answering Respondents admit that Geist's signature appears on the referenced document and lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations of this paragraph.

93. On September 28, 2006, Creative Liquid Coatings submitted to IDEM, OAQ a letter indicating possible reactivation of operations at Suite 1158 and requesting deletion of individual source VOC emission limitations for Suite 1284 with consolidation of those emissions under the VOC emission limitations for Suite 1158.

ANSWER: Answering Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

94. On September 28, 2007, Randall Geist, as President of Creative Liquid Coatings submitted to IDEM, OAQ an "Air Permit Application to Restore Prior Terms and Conditions" for VOC emissions at Suite 1158. In this permit application Creative Liquid Coatings reported that the legal name of the company was Elite Enterprises from 1994 to 2005 and Creative Liquid Coatings, Inc. since 2005.

ANSWER: The referenced documents speak for themselves. Answering Respondents deny that CLC operated at Suite 1284 at any time relevant to the EPA inspection.

95. Randall Geist was Guarantor on a lease dated June 16, 2003, between Elite Enterprises, Inc. and Wayne Coliseum for Suite 1284.

ANSWER: The referenced document speaks for itself. CLC makes no response to the allegations not directed toward CLC.

96. Randall Geist, as the authorized representative of Creative Coatings, Inc. on January 3, 2004, entered into an equipment sales and property lease agreement ("Sales Agreement") with Elite Enterprises, Inc. for Suite 1284. Creative Coatings, Inc. subleased Suite 1284 to Elite

Enterprises, Inc. from January 3, 2003 to December 31, 2004. Creative Coatings, Inc. purchased Elite Enterprises, Inc.'s paint and related equipment located at Suite 1284.

ANSWER: The referenced document speaks for itself. Answering Respondents admit that CLC bought certain equipment from Elite and deny that Elite Enterprises, Inc. subleased Suite 1284 only until December 31, 2004.

97. Randall Geist, as Chairman of Creative Coatings, Inc., on August 1, 2004, signed a lease agreement with Wayne Coliseum for Suite 1284.

ANSWER: The referenced document speaks for itself.

98. Randall Geist as Chairman of Creative Coatings, Inc. on December 1, 2004, signed a lease agreement as Guarantor for Suite 1284. He also signed the lease agreement as Chairman of Elite Enterprises as the Lessee. He signed subsequent amendments as President of Elite Enterprises, Inc. on August 10, 2005 and August 1, 2006.

ANSWER: Answering Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

99. Representatives of Wayne Coliseum notified Randall Geist on or about September 12, 2005, of the fourth complaint it received regarding hydraulic fluid found on the ground and around storm drains at property located at Suite 1158.

ANSWER: Answering Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

100. Since approximately 2002, representatives of Wayne Coliseum have routinely dealt with Randall Geist to correct problems that occurred at either Elite Enterprises, Inc. or Creative Liquid Coatings, Inc.

ANSWER: Answering Respondents deny the allegations of this paragraph.

101. On or about March 23, 2006, Wayne Coliseum, sent a letter to Elite Enterprises regarding its compliance with environmental obligations under the lease for Suite 1158. The environmental concerns that were identified included removal of drums and hazardous waste manifests at Suite 1158; sampling of drains in the first floor drum storage area; and possible venting of painting and spraying activities to the atmosphere.

ANSWER: Answering Respondents make no response to the allegations not directed toward Answering Respondents. To the extent an answer is required, Answering Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

102. Randall Geist as President Elite Enterprises, Inc. on April 4, 2006, submitted Wayne Coliseum's plans for "cleanup of the collection pit and drains in the complex."

ANSWER: Geist lacks knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph. CLC makes no response to the allegations not directed toward CLC.

103. Randall Geist, as President of Creative Liquid Coatings, on January 31, 2007, informed IDEM that Creative Coatings, Inc. signed the leases and made the financial commitment to build new equipment for businesses it operated within International Park. He stated that Creative Coatings, Inc. obtained air permits for both the existing and new equipment at Suite 1284 as Creative Coatings, Inc. Mr. Geist also stated that Creative Coatings, Inc. has ownership and is operating all of the assets at Suite 1284.

ANSWER: Answering Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

104. On June 1, 2008, Stephen Geist as Operations Manager of Creative Liquid Coatings, inc. submitted a letter to Derrick Samaranski of EPA. Mr. Geist stated that Creative Liquid Coatings, Inc. was the same as Creative Coatings, Inc. He stated that Creative Coatings, Inc. was not to have any involvement in the business operations of Elite Enterprises, Inc. at Suite 1284. He asserted that the waste EPA observed on June 22, 2005, at Suite 1284 was generated by Elite Enterprises, Inc.

ANSWER: The referenced document speaks for itself.

Count I

105. Paragraphs 1-104 are incorporated by reference as if fully presented in this Count I. Respondents are *persons* as defined by 329 IAC § 3.1-4-20, 40 C.F.R. § 260.10.

ANSWER: Answering Respondents incorporate their responses to the allegations of paragraphs 1 through 104 as if fully presented in Count I. The remaining allegations of this paragraph set forth legal conclusions to which no answer is required. Further, the referenced statutes or regulations speak for themselves.

106. Under 329 IAC §§ 3.1-1-7 and 13-1, 40 C.F.R. § 270.1(c) owners and operators of hazardous waste management units are required to have a permit for the storage of hazardous waste.

ANSWER: The allegations of this paragraph set forth legal conclusions to which no answer is required. Further, the referenced statutes or regulations speak for themselves.

107. Under 329 IAC § 3.1-1-7, 4-1, and 6-1, a *solid waste* is defined as any discarded material that is not excluded by 40 C.F.R. § 261.4(a) or that is not excluded pursuant to 40 C.F.R. §§ 260.30 and 260.31. *See also*, 40 C.F.R. § 261.2.

ANSWER: The allegations of this paragraph set forth legal conclusions to which no answer is required. Further, the referenced statutes or regulations speak for themselves.

108. On June 22, 2005, the drums in the hazardous waste storage area at Elite Enterprises, Inc. (Suite 1158) were identified as containing wastes from the painting operations, including paint solvent and catalyzed paint. The contents of the drums were solid wastes as defined by 329 IAC §§ 3.1-1-7, 4-1 and 6-1, 40 C.F.R. § 261.2.

ANSWER: Answering Respondents deny either operated at Suite 1158 at any time relevant to the EPA inspection. Answering Respondents make no response to allegations not directed toward Answering Respondents. The remaining allegations of this paragraph set forth legal conclusions to which no answer is required. Further, the referenced statutes or regulations speak for themselves.

109. On June 22, 2005, the drums were labeled with hazardous waste codes F003, F005, D001, D007, D008, and D035. The contents of the drums were hazardous wastes as defined by 329 IAC §§ 3.1-1-7, 4-1 and 6-1, 40 C.F.R. §261.3, and meeting criteria in 40 C.F.R. §§261.21, 24 and 30.

ANSWER: Answering Respondents deny either operated at Suite 1158 at any time relevant to the EPA inspection. Answering Respondents make no response to allegations not directed toward Answering Respondents. The remaining allegations of this paragraph set forth legal conclusions to which no answer is required. Further, the referenced statutes or regulations speak for themselves.

110. On June 22, 2005, some of the drums in the hazardous waste storage area at Suite 1158 were labeled as having an accumulation start date in excess of 90-days. All drums were shipped off-site for subsequent disposal or treatment. The drums in the hazardous waste storage area were in storage as that term is defined in 329 IAC §§3.1-1-7 and 4-1, 40 C.F.R. § 260.10.

ANSWER: Answering Respondents deny either operated at Suite 1158 at any time relevant to the EPA inspection. Answering Respondents make no response to allegations not directed toward Answering Respondents. The remaining allegations of this paragraph set forth legal conclusions to which no answer is required. Further, the referenced statutes or regulations speak for themselves.

111. The hazardous waste storage area at Suite 1158 was a hazardous waste management unit as defined by 329 IAC §§ 3.1-1-7 and 4-1, 42 C.F.R. § 260.10, and a hazardous waste storage facility as defined by 329 IAC §§ 3.1-1-7 and 4-1, 40 C.F.R. § 260.10.

ANSWER: The allegations of this paragraph set forth legal conclusions to which no answer is required. Further, the referenced statutes or regulations speak for themselves.

112. On June 22, 2005, Respondents owned or operated the equipment and hazardous wastes in the hazardous waste storage area at Suite 1158. Respondents were responsible for the overall operation of Suite 1158 and owned the equipment located therein. Respondents were owners or operators as those terms are defined in 329 IAC §§ 3.1-1-7 and 4-1, 40 C.F.R. § 260.10.

ANSWER: Answering Respondents deny either operated at Suite 1158 at any time relevant to the EPA inspection. Answering Respondents make no response to allegations not directed toward Answering Respondents. The remaining allegations of this paragraph set forth legal

conclusions to which no answer is required. Further, the referenced statutes or regulations speak for themselves.

113. Respondents did not have a permit or interim status to operate the hazardous waste storage area at Suite 1158 as a hazardous waste management unit. Consequently, Respondents were in violation of 329 IAC §§ 3.1-1-7 and 13-1, 40 C.F.R. § 270.1(c).

ANSWER: Answering Respondents deny either operated at Suite 1158 at any time relevant to the EPA inspection. Answering Respondents make no response to allegations not directed toward Answering Respondents. The remaining allegations of this paragraph set forth legal conclusions to which no answer is required. Further, the referenced statutes or regulations speak for themselves.

114. 329 IAC §§ 3.1-7 and 13-1, 40 C.F.R. § 262.34, exempts generators of hazardous waste from the permit requirements if certain conditions are met.

ANSWER: The allegations of this paragraph set forth legal conclusions to which no answer is required. Further, the referenced statutes or regulations speak for themselves.

115. Respondents were generators of hazardous waste at Suite 1158 as that term is defined in 329 IAC §§ 3.1-1-7 and 4-1, 40 C.F.R. § 260.10.

ANSWER: Answering Respondents deny either operated at Suite 1158 at any time relevant to the EPA inspection. Answering Respondents make no response to allegations not directed toward Answering Respondents. The remaining allegations of this paragraph set forth legal conclusions to which no answer is required. Further, the referenced statutes or regulations speak for themselves.

116. 329 IAC §§ 3.1-1-7 and 7-1, 40 C.F.R. § 262.34(a) and (b) limits the on-site storage of hazardous waste to 90 days. During the June 22, 2005, inspection there were at least four 55-gallon drums of hazardous waste that were stored on-site for greater than 90 days at Suite 1158. Consequently, the Respondents were in violation of 329 IAC §§ 3.1-1-7 and 7-1; 40 C.F.R. § 262.34(a) and (b) and therefore did not qualify for a permit exemption.

ANSWER: Answering Respondents deny either operated at Suite 1158 at any time relevant to the EPA inspection. Answering Respondents make no response to allegations not directed toward Answering Respondents. The remaining allegations of this paragraph set forth legal conclusions to which no answer is required. Further, the referenced statutes or regulations speak for themselves.

117. 329 IAC §§ 3.1-1-7 and 7-1, 40 C.F.R. § 262.34(a)(2), require a generator to label containers with the accumulation start date. On June 22, 2005, the Respondents' container storage area at Suite 1158 had a drum which was mislabeled July 14, 2007. Consequently, Respondents failed to meet the conditions of 329 IAC §§ 3.1-1-7 and 7-1; 40 C.F.R. § 262.34(a)(2) and therefore did not qualify for a permit exemption.

ANSWER: Answering Respondents deny either operated at Suite 1158 at any time relevant to the EPA inspection. Answering Respondents make no response to allegations not directed

toward Answering Respondents. The remaining allegations of this paragraph set forth legal conclusions to which no answer is required. Further, the referenced statutes or regulations speak for themselves.

118. 329 IAC §§ 3.1-1-7, 7-1, 9-1 and 10-1, 40 C.F.R. § 262.34(a)(4) and 265.51 requires a generator that stores hazardous waste on-site to have a contingency plan as a condition for qualifying for an exemption from the permit requirements.

ANSWER: The allegations of this paragraph set forth legal conclusions to which no answer is required. Further, the referenced statutes or regulations speak for themselves.

119. The contingency plan must include the following items: 1) the address of the emergency coordinator(s); 2) a list of all emergency equipment at the facility including its location and a physical description and brief outline of each item on the list; and 3) an evacuation plan describing signals that are to be used to begin evacuation and primary and secondary evacuation routes. See also, 329 IAC §§ 3.1-1-7, 7-1, 9-1 and 10-1; 40 C.F.R. §§ 262.34(a)(4) and 265.52(d), (e) and (f); 264.52(d) and (e) and (f). Consequently, Respondents failed to meet the conditions of 329 IAC §§ 3.1-1-7, 7-1 and 10-1, 40 C.F.R. §§ 262.34(a)(4) and 265.52(d), (e) and (f), and therefore did not qualify for a permit exemption.

ANSWER: Answering Respondents deny either operated at Suite 1158 at any time relevant to the EPA inspection. Answering Respondents make no response to allegations not directed toward Answering Respondents. The remaining allegations of this paragraph set forth legal conclusions to which no answer is required. Further, the referenced statutes or regulations speak for themselves.

120. At the time of the inspection, Respondents' contingency plan for Suite 1158 did not include the information required by the regulations cited in preceding paragraph. Respondents therefore failed to meet the conditions of 329 IAC §§ 3.1-1-7, 7-1, and 10-1; 40 C.F.R. § 262.34(a)(4), 40 C.F.R. §§ 265.52(d), (e) and (f). Therefore Respondents did not qualify for a permit exemption.

ANSWER: Answering Respondents deny either operated at Suite 1158 at any time relevant to the EPA inspection. Answering Respondents make no response to allegations not directed toward Answering Respondents. The remaining allegations of this paragraph set forth legal conclusions to which no answer is required. Further, the referenced statutes or regulations speak for themselves.

121. 329 IAC §§ 3.1-1-7, 7-1, and 10-1; 40 C.F.R. § 262.34(a)(1)(i) and 265.174, require a generator using containers to store hazardous waste to inspect those areas where the containers are stored at least weekly, looking for leaks and deterioration caused by corrosion or other factors.

ANSWER: The allegations of this paragraph set forth legal conclusions to which no answer is required. Further, the referenced statutes or regulations speak for themselves.

122. Inspection logs for Suite 1158 were missing for the periods: July 1, 2004 through December 20, 2004, March 7, 2005 through July 11, 2005, and July 25, 2005 through October 3,

2005. Respondents have not demonstrated that they inspected the hazardous waste storage area at Suite 1158 during these time periods. Respondents therefore failed to meet the conditions of 329 IAC §§ 3.1-1-7, 7-1, and 10-1; 40 C.F.R. § 262.34(a)(1)(i) and 265.174 and did not qualify for the permit exemption.

ANSWER: Answering Respondents deny either operated at Suite 1158 at any time relevant to the EPA inspection. Answering Respondents make no response to allegations not directed toward Answering Respondents. The remaining allegations of this paragraph set forth legal conclusions to which no answer is required. Further, the referenced statutes or regulations speak for themselves.

123. 329 IAC §§ 3.1-1-7, 7-1, and 10-1; 40 C.F.R. § 262.34(a)(4), 265.16(a), (b) and (c), require a generator, as a condition for an exemption from the permit requirements, to provide initial and annual training for its employees with duties involving hazardous waste management that teaches them to perform their duties in a way that ensures compliance with 40 C.F.R. Part 265.

ANSWER: The allegations of this paragraph set forth legal conclusions to which no answer is required. Further, the referenced statutes or regulations speak for themselves.

124. 329 IAC 3.1-1-7, 7-1 and 10-1, 40 C.F.R. §§ 262.34(a)(4) and 265.16(d)(4) and (e), requires a generator, as a condition for an exemption from the permit requirements, to document that the training required by the previous paragraph has been given to, and completed by, company personnel, and to maintain those documents for at least three years from the date that the employee last worked at the location.

ANSWER: The allegations of this paragraph set forth legal conclusions to which no answer is required. Further, the referenced statutes or regulations speak for themselves.

125. 392 IAC §§ 3.1-7-1, 40 C.F.R. §§ 265.16(d)(1), requires a generator, as a condition for an exemption from the permit requirements, to maintain a document that lists the job title for each position related to hazardous waste management and the name of the person filling that position.

ANSWER: The allegations of this paragraph set forth legal conclusions to which no answer is required. Further, the referenced statutes or regulations speak for themselves.

126. At the time of the inspection, Respondents were unable to provide the required training documentation upon the request of the EPA inspector. Therefore, Respondents failed to meet the conditions of 329 IAC 3.1-1-7, 7-1 and 10-1, 40 C.F.R. §§ 262.34(a)(4), 265.16(a), (b) and (c); (d)(1), (4) and (e), and therefore did not qualify for a permit exemption.

ANSWER: Answering Respondents deny either operated at Suite 1158 at any time relevant to the EPA inspection. Answering Respondents make no response to allegations not directed toward Answering Respondents. The remaining allegations of this paragraph set forth legal conclusions to which no answer is required. Further, the referenced statutes or regulations speak for themselves.

127. As alleged in paragraphs 105-126 above Respondents failed to comply with the conditions necessary for an on-site generator to qualify for an exemption from a hazardous waste storage permit under 35 IAC §§ 3.1-1-7, 7-1 and 10-1, 40 C.F.R. § 262.34. Respondents did not and do not have a permit for the storage of hazardous waste. Consequently, Respondents stored hazardous waste without a permit or interim status in violation of Section 3005 of RCRA, 42 U.S.C. § 6925(a) and the regulations found at 329 IAC §§ 3.1-13-1, 40 C.F.R. Part 264, §§ 270.1(c).

ANSWER: Answering Respondents deny either operated at Suite 1158 at any time relevant to the EPA inspection. Answering Respondents make no response to allegations not directed toward Answering Respondents. The remaining allegations of this paragraph set forth legal conclusions to which no answer is required. Further, the referenced statutes or regulations speak for themselves.

Count II

128. Paragraphs 1-104 are incorporated by reference as if fully presented in this Count II. Respondents are *persons* as defined by 329 IAC § 3.1-4-20, 40 C.F.R. § 260.10.

ANSWER: Answering Respondents incorporate their responses to the allegations of paragraphs 1 through 104 as if fully presented in Count II. The remaining allegations of this paragraph set forth legal conclusions to which no answer is required. Further, the referenced statutes or regulations speak for themselves.

129. 329 IAC §§ 3.1-1-7 and 7-1, 40 C.F.R. §§ 262.40(a), 262.42(a)(1) and (2), require a generator of hazardous waste to obtain and maintain a copy of the manifest signed by the facility designated to receive the hazardous waste. If the generator does not receive a signed manifest within 35 days it is to make inquiries related to the shipment. If it does not receive a signed manifest within 45 days it is to submit a Manifest Exception Report to IDEM.

ANSWER: The allegations of this paragraph set forth legal conclusions to which no answer is required. Further, the referenced statutes or regulations speak for themselves.

130. Respondents shipped hazardous waste on May 13, 2003 to November 11, 2003. At the time of the June 22, 2005, inspection the Respondents did not have a copy of the manifest signed by the destination facility. Further, Respondents had not inquired as to the shipments nor provided IDEM with a Manifest Exception Report. Consequently, Respondents violated 329 IAC §§ 3.1-1-7 and 7-1, 40 C.F.R. §§ 262.40(a), 262.42(a)(1) and (2).

ANSWER: Answering Respondents deny either operated at Suite 1158 at any time relevant to the EPA inspection. Answering Respondents make no response to allegations not directed toward Answering Respondents. The remaining allegations of this paragraph set forth legal conclusions to which no answer is required. Further, the referenced statutes or regulations speak for themselves.

II. PROPOSED CIVIL PENALTY

ANSWER: This Proposed Civil Penalty section sets forth legal conclusions and procedural information, to which no response is required. To the extent a response is required, Answering Respondents state they have already set forth their substantive answers to Counts I and II above. To the extent any additional answer is required, Answering Respondents deny that EPA fairly and properly evaluated the facts and circumstances in this matter, and believe that there are bona fide issues and defenses relevant to the proposed penalty's appropriateness. Further, Answering Respondents deny the remaining allegations of this section.

III. COMPLIANCE ORDER

ANSWER: This Compliance Order section sets forth legal conclusions and procedural information, to which no response is required. To the extent a response is required, Answering Respondents state they have already set forth their substantive answers to Counts I and II above. To the extent any additional answer is required, Answering Respondents deny they are required to comply with EPA's requested provisions unless and until Answering Respondents' rights to challenge the proposed order have been fully adjudicated and the order becomes effective and non-appealable. Further, Answering Respondents deny the remaining allegations of this section.

IV. OPPORTUNITY TO REQUEST A HEARING

ANSWER: Answering Respondents hereby request a hearing on the complaint and its factual and legal allegations, and on the lawfulness, necessity, or appropriateness of any civil penalty, and wish to avail themselves of any and all other rights available to them. The remaining allegations of this section set forth legal conclusions and procedural information, to which no answer is required.

V. SETTLEMENT CONFERENCE

ANSWER: While Answering Respondents request a hearing on this matter, they have requested an informal settlement conference. Answering Respondents have contacted EPA in writing and by telephone to arrange a time for a settlement conference.

* * *

ANSWER: To the extent Answering Respondents have not fully responded to any allegations made by EPA in this or the similar Complaint filed by EPA, Answering Respondents deny them at this time.

Respectfully submitted,



David L. Hatchett (IN #19383-49)

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Attorneys for Randall Geist

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CERTIFICATE OF SERVICE

I certify that on the 24th day of September, 2009, service of a true and complete copy of the foregoing was made upon each party or attorney of record herein by U.S. Mail, postage prepaid:

Richard J. Clarizio
Associate Regional Counsel
Office of the Regional Counsel
U.S. Environmental Protection Agency,
Region 5
77 West Jackson Boulevard (C-14J)
Chicago, Illinois 60604-3590



David L. Hatchett

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