

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:)	
)	DOCKET NO. RCRA-05-2009-0012
Creative Liquid Coatings, Inc.)	
(formerly doing business as Creative)	
Coatings, Inc.))	
2701 S. Coliseum Blvd.)	Complaint and Compliance
Suite 1284)	Order and Notice of Opportunity for
Fort Wayne, IN 46803)	Hearing pursuant to Section 3008(a) of
)	the Resource Conservation and Recovery
U.S. EPA ID No. INR 000 109 322)	Act, 42 U.S.C. §6928(a)
)	
Elite Enterprises, Inc.)	COMPLAINANT'S
AND)	PREHEARING EXCHANGE
Randall Geist)	
)	
Respondents)	
_____)	

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COMPLAINANT'S PREHEARING EXCHANGE

Complainant is filing this Prehearing Exchange pursuant to Judge Gunning's October 22, 2009, Prehearing Order.

1. A. Witness

Complainant may call the following individuals as witnesses in its direct case. The Complainant will supplement this list with potential rebuttal witnesses after it receives and reviews the Respondents' Prehearing Exchange.

1. Fact Witnesses

Todd Brown, USEPA – Mr. Brown's testimony is expected to include, but not be limited to, his investigation of Respondents' compliance with the Resource Conservation and Recovery Act (RCRA). Mr. Brown may be called upon to testify about his observations during

the June 22, 2005, inspection and subsequent follow-up activities including, but not limited to information submitted by Respondents and others. Mr. Brown's inspection report and other documents he may rely upon are included in Complainant's Prehearing Exchange.

Derrick Samaranski, USEPA – Mr. Samaranski's testimony is expected to include, but not be limited to, his investigation of Respondents' compliance with RCRA and the proposed penalty. Mr. Samaranski may be called upon to testify as to his review of documents submitted by Wayne Coliseum Ltd. Partnership, ERG and others in response to information requests USEPA sent to these and other entities. The documents that he may rely upon are included as part of Complainant's Prehearing Exchange. A more detailed explanation of Mr. Samaranski's testimony as it relates to the proposed penalty will be submitted in accordance with the Prehearing Order – i.e., within 15 days after Respondents' Prehearing Exchange.

Mark Espich, IDEM – Mr. Espich may be called upon to testify as to his observations during the June 22, 2005, inspection and IDEM's knowledge of the regulatory status and operations of the facility.

Greg David, former plant manager, Creative Coatings and Elite Enterprises – Mr. David may be called upon to testify as to the operations of and relationship between Creative Coatings, Creative Liquid Coatings, QP2 and Elite Enterprises. He may also be called to testify as to operations and conditions at the two facilities during the June 22, 2005, inspection.

Jan Jackson, Property Manager, Wayne Coliseum Limited Partnership – Ms. Jackson may be called upon to testify as to the daily activities of the Respondents; her contacts with the Respondents; her conversations with Randall Geist; his involvement in negotiating and/or guaranteeing leases; his involvement in decision-making related to the corporate Respondents;

the involvement of the Respondents with the operations at 2701 Coliseum Boulevard; the environmental reports and conditions she observed or was aware of at the Respondents' facilities; and the environmental investigations completed by or on behalf of her employer related to the Respondents' operations and compliance with the environmental covenants in its leases. Some of the observations and conversations Ms. Jackson may be called upon to testify to are summarized in documents included as part of the pre-hearing exchange. The topics, include but are not limited, to the continued storage of hazardous waste greater than 90 days in 2006; the leaking or disposal of oil and other liquids onto the ground and in or near storm and sanitary sewers; and the involvement of Randall Geist in the decision-making involving environmental compliance issues.

Maureen O'Neill, USEPA – Ms. O'Neill is a civil investigator employed by EPA. She may be called upon to testify as to her investigation into the corporate relationship between the Respondents. Her testimony may include her interview of Jan Jackson, should Ms. Jackson not voluntarily testify or comply with any subpoena that may be issued.

Randall Geist – adverse witness - The Complainant may call Randall Geist as an adverse witness, if he is not called by the Respondents. The scope of his testimony would be his involvement with the corporations and their daily operations. Additionally, if the Respondents should raise inability to pay as a defense the Complainant may call Mr. Geist to testify to the financial and other relationships between the named Respondents.

2. Expert Witnesses

Mark Ewen, Industrial Economics – Mr. Ewen may be called upon to testify as to the corporate relationship between the Respondents. If the Respondents claim an inability to pay the

proposed penalty Mr. Ewen may be called upon to provide the results of his review of any documents produced by the Respondents as well as any documents the Complainant identifies in rebuttal.

B. Exhibits

Complainant has included the exhibits as an attachment to this Prehearing Exchange.

C. Place and Time for Hearing

The Complainant recommends that the hearing be conducted in Fort Wayne, Indiana.

The Respondent and some of the witnesses are located in Fort Wayne, Indiana.

At the present time the Complainant anticipates that it will take approximately two days to present its direct case. The Complainant requests the hearing start on a Tuesday so that it can use Monday to prepare the room and exhibits.

Complainant requests that the hearing not be scheduled in July or August of 2010.

Complainant's counsel is assisting the United States Attorney's Office for the Eastern District of Michigan for a trial in United States v. Dearborn Refining Company and Aram Moloian, Civil Action: 09-13597. The trial is presently scheduled for August 3, 2010.

2. Factual information relevant to assessment of penalty.

The Complainant will provide a summary of the relevant factual information when it provides its proposed penalty – i.e., within 15 days after the Respondents file their Prehearing Exchange. The relevant facts are contained in the documents which are included with this Prehearing Exchange.

3. Proposed Penalty.

The Complainant will provide the proposed penalty and summary of how it was calculated in accordance with the Prehearing Order – i.e., within 15 days of Respondents' filing of their Prehearing Exchange.

4. Inability to Pay.

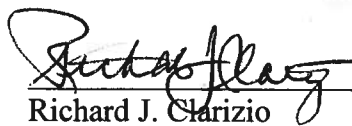
The Prehearing Order directs the Respondents to furnish certified copies of financial statements or tax returns. The Complainant requests that tax returns and financial statements of Creative Coatings, Creative Liquid Coatings and Elite Enterprises, Inc. be provided for the last five years. All schedules and attachments to the tax returns and financial statements should be submitted. Additionally, the Complainant requests that Respondent Geist provide certified copies of his tax returns for the past five years and complete the "Individual Ability to Pay Claim – Financial Data Request Form" which is included.

5. Paperwork Reduction Act.

The Paperwork Reduction Act of 1990, 44 U.S.C. §§ 3501 et seq., may be applicable this proceeding since certain federal regulations cited in the complaint may be considered a collection of information. Complainant has reviewed those regulations and has determined that there was

valid display of an Office of Management and Budget (OMB) control number during the relevant time periods.

Respectfully submitted,



Richard J. Clarizio
USEPA, Region 5
Office of Regional Counsel

Date: DEC 30 2008

In the Matter of *Creative Liquid Coatings, Inc. (fdb Creative Coatings, Inc.) (USEPA ID No. INR 000 109 322, Elite Enterprises, Inc. and Randall Geist, Respondents*
Docket No. RCRA-05-2009-0012

CERTIFICATE OF SERVICE

I certify that the foregoing **Prehearing Exchange**, dated DEC 30 2009, was sent this day in the following manner to the addressees listed below:

Original and One Copy by Hand Delivery To:


La Dawn Whitehead
Regional Hearing Clerk
USEPA
77 West Jackson Boulevard, E-19J
Chicago, Illinois 60604-3590

Copy by Regular Mail To:

David L. Hatchett, Esquire
Jaimie K. Saylor, Esquire
Hatchett & Hauck LLP
111 Monument Circle, Suite 301
Indianapolis, IN 46204-5124

Copy by Pouch Mail To:

Honorable Barbara A. Gunning
USEPA
Office of Administrative Law Judges
1200 Pennsylvania Avenue, N.W.
Mail Code 1900L
Washington D.C., 20005


Elizabeth Rosado
USEPA, Region 5, ORC

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Date: DEC 30 2009

in the history of the world, the only one that has been able to maintain its position of leadership for so long.

THE HISTORY OF THE WORLD

The history of the world is a long and complex one, and it is one that has been written by many different people.

One of the most important things to remember is that the history of the world is not just a list of events.

It is a story that has been told in many different ways, and it is one that has been told in many different languages.

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INDIVIDUAL ABILITY TO PAY CLAIM
Financial Data Request Form

This form requests information regarding your financial status. The data will be used to evaluate your ability to pay for environmental clean-up or penalties. If there is not enough space for your answers, please use additional sheets of paper. Note that we may request further documentation of any of your responses. We welcome any other information you wish to provide supporting your case, particularly if you feel your situation is not adequately described through the information requested here.

Certification

Under penalties of perjury, I declare that this statement of assets, liabilities, and other information is true, correct, and complete to the best of my knowledge and belief. I further understand that I will be subject to prosecution by the Environmental Protection Agency to the fullest extent possible under the law should I provide any information that is not true, correct, and complete to the best of my knowledge.

Signature

Date

Name:
Spouse's Name:
Address:
County of Residence:

PART I. BACKGROUND INFORMATION

3. INCOME (List all income earned by persons in household. If members of the household other than the applicant and spouse earn income, please itemize on separate page.)

Source	Gross (Pre-Tax)		Period of Payment (check one)			
	Applicant	Spouse	Weekly	Monthly	Quarterly	Yearly
Wages/Salaries						
Sales Commissions						
Investment Income (interest, dividends, capital gains, etc.)						
Net Business Income						
Rental Income						
Retirement Income (Pension, Social Security, etc.)						
Child Support						
Alimony						
Other Income (please itemize)						

PART III. NET WORTH

Please provide the following information to the best of your ability. Data should be as current as possible. Estimates are acceptable; if you wish note such items with an "E". If you are the sole proprietor of a business, please list business assets and liabilities to the extent that the information sought is not already provided in your tax returns, in addition to personal assets and liabilities. Please mark these entries with a "B" to identify them as business assets and liabilities.

1. BANK ACCOUNTS (Checking, NOW, Savings, Money Market, CDs etc.)		
Name of Bank or Credit Union	Type of Account	Current Balance
For Agency Use Only - Total Current Balance in Bank Accounts		

2. INVESTMENTS (Stock, Bonds, Mutual Funds, Options, Futures, Real Estate Investment Trusts (REIT), etc.)		
Investment	Number of Shares or Units	Current Market Value
For Agency Use Only - Total Current Market Value of Investments		

3. RETIREMENT FUNDS AND ACCOUNTS (IRA, 401(k), Keogh, vested interest in company retirement fund, etc.)	
Description of Account	Estimated Market Value
For Agency Use Only - Total Estimated Market Value of Retirement Funds and Accounts	

6. PERSONAL PROPERTY (Household Goods and Furniture, Jewelry, Art, Antiques, Collections, Precious Metals, etc. Only list items with a value greater than \$500.00)

Type of Property	Estimated Market Value	Loan (if any) Owed to:	Balance Due:	Start Date	End Date

For Agency Use Only - Total Estimated Market Value of Personal Property

7a. REAL ESTATE — PRIMARY RESIDENCE (Home — List only one such residence.)

Location & Description of Property	Estimated Market Value	Mortgage (if any) Owed to:	Balance Due:	Start Date	End Date

For Agency Use Only - Total Estimated Market Value of Real Estate

7b. OTHER REAL ESTATE (Land, Buildings, Land with Buildings)

Location & Description of Property	Estimated Market Value	Mortgage (if any) Owed to:	Balance Due:	Start Date	End Date

For Agency Use Only - Total Estimated Market Value of Real Estate

PART IV. ADDITIONAL INFORMATION

Please respond to the following questions. For any question that you answer "Yes," please provide additional information on separate pages or at the bottom of this page.

QUESTION	YES	NO
1. Do you have any reason to believe that your financial situation will change during the next year?		
2. Are you currently selling or purchasing any real estate?		
3. Is anyone (or any entity) holding real or personal property on your behalf (e.g. a trust)?		
4. Are you a party in any pending lawsuit?		
5. Have any of your belongings been repossessed in the last three years?		
6. Are you a Trustee, Executor, or Administrator?		
7. Are you a participant or beneficiary of an estate or profit sharing plan?		
8. Have you declared bankruptcy in the last seven years?		
9. Do you receive any type of federal aid or public assistance?		

Complainant's Exhibit Number	Bates Stamp Number	Date	Author or Contact	Recipient
1	CX-000001 - CX-000002	5/25/1993	Michael Kreps	IDEM
2	CX-000003-CX-000047	9/3/1999		
3	0000048 -CX0000	5/3/2002	Wayne Coliseum (WC)	Elite Enterprises
4	CX-0000078 - CX0000080	7/1/2003	WC	Elite Enterprises
5	CX-0000081 - CX0000082	7/2/2003	Greg David, Plant Manager, QP	Notification
6	CX-0000083 - CX0000103	7/16/2003	WC	Elite Enterprises
7	CX-0000104 - CX0000116	11/18/2003	Elite	
7		11/18/2003	ASC, Inc	Elite Enterprises
8	CX-0000117 - CX0000165	1/23/2004	Paul Dubenetzky, IDEM	Michael Kreps, Elite Enterprises
9	CX-0000166	1/27/2004	Richard Lain CFO, Elite and Creative	IDEM
10	CX-0000167 CX-0000168	3/1/2004	Greg David, Plant Manager Creative Coatings	Notification
11	CX-0000167 -CX-0000220	3/31/2004	Gregory David, Plant Manager, Creative Coatings	IDEM
12	CX-0000221	5/14/2004	Greg David, Plant Manager, Creative Coatings	IDEM
13	CX-0000222	5/21/2004	Gregory David, Plant Manager, Creative Coatings	ERG
14	CX-0000223	7/20/2004	Greg David, Plant Manager, Creative Coatings	IDEM
15	CX-0000224 CX-0000232	7/27/2004	Bill Gabbard	Sanober Durrani

Complainant's Exhibit Number	Bates Stamp Number	Date	Author or Contact	Recipient
16	CX-0000233 - CX 0000242	7/28/2004	Bill Gabbard	Sanober Durrani
17	CX-0000243 - CX 0000275	8/1/2004	WC	Creative Coatings
18	CX-0000276	8/13/2004	Bill Gabbard	Sanober Durrani
19	CX-0000277	8/17/2004	Greg David, Plant Manager, Creative Coatings	Sanober Durrani
20	CX-0000278 - CX 0000285	8/30/2004		
21	CX-0000286 - CX 0000294	9/7/2004	Elite Enterprises and Creative Coatings, Inc.	
22	CX-0000295	11/5/2004	Greg David, Plant Manager, Creative Coatings	Enviroplan Consulting
23	CX-0000296 CX- 0000305	11/15/2004	Richard Lain, CFO, Elite Enterprises	IDEM
24	CX-0000306 - CX 0000307	11/18/2004	Jan Jackson	
25	CX-0000308 - CX 0000310	12/1/2004	WC	Creative Coatings and Elite Enterprises
26	CX-0000311 CX- CX-0000325	1/13/2005	Richard Lain, CFO, Elite and Creative	IDEM
27	CX-0000326 -CX- 0000327	1/21/2005		
28	CX-0000328 CX- 0000329	2/16/2005	Jan Jackson	
29	CX-0000330 - CX 0000331	2/23/2005	Richard Lain, VP Finance Creative and Elite	IDEM
30	CX-0000332	4/15/2005	Jenny Dooley	File
31	CX-0000333	4/19/2005	Richard Lain, CFO, Elite Enterprises	IDEM
32	CX-0000334	4/22/2005	Anne Remeck, IDEM	Jenny Dooley, IDEM

Complainant's Exhibit Number	Bates Stamp Number	Date	Author or Contact	Recipient
33	CX-0000335	4/25/2005	Richard Lain, CFO, Elite	IDEM
34	CX-0000336	5/16/2005	Richard Lain, CFO, Elite	IDEM
35	CX-0000337	6/24/2005	Mark Espich	Jenny Dooley
36	CX-0000338- CX-0000339	6/24/2005	Jenny Dooley	David Gregg, Creative Coatings
37	CX-0000340 CX-0000365	7/7/2005	Todd Brown	
38	CX-0000366 CX-0000367	7/20/2005	Richard Lain, CFO, Elite	IDEM
39	CX-0000368 - CX-0000369	8/10/2005	WC	Elite Enterprises
40	CX-0000370 CX-0000372	8/12/2005	Richard Lain, CFO, Elite	IDEM
41	CX-0000373 CX-0000374	9/12/2005	Jan Jackson	Randy Geist
42	CX-0000375 CX-0000381	10/5/2005	Lorna Jereza	Greg David, Creative
43	CX-0000382 - CX-0000447	10/25/2005	Richard Lain, CFO Elite	Lorna Jereza
44	CX-0000448 - CX-0000449	11/8/2005	Richard Lain, CFO Elite	Todd Brown
45	CX-0000450 - CX-0000453	11/14/2005	Richard Lain, CFO Elite	Todd Brown
46	CX-0000454 CX-0000457	12/7/2005	Roto Router	Jan Jackson
47	CX-0000458	12/8/2005	Jan Jackson	
47	CX-0000458	12/12/2005	Jan Jackson	
48	CX-0000459 CX-0000460	12/13/2005	Jan Jackson	
47		12/14/2005	Jan Jackson	
49	CX-0000461- CX-0000470	12/16/2005	Lorna Jereza	Greg David, Creative and Elite
50	CX-0000471 CX-0000474	12/16/2005	Thomas Bergman	Elite Enterprises
51	CX-0000475 - CX-0000476	12/21/2005	Jan Jackson	Brian Wendel
51		12/22/2005	Jan Jackson	Brian Wendel
52	CX-0000477	12/22/2005	Jan Jackson	Bergman
53	CX-0000478 - CX-0000482	12/23/2005	Richard Lain, CFO, Elite	Michelle Weddle

Complainant's Exhibit Number	Bates Stamp Number	Date	Author or Contact	Recipient
54	CX-0000483	1/3/2006	Jan Jackson	Brian Wendel
55	CX-0000484 - CX 0000485	1/3/2006	Jan Jackson	Brian Wendel
56	CX-0000486 - CX 0000487	1/5/2006	Jan Jackson	Brian Wendel
57	CX-0000488 - CX 0000583	1/7/2006	Richard Lain, CFO Elite	Todd Brown
58	CX-0000584 CX- 0000585	1/11/2006	Jan Jackson	Brian Wendel
59	CX-0000586 - CX 0000587	2/14/2006	Richard Lain, CFO Elite	IDEM
60	CX-0000588	2/16/2006	Jan Jackson	
61	CX-0000589 CX- 0000591	2/17/2006	Jan Jackson	Brian Wendel
62	CX-0000592	2/17/2006	Jan Jackson	
63	CX-0000593 - CX 0000594	2/17/2006	Massoud Tabrizi & Gordon Sherk	Gordon Sherk & Massoud Tabrizi
62		2/20/2006	Jan Jackson	
64	CX-0000595 - CX 0000596	3/4/2006	Massoud Tabrizi	Jan Jackson
65	CX-0000597 - CX 0000598	3/4/2006	Massoud Tabrizi	Jan Jackson
66	CX-0000599 - CX 0000600	3/8/2006	Jan Jackson	Tom Bergman
67	CX-0000601	3/9/2006	Jan Jackson	Brian Wendel
68	CX-0000602 - CX 0000603	3/10/2006	Jan Jackson	Brian Wendel
69	CX-0000604 CX- 0000605	3/14/2006	Jan Jackson	Brian Wendel
70	CX-0000606	3/14/2006	Jan Jackson	Tom Bergman
71	CX-0000607 - CX 0000608	3/15/2006	Jan Jackson	Brian Wendel
72	CX-0000609	3/15/2006	Jan Jackson	Brian Wendel
73	CX-0000610	3/16/2006	Jan Jackson	Incident Report
74	CX-0000611	3/16/2006	Jan Jackson	Brian Wendel
75	CX-0000612	3/17/2006	Jan Jackson	Brian Wendel
76	CX-0000613	3/17/2006	Jan Jackson	Brian Wendel
77	CX-0000614	3/17/2006	Richard Lain, CFO, Elite	IDEM
78	CX-0000615 - CX 0000618	3/20/2006	Jan Jackson	Brain Wendel

Complainant's Exhibit Number	Bates Stamp Number	Date	Author or Contact	Recipient
79	CX-0000619 - CX 0000620	3/22/2006	Jan Jackson	Briand Wendel
80	CX-0000621 - CX 0000622	3/23/2006	Jan Jackson	Brian Wendel
81	CX-0000623	4/5/2006	Richard Lain, CFO Creative Liquid Coatings	Michelle Weddle, IDEM
82	CX-0000624 - CX 0000630	4/12/2006	Richard Lain, CFO, CLC	IDEM
83	CX-0000631	4/17/2006	Jan Jackson	Brian Wendel
84	CX-0000632 - CX 0000637	4/19/2006	Richard Lain, CFO, Creative Liquid	IDEM
85	CX-0000638 - CX 0000639	4/20/2006	Brian Wendel	David Steiner
86	CX-0000640 - CX 0000641	4/25/2006	City of Fort Wayne	J&S Liquid Waste Service
87	CX-0000642 - CX 0000643	4/25/2006	Massoud Tabrizi & Gordon Sherk	Gordon Sherk & Massoud Tabrizi
88	CX-0000644 - CX 0000645	4/26/2006	Jan Jackson	Brian Wendel
89	CX-0000646	5/23/2006	Jan Jackson	Brian Wendel
90	CX-0000647	6/6/2006	Republic Services, Inc.	
91	CX-0000648 - CX 0000657	6/6/2006	Randall Geist, President Elite Enterprises/ Creative Coatings	IDEM
92	CX-0000658 - CX 0000659	7/7/2006	Jan Jackson	Brian Wendel
93	CX-0000660 - CX 0000671	8/7/2006	Randall Geist, President Elite and Creative	IDEM
94	CX-0000672	9/26/2006	Thomas Bergman	Elite Enterprises
95	CX-0000673	9/28/2006	John Evans, VP Operations, Creative Liquid Coatings	IDEM
96	CX-0000674 - CX 0000679	10/20/2006	Randall Geist, President Creative Liquid Coatings	IDEM

Complainant's Exhibit Number	Bates Stamp Number	Date	Author or Contact	Recipient
97	CX-0000680 - CX 0000681	1/28/2007	Randall Geist, President Elite Enterprises	IDEM
98	CX-0000682 - CX 0000690	1/31/2007	Randall Geist, President, Creative Liquid	Matthew Chaifetz, IDEM
99	CX-0000691 - CX 0000694	5/3/2007	Jan Jackson	Incident E-mail Report
100	CX-0000695 - CX 0000696	7/16/2007	Jan Jackson	
101	CX-0000697	7/16/2007	Jan Jackson	Brain Wendel
102	CX-0000698 CX- 0000701	7/16/2007	Jan Jackson	Incident Report
103	CX-0000702	7/17/2007	Jan Jackson	Brain Wendel
104	CX-0000703	8/17/2007	Jan Jackson	Brian Wendel
105	CX-0000704 - CX 0000705	8/25/2007	Justin Barman	Incident Report
106	CX-0000706 - CX 0000708	8/28/2007	Massoud Tabrizi	
107	CX-0000709 - CX 0000801	9/5/2007	Randall Geist, President Creative Liquid Coatings	IDEM
108	CX-0000802 - CX 0000817	9/28/2007	Randall Geist, President Creative Liquid Coatings	IDEM
109	CX-0000818 - CX 0000823	10/16/2007	David R. Steiner	Randall Geist, President, Creative Liquid
110	CX-0000824 - CX 0000835	10/23/2007	Massoud Tabrizi	Stephen Geist, Operations Manager.
111	CX-0000836 - CX 0000839	11/8/2007	Jan Jackson	Brian Wendel cc: R.Geist
112	CX-0000840 - CX 0000842	11/14/2007	Massoud Tabrizi & Dan Hartzler	Dan Hartzler & Massoud Tabrizi
113	CX-0000843 - CX 0001031	1/4/2008	Randall Geist, President, Creative Liquid	Willie Harris, EPA

Selected Reports and Publications

Estimation of The Marginal Greenhouse Gas Abatement Curve for The Beneficial Use of Fly Ash as a Substitute for Portland Cement in Ready-mix Concrete Production, prepared for Office of Solid Waste, U.S. Environmental Protection Agency, November 2008.

Assessment of the Potential Costs, Benefits, and Other Impacts of Proposed Revisions to the RCRA Subtitle C Corporate Financial Test, prepared for Office of Solid Waste, U.S. Environmental Protection Agency, August 2008.

Assessment of the Potential Costs, Benefits, and Other Impacts of The Proposed Rule Revising The Land Disposal Restriction Treatment Standards for Spent Hydro-refining Catalysts and The Recycling Requirements for Spent Hydro-refining and Hydro-treating Catalysts, prepared for Office of Solid Waste, U.S. Environmental Protection Agency, August 2008.

Assessment of the Potential Costs, Benefits, and Other Impacts of Adding Pharmaceuticals to the Universal Waste Rule, as Proposed, prepared for Office of Solid Waste, U.S. Environmental Protection Agency, April 2008.

Assessment of the Potential Costs, Benefits, and Other Impacts of the Expansion of the RCRA Comparable Fuels Exclusion—Final Rule, prepared for Office of Solid Waste, U.S. Environmental Protection Agency, April 2008.

Waste and Materials-Flow Benchmark Sector Report: Beneficial Use of Secondary Materials – Foundry Sand, report prepared for the Office of Solid Waste Economic Methods and Risk Analysis Division, U.S. Environmental Protection Agency, February 2008.

Waste and Materials-Flow Benchmark Sector Report: Beneficial Use of Secondary Materials – Coal Combustion Products, report prepared for the Office of Solid Waste Economic Methods and Risk Analysis Division, U.S. Environmental Protection Agency, February 2008.

Waste and Materials-Flow Benchmark Sector Report: Generation and Management of Electronic Waste in the United States, prepared for Office of Solid Waste, U.S. Environmental Protection Agency, March 2007.

Assessment of the Potential Costs, Benefits, and Other Impacts of Chat Use in Transportation Projects, report prepared for Office of Solid Waste Economic Methods and Risk Analysis Division, U.S. Environmental Protection Agency, January 2006.

Assessment of the Potential Costs, Benefits, and Other Impacts of the Expansion of the RCRA Comparable Fuels Exclusion—Proposed Rule, prepared for Office of Solid Waste, U.S. Environmental Protection Agency, December 2006.

Assessment of the Potential Costs, Benefits, and Other Impacts of the Exclusion for Gasification of Petroleum Oil-bearing Secondary Materials Final Rule, prepared for Office of Solid Waste, U.S. Environmental Protection Agency, December 2006.

Economic Analysis of Critical Habitat Designation [various species], prepared for the Division of Economics, U.S. Fish and Wildlife Service, 2003 to present.

Economic Analysis of Critical Habitat Designation [various species], prepared for the National Marine Fisheries Service, 2004 to present.

Financial Profiles and Alternative Costs Report, 2002 Methyl Bromide CUE Applications from Post-Harvest/Structural Users, prepared for U.S. Environmental Protection Agency Office of Pesticide Programs. June 2003.



MARK D. EWEN

Regulatory and Environmental Economics (continued)

- For the Independent Power Producers Society of Alberta, providing analytic support relating to the development of an electricity congestion management plan in the Province.
- For EPA's Office of Drinking Water, conducting analyses to explore possible revisions to the Agency's affordability criteria for drinking water regulations.
- For EPA's Office of Pesticide Programs, conducting a program evaluation of its Reduced Risk Initiative for conventional pesticides
- Reviewing the United States Postal Service's proposed cost allocation for postal rates in 1997 and 2000 on behalf of the Newspaper Association of America and the Office of the Consumer Advocate. This work includes submitting testimony regarding city carrier costs in the R2000 rate proceeding.
- Evaluating the ability of states to meet their cost share obligations associated with remedial actions at Superfund sites, for EPA. The evaluation utilizes a case study approach to analyze state financial capabilities, willingness of state officials and residents to fund cleanup activities, and actual state experiences with the Superfund program.
- For EPA's Office of Water, managing an assessment of the costs of water pollution control in the Chesapeake Bay Watershed. This analysis estimates the increase in annual compliance costs incurred by both the public and private sector to comply with the Clean Water Act and other pollution control programs that went into effect between 1972 and 1997.
- For Environment Canada, assessing the human health and environmental benefits of Canada's New Substances Notification Regulations (NSNR). The analysis utilizes a retrospective approach to evaluate the benefits that would have resulted had the NSNR been implemented in time to regulate the use of three substances: vinyl chloride, dichloromethane, and PCBs.
- Conducting a case study analysis for EPA's Office of Water of the costs and benefits of improved water quality on the Upper Mississippi and Potomac Rivers resulting from enhanced municipal wastewater treatment processes under the Clean Water Act.
- For the U.S. Environmental Protection Agency's (EPA) Office of Radiation and Indoor Air, Mr. Ewen developed a cost-benefit analysis of risk-based radiation clearance standards for the release of scrap metal from nuclear facilities. As part of this effort, Mr. Ewen managed various aspects of the work, including developing an economic model to predict cost and human health impacts, providing strategic planning advice concerning expansion of the initiative to include "orphaned" radioactive sources and development of international clearance standards, and developing a communications strategy and public outreach materials.
- As part of his work for EPA's Office of Radiation and Indoor Air, Mr. Ewen supported the development of a communications strategy to help the Office implement the Clean Metals Program. This work includes identifying appropriate target audiences and developing a variety of public outreach materials, including briefing packets, letters, brochures and summary issue papers.

Financial and Economic Analysis (continued)

- Managing the modification of certain EPA financial models, including changing the INDIPAY model to allow greater flexibility in the ability to pay assessment of individuals and updating the ABEL model to the Windows operating environment and incorporating other improvements.
- Analyzing academic literature relating to calculating the economic benefit a violator derives from delaying or avoiding compliance with environmental statutes, for improvements to EPA's BEN computer model.

Regulatory and Environmental Economics

Mr. Ewen's additional experience in regulatory and environmental economics includes the following projects.

- For the US Fish and Wildlife Service, assessing economic impacts related to the designation of critical habitat under the Endangered Species Act. This effort has included directing the development of economic analyses for over 20 critical habitat designations potentially affecting numerous categories of human activities and economic sectors, including, among others: dam operations; coastal and inland development; recreation; mining; forestry; transportation; and military training.
- For the National Oceanographic and Atmospheric Administration, conducting economic impact assessments related to the designation of critical habitat for Atlantic Salmon, Pacific Salmon, Green Sturgeon, and Killer Whales.
- For EPA's Office of Superfund Remediation and Technology Innovation, developed economic and environmental and human health risk characterizations for industry sectors to be potentially considered for CERCLA financial assurance requirements.
- For EPA's Office of Solid Waste, providing analytic and editorial support for the development of a Report to Congress concerning increasing the usage of recovered mineral components in cement and concrete.
- For the Pennsylvania Office of Small Business Advocate, Mr. Ewen provides consulting and analytic support relating to electricity and natural gas tariff design, revenue requirements, and other regulatory initiatives concerning electrical and natural gas distribution utilities.
- For EPA's Office of Pesticide Programs, assessing the financial and operational impacts of the planned phase-out of Methyl Bromide on various users of the pesticide, to support EPA's review of Critical Use Exemption applications under the Montreal Protocol.
- For EPA's Office of Solid Waste, directing a number of studies assessing the beneficial reuse of non-hazardous industrial byproducts, including foundry sands, coal combustion products, and construction and demolition debris. This work focuses on life-cycle assessment of these material flows.
- For EPA's Mobile Source Enforcement Branch, managing analysis of existing penalty policies to ensure policies are up-to-date and consistent, both internally to the program and externally with overarching Agency policy. Analysis requires review of financial and cost data primarily for economic benefit and gravity penalty calculation.
- For EPA's Office of Solid Waste, assessing electricity market price impacts, along with operational and financial effects, of new regulations concerning the management of residues from the burning of fossil fuels at electricity generating facilities.

Financial and Economic Analysis

The points below contain supplemental information on Mr. Ewen's financial economics work for various clients.

- Providing a variety of analytic support activities for the U.S. Environmental Protection Agency's (EPA) Office of Enforcement and Compliance Assurance, DOJ, state environmental enforcement officials, and private clients. These activities include: analyzing claims of inability to afford Superfund remediation costs or civil penalties; testifying as an expert witness on ability to pay; assessing the economic benefit derived by violators through non-compliance, conducting numerous related training seminars for enforcement personnel; and managing certain modifications and updates to two of EPA's financial computer models, ABEL and INDIPAY.
- For EPA, DOJ, U.S. Department of Agriculture, and a number of state environmental enforcement agencies, analyzing numerous ability-to-pay claims made by respondents concerning environmental enforcement lawsuits, including more than 125 corporations, 25 individuals, and several not-for-profit entities. These ability-to-pay analyses require a full review of the respondent's financial condition, including available cash flow, additional debt capacity, and unnecessary assets. Several cases have also involved the investigation of complex corporate organizations, including several with international ownership structures, to support the development of piercing the corporate veil or corporate control arguments.
- For EPA, assessing environmental regulatory costs to calculate the economic benefit of noncompliance.
- Conducting a financial and economic assessment of seven large pulp and paper facilities in Wisconsin.
- Preparing guidance documents for EPA enforcement personnel on developing maps of corporate structure and piercing the corporate veil.
- Participated as a witness in an "expert witness role play," presented with an EPA Administrative Law Judge presiding and Agency lawyers for attendees to the Fifth Annual Financial Analysts Workshop, U.S. Environmental Protection Agency, Boston, MA, July 2000. Session provided "live" testimony session to illustrate testifying techniques for financial analysts.
- Providing litigation support in legal action taken against a potentially responsible party (PRP) at a Superfund site, for DOJ. The support includes extensive deposition preparation activities, participating in mediated settlement negotiations; and generating acceptable settlement figures.
- For the Administrative Law Judges of the Mine Safety and Health Administration, developing and conducting a seminar on financial and economic analyses relevant to the enforcement of mine safety regulations.
- Conducting training on EPA's BEN, PROJECT, MUNIPAY, INDIPAY, and ABEL computer models for EPA and state environmental enforcement staff, and developing a four-day seminar on the advanced financial analysis of respondents. Mr. Ewen has presented this seminar for EPA and state environmental enforcement officials in seven EPA Regions. He has also presented courses on advanced economic benefit assessment. These training efforts have expanded to include internet-based webinars, and viewable web tutorials, to implement distance learning efforts.



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Litigation and Economic Damages

Examples of Mr. Ewen's litigation support and economic damages assessment activities include the following projects.

- For the U.S. Coast Guard's National Pollution Funds Center (NPFC), assessing economic damages to electricity generating and oil refining facilities from their shutdown as result of a marine oil spill.
- Serving as an expert witness concerning economic damages incurred by the US Forest Service resulting from a forest fire within the Sierra National Forest, for the US Attorney's Office in Sacramento, CA.
- Assessing economic damages incurred by a class of lobster fishermen resulting from the collapse of the lobster fishery in Long Island Sound, for a private client.
- For the Commercial Litigation Branch of the U.S. Department of Justice (DOJ), providing case management support and assessing potential economic damages for contract litigation involving nuclear utility interests.
- For a group of private plaintiffs, assessing economic damages and related financial impacts resulting from pollution discharges at a meatpacking facility.
- For the US Department of Interior, allocating liability among responsible parties for natural resource damages at a large Superfund site, including numerous mining entities.
- Providing case management and litigation support for DOJ concerning its enforcement actions against various coal burning power plants involving alleged violations of the Clean Air Act.
- For the State of Pennsylvania, providing internal expert analysis and discovery support related to the economic impacts of a landfill permitting effort.
- For the U.S. Coast Guard's National Pollution Funds Center (NPFC), developing guidance concerning the assessment of economic damages resulting from oil spills.
- For a private client, providing litigation and discovery support related to a natural resource damages claim in New Mexico.
- Providing case management and analytic support for DOJ in three lawsuits involving Alaskan timber interests. The support includes the financial and economic analysis of timber, sawmill, and pulp operations. In addition, this work involved assessing the regional economic impact of pulp mill closures on the local economies of Southeast Alaska.
- For the US Fish and Wildlife Service, auditing and documenting Natural Resource Damage Assessment (NRDA) costs incurred by relevant Trustees related to a NRDA case in Maine.
- For a private client, providing support concerning the assessment and economic valuation of human health effects related to U.S. nuclear weapons testing in the U.S. Marshall Islands.

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Mr. Ewen has a strong background in applied economics, empirical methodologies, and financial analysis. As a Principal at Industrial Economics, Incorporated, he focuses on regulatory and environmental economics, case management and economic damages estimation in a variety of litigation contexts, and financial analysis. He also currently serves as the Chief Operations Officer of the firm. Within his areas of expertise, Mr. Ewen has been qualified as an expert witness before judicial and regulatory bodies. Examples of his project work include:

- Mr. Ewen is the Program Manager for IEC's prime mission support contract with the Economics, Methods, and Risk Assessment Division within the US Environmental Protection Agency's (EPA) Office of Solid Waste. In this role, he directs a large in-house team of IEC consultants and an external group of subcontractors and academic consultants providing a range of support activities to this division. This support includes developing data related to solid and hazardous waste management, conducting sophisticated economic and material flow life cycle analyses concerning the Office's program initiatives, evaluating the efficacy and efficiency of these programs, and providing related outreach and publication support.
- Mr. Ewen directs numerous analyses of the economic impacts of critical habitat designation for endangered species. This work, completed for both the US Fish and Wildlife Service (FWS) and National Oceanic and Atmospheric Administration (NOAA), addresses the regulatory burdens of species conservation measures on a variety of industry sectors and land use activities. Mr. Ewen has developed particular expertise in evaluating economic effects related to the conservation of riverine and marine endangered species, including impacts on dam operations and hydropower generation, commercial and residential development, agriculture, recreation, shipping, forestry, mining, and fisheries.
- Mr. Ewen also participates in various proceedings concerning energy markets and regulated utilities. These efforts include working on behalf of industry and consumer intervenor groups in rate-making cases before the US Postal Rate Commission and public utility commissions in Pennsylvania and Alberta, Canada. His work has focused on issues related to cost allocation and rate design.
- Mr. Ewen's analytic work extends to expert financial analysis and economic damages estimation in the context of general litigation and environmental enforcement actions. These efforts include assessing damages in breach of contract, nuisance, and cost recovery actions, and assessing the financial capabilities and economic benefit of noncompliance of firms accused of environmental violations. Clients in this area of his practice include the US Department of Justice (DOJ), US Coast Guard, EPA, and private parties.

Mr. Ewen holds a B.A. summa cum laude in Economics and Political Science from the University of North Dakota and an M.P.P. from the University of Michigan. Prior to joining Industrial Economics, Incorporated, Mr. Ewen worked as an Intern at the Congressional Budget Office in Washington, D.C., a Research Assistant at the Economic Development Corporation of Lansing, MI, and a Teaching Assistant at the University of Michigan.

Curriculum Vitae Derrick Samaranski

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EDUCATION: **B.S. 2003, University of Illinois Chicago, IL**
Major: Chemical Engineering

B.S. 2001, University of Illinois Urbana-Champaign, IL
Major: Chemistry

EXPERIENCE:

Environmental Engineer – U.S. Environmental Protection Agency, Land & Chemicals Division

Aug. 2003 - Current

Conduct environmental compliance audits/inspections of regulated hazardous waste entities. Prepare written, oral, tabular, and graphic reports summarizing requirements and regulations, including enforcement. Analyze and implement state, federal or local requirements as necessary to maintain compliance with hazardous waste regulations. Determine the nature of violations and actions to be taken, and issue written notices of violation, draft case enforcement documents (penalty narratives, and complaints); participate in enforcement hearings as necessary. Determine which sites and violation reports to investigate, and coordinate compliance and enforcement activities with other government agencies. Examine permits, licenses, applications, and records to ensure compliance with licensing requirements. Inform individuals and groups of pollution control regulations and inspection findings, and explain how problems can be corrected. Inspect generators, treatment, and disposal facilities and systems for conformance to federal, state, or local regulations. Interview individuals to determine the nature of suspected violations and to obtain evidence of violations. Monitor follow-up actions in cases where violations were found, and review compliance monitoring reports. Prepare, organize, and maintain inspection records. Verify that hazardous chemicals are handled, stored, and disposed of in accordance with regulations. Conclude enforcement cases, and ensure regulated entities return to environmental compliance.

RESEARCH

EXPERIENCE:

Undergraduate Research - University of Illinois at Chicago – Professor G. Ali Mansoori, Department of Chemical Engineering (UIC), 2002. Investigation of dynamic fluid flow inside carbon nanotubes. Focus on feasibility and potential application of nanotechnology in chemical engineering field.

OTHER WORK

EXPERIENCE:

Senior Bank Teller – Mid-America Bank, Chicago IL. 1994-1996.

Supervised trainees, assisted customers, responsible for large amounts of cash.

Security Officer – Initial Security, Northbrook IL 1998-1999.

Computer Experience Includes:

- Operating Systems: Microsoft Dos/2003/2007
- Programming: C++, Java, Visual Basic, Html
- Applications: Hysys, MATLAB, Adobe, Microsoft Word/Excel/PowerPoint/Access/Project

Course Work Includes:

- Heat & Momentum Transfer
- Process Control
- Senior Design I, II
- Mass Transfer
- Reaction Engineering
- Chemical Engineering Lab I, II

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- G. Ali Mansoori, "Principles of Nanotechnology", Chicago, 2004, Contributor