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REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

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February 2, 2010

Via Overnight Delivery

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

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

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 Prehearing Exchange
- REDACTED VERSION of Creative Liquid's and Randall Geist's Prehearing Exchange

As required by 40 C.F.R. § 22.5(d) for the filing of documents containing confidential business information, we are including two versions of Creative Liquid's and Randall Geist's Prehearing Exchange. The first version clearly identifies the specific portions which are confidential. The second version has been redacted and the redacted portions replaced with notes indicating the nature of the information redacted. Pursuant to 40 C.F.R. § 22.5(d)(4), only the redacted version may be treated as public information.

Please file-stamp the documents and return one file-stamped copy of each version 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 jks

David L. Hatchett

DLH:djl
Enclosures

Cc: Judge Barbara A. Gunning, U.S. EPA
Richard J. Clarizio, U.S. EPA

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:)

Creative Liquid Coatings, Inc.)
(formerly doing business as Creative Coatings, Inc.))
2701 S. Coliseum Blvd.)
Suite 1284)
Fort Wayne, IN 46803)

U.S. EPA ID No. INR 000 109 322)

Elite Enterprises, Inc.)

AND)

Randall Geist)

Respondents)

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-05-2009-0012

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USEPA
REGION 5

DOCKET NO. RCRA-05-2009-0013

CREATIVE LIQUID'S AND RANDALL GEIST'S PREHEARING EXCHANGE
BUSINESS CONFIDENTIALITY ASSERTED – REDACTED VERSION¹

Creative Liquid Coatings, Inc. (“Creative Liquid”) and Randall Geist (collectively, “Respondents”) hereby file their Prehearing Exchange pursuant to the October 22, 2009

¹ Pursuant to 40 C.F.R. § 22.5(d)(2)(ii), the information claimed confidential has been deleted from this version, and a complete copy of the document containing the information claimed confidential has been filed with the Regional Hearing Clerk. Pursuant to 40 C.F.R. § 22.5(d)(4), only this redacted version shall be treated as public information.

Prehearing Order.² Please note that the exhibits in this Prehearing Exchange contain financial information that is company confidential material protected under 40 C.F.R. Part 2, Subpart B. Specifically, 40 C.F.R. § 2.203 protects, for reasons of business confidentiality, the financial information included in these exhibits from disclosure. Pursuant to 40 C.F.R. § 22.5(d), Respondents are filing two versions of their Prehearing Exchange – a complete version containing the confidential information and one that has been redacted.

POTENTIAL WITNESSES

Respondents submit the following potential witness list:

1. Sabrina Byer, accountant, Creative Liquid Coatings, Inc. – Ms. Byer’s testimony may include, but not be limited to, the financial status of Creative Liquid, the following of corporate formalities, and Creative Liquid’s inability to pay a civil penalty. To the extent the testimony also provides expert opinion, Ms. Byer worked for Elite Enterprises, Inc. (“Elite”) from 1998 - 2005 and has been with Creative Liquid since 2005. While Ms. Byer does not have a curriculum vitae, her primary job responsibilities include: general ledger entries, AR / AP management, maintaining & preparing Creative Liquid's financial statements, and managing Creative Liquid's cash and financial transactions.

2. Adam Decker, CPA, CVA, Veros Partners, Indianapolis, Indiana – Mr. Decker’s testimony may include, but not be limited to, the financial status of Creative Liquid and/or Randall Geist, the following of corporate formalities, and Creative Liquid’s and/or Randall

² As provided in footnote 4 of Judge Gunning’s Prehearing Order, Respondents Creative Liquid and Mr. Geist choose to file a joint prehearing exchange. Further, it appears that the complaint filed in Docket No. RCRA-05-2009-0012 is directed toward Respondents Creative Liquid and Mr. Geist; however, to the extent the complaint filed in Docket No. RCRA-05-2009-0013 is directed toward Respondents Creative Liquid and Mr. Geist, these Respondents respectfully submit this Prehearing Exchange for both matters.

Geist's inability to pay a civil penalty. A curriculum vitae is included as an exhibit to this Prehearing Exchange.

3. Randall Geist – Randall Geist's testimony may include, but not be limited to, the histories of the separate entities of Elite and Creative Liquid, the arms-length business dealings between the two companies relating to the suites at International Park Commerce & Industrial Business Center ("International Park"), the nature of his interests in the two corporations and his lack of day-to-day involvement during the period relevant to this matter, the following of corporate formalities, and his inability to pay a civil penalty.

4. Stephen Geist, Operations Manager, Creative Liquid Coatings, Inc. – Stephen Geist's testimony may include, but not be limited to, the separate entities and operations of Elite and Creative Liquid, the arms-length business dealings between the two companies, Randall Geist's lack of day-to-day involvement in Creative Liquid and Elite during the period relevant to this matter, and Creative Liquid's inability to pay a civil penalty.

5. Todd Brown, U.S. EPA – Mr. Brown may be called upon as an adverse witness to testify about his observations during the June 22, 2005 inspection and the alleged conversations with on-site employees.

6. Chuck Adamson, former Production Manager, Elite Enterprises, Inc., part-time employee, Creative Liquid Coatings, Inc. – Mr. Adamson's testimony may include, but not be limited to, his position with Elite, Randall Geist's lack of day-to-day involvement in Creative Liquid and Elite during the period relevant to this matter, and the alleged conversations with the agencies' inspectors during the June 22, 2005 inspection.

7. Gregg David, former Plant Manager, Elite Enterprises, Inc., former Process Manager, Creative Liquid Coatings, Inc. – Mr. David's testimony may include, but not be

limited to, his position with Elite, Randall Geist's lack of day-to-day involvement in Creative Liquid and Elite during the period relevant to this matter, and the alleged conversations with the agencies' inspectors during the June 22, 2005 inspection.

8. Herman Dejong, former Operations Manager and Paint Manager, Elite Enterprises, Inc., and current Paint Manager, Creative Liquid Coatings, Inc. - Mr. Dejong's testimony may include, but not be limited to, his position with Elite, Randall Geist's lack of day-to-day involvement in Creative Liquid and Elite during the period relevant to this matter, and the alleged conversations with the agencies' inspectors during the June 22, 2005 inspection.

9. Jerome Henry, Shareholder, Creative Liquid Coatings, Inc. - Mr. Henry's testimony may include, but not be limited to, his interest in Creative Liquid, its separateness from Elite, and the arms-length business dealings between the two companies relating to the suites at International Park.

10. Walter Fuller, Shareholder, Creative Liquid Coatings, Inc. - Mr. Fuller's testimony may include, but not be limited to, his interest in Creative Liquid, its separateness from Elite, and the arms-length business dealings between the two companies relating to the suites at International Park.

11. Any witness identified or called by any other party, including in Complainant's Prehearing Exchange or Rebuttal Prehearing Exchange.

12. Any witness for the purpose of establishing an evidentiary foundation, authentication of documents, impeachment or rebuttal.

13. Respondents reserve the right to supplement or alter this list if required by the discovery of new or additional information relevant to this matter.

POTENTIAL EXHIBITS

Respondents have included copies of their potential exhibits with this Prehearing Exchange. Please note that the exhibits contain financial information that is company confidential material protected under 40 C.F.R. Part 2, Subpart B. Specifically, 40 C.F.R. § 2.203 protects, for reasons of business confidentiality, the financial information included in these exhibits from disclosure. In addition to these materials, Respondents also include:

1. Any exhibit identified or used by any other party, including in Complainant's Prehearing Exchange or Rebuttal Prehearing Exchange.
2. Any pleadings or other documents filed or exchanged in this litigation.
3. All documents reviewed and/or prepared by testifying experts during their work on this litigation.
4. Reports, affidavits and curriculum vitae of all testifying experts.
5. Any exhibit for the purpose of impeachment or rebuttal.
6. All documents produced or to be produced during discovery by any current or future party or non-party in this litigation.
7. Respondents reserve the right to supplement or alter this list if required by the discovery of new or additional information relevant to this matter.

PLACE AND TIME FOR HEARING

Respondents agree with Complainant's recommendation that the hearing be conducted in Fort Wayne, Indiana. At the present time, Respondents anticipate that it will take one day to present their direct case, although Complainant's case-in-chief will affect the additional amount of time needed.

FACTUAL INFORMATION RELEVANT TO ASSESSMENT OF PENALTY

Respondents respectfully submit that Complainant's lack of a penalty proposal throughout this matter makes it difficult for Respondents to determine the information relevant to assessment of a penalty. Nevertheless, some facts relevant to the assessment of a penalty are contained in the documents which are included with this Prehearing Exchange. Respondents also submit that penalties paid by other respondents in other enforcement matters for similar allegations, which information is in Complainant's possession, may be relevant to this matter.

Regarding the RCRA allegations of the case, Respondents respectfully believe that Complainant's allegations are more properly directed toward Elite and that Respondents should not have any liability for the acts or omissions of another entity. Further, Randall Geist should not face any liability as an individual given his lack of day-to-day involvement in the operations at the time period relevant to this matter and the well-founded principles of shareholder liability limitations. Respondents currently intend to file one or more motions for accelerated decision, including one arguing Mr. Geist's lack of individual liability.

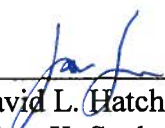
INABILITY TO PAY

Respondents have previously provided Complainant with tax returns and balance sheets for Creative Liquid beginning with the year of that company's existence (2005), as well as Randall Geist's individual tax returns for those years. Those items are enclosed with this Prehearing Exchange as well.

The significant financial difficulties experienced by Creative Liquid (and, by extension, Mr. Geist as a shareholder) may overshadow the factual debates of this case. Based on Creative Liquid's returns, U.S. EPA's ABEL model predicts a low (<60%) probability to pay even a \$5,000 penalty. Because Creative Liquid's business relies on the American auto industry and

because the worst recession in 70 years has exacerbated an already-depressed industry, it is extremely unlikely that Creative Liquid will see any significant improvement in 2010. For the same reasons, Mr. Geist's individual tax returns also show that no portion of a \$5,000 proposed penalty would be affordable by him using the U.S. EPA's INDIPAY model. Complainant is taking the position, however, that the output from U.S. EPA's own inability-to-pay models is not instructive in this case. Respondents respectfully disagree with Complainant's position and, in any event, will offer evidence demonstrating the inability to pay.

Respectfully submitted,



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Attorneys for Creative Liquid Coatings, Inc.
Attorneys for Randall Geist

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CERTIFICATE OF SERVICE

I certify that on the 2nd day of February, 2010, service of the foregoing was made upon each addressee listed below in the following manner:

Original and One Copy by overnight delivery to:

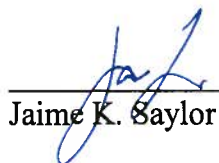
La Dawn Whitehead
Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
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Chicago, Illinois 60604

Copy by regular mail to:

Judge Barbara A. Gunning
Office of Administrative Law Judges
U.S. Environmental Protection Agency
Mail Code 1900L
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460-2001

Copy by regular mail to:

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77 West Jackson Boulevard (C-14J)
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