

Attachment

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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

DOCKET NO. RCRA-05-2009-0012

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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U.S. ENVIRONMENTAL
PROTECTION AGENCY

COMPLAINT AND COMPLIANCE ORDER

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 Sections 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.
2. Jurisdiction for this action is conferred upon the United States Environmental Protection Agency (EPA) by Sections 2002(a)(1), 3006(b), and 3008 of RCRA; 42 U.S.C. §§ 6912(a)(1), 6926(b), and 6928.
3. The Complainant is, by lawful delegation, the Director, Land and Chemicals Division, Region 5, EPA.
4. The Respondents are Creative Liquid Coatings, Inc., formerly doing business as Creative

Coatings, Inc., Elite Enterprises, Inc. and Randall Geist. For the purpose of this Complaint the location of the alleged violations is 2701 South Coliseum Blvd. Suite 1284, Fort Wayne, Indiana 46803 (Suite 1285 or Creative Liquid Coatings, Inc.).

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).

Statutory and Regulatory Background

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.
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.
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.
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.
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.
11. Any violation of regulations promulgated pursuant to Subtitle C, Sections 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.

12. 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.
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.
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.
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.
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.
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.
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.
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.
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).
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.
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).

23. Under 329 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).
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).
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).
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).
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).
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).
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).
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).
31. Under 329 IAC Article 3.1, in particular 329 IAC 3.1-7-1, provides that the owner or operator of a hazardous waste facility who transports, or offers for transportation, hazardous waste for offsite treatment, storage or disposal must use a properly completed uniform hazardous waste manifest (EPA Form 8700-22). *See also* 40 CFR § 262.20(a).

Information about Respondents

32. Creative Coatings, Inc. was founded in or about 1995 and did business at 7505 Freedom Way, Fort Wayne, Indiana (Freedom Way location).
33. Creative Coatings, Inc. discontinued operations at the Freedom Way location in or about 2003. Creative Coatings, Inc. started operations at 2701 Coliseum Boulevard, Suite 1284, Fort Wayne, Indiana ("Suite 1284") in or about 2003.
34. Creative Coatings, Inc. changed its name to Creative Liquid Coatings, Inc. in 2005. In this complaint references to Creative Liquid Coatings and/or Creative Coatings, Inc. refer to the same entity.
35. Creative Liquid Coatings, Inc. continued operations at Suite 1284 and presently operates at that location.
36. Creative Liquid Coatings, Inc. and Creative Coatings, Inc. are corporations organized under the laws of the state of Indiana.
37. Elite Enterprises, Inc. is a corporation organized under the laws of the state of Indiana.
38. 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.
39. Randall Geist owns more than 50% of the stock of Creative Liquid Coatings, Inc. He is the President of Creative Liquid Coatings, Inc.
40. 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.

Operations

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

42. Creative Coatings, Inc. and Elite Enterprises, 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).
43. 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).
44. 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. Tennants retain the original suite number regardless of where they relocate within International Park.
45. 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.
46. 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.
47. 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.
48. 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.
49. Elite Enterprises, Inc. operated in Building 5 within International Park from approximately 1992-1993. It used suite number 1158 at that time. Elite Enterprises, 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.
50. Building 13 within International Park contained operations that were identified as Suite 1158 (1993-2002) and Suite 1284 (after 2003)
51. Elite Enterprises, Inc. conducted painting operations at Suite 1284 from approximately 1994 to April of 2003.
52. Elite Enterprises, Inc. moved its painting work to Suite 1158 in April of 2003.

53. Elite Enterprises, Inc. moved its prime painting operations from Suite 1158 to Suite 1284 in August 2003.
54. 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.
55. Elite Enterprises, Inc. discontinued operations at Suite 1158 in February 2006.
56. Elite Enterprises, Inc. conducted painting operations at Suite 1158 from approximately April 2003 to February 2006.

Hazardous Waste Notifications and Annual Reports

57. On July 2, 2003, Gregg David, as the Plant Manager, signed an initial notification for QP2 doing business at Suite 1284. He identified QP2 as a large quantity generator of waste with the hazardous waste codes F001, F003, F005 and D035. Hazardous Waste Identification Number INR000109322 was assigned to this location.
58. On March 1, 2004, Gregg David as the Plant Manager signed an initial notification for Creative Coating, Inc. at Suite 1284. He indicated that it was a large quantity generator of waste with hazardous waste codes F001, F003, F005 and D035. He identified the owner as Custome Coatings, Inc. Hazardous Waste Identification Number INR000109322 was assigned to this location.
59. On May 14, 2004, Gregg David on Creative Coatings, Inc. stationary informed the Indiana Department of Environmental Management (IDEM) that QP2 was an exploratory company and did not go into operations. He indicated that the waste generating and handling activities should be assigned to Creative Coatings, Inc. Hazardous Waste Identification Number INR000109322 was assigned to this location.
60. On February 23, 2005, Richard Lain, as "VP Finance" for Creative Coatings, Inc. submitted a subsequent Notification to change the name of the company and add waste codes. He indicated that the name should be changed from Creative Coatings, Inc. to Elite Enterprises, Inc. He added hazardous waste codes D001, D007 and D008. He changed the name of the company and the owner to Elite Enterprises, Inc. Hazardous Waste Identification Number INR000109322 was assigned to this location
61. On April 25, 2005, Richard Lain, as Chief Financial Officer (CFO), for Elite Enterprises requested IDEM to deactivate the Hazardous Waste Identification Number for Creative Coatings, Inc at the Suite 1284 location because Elite Enterprises, Inc. already had a Hazardous Waste Identification Number for its operations at Suite 1158.
62. On June 24, 2005, IDEM informed Creative Coatings, Inc. that separate Hazardous Waste Identification Numbers were needed for Suites 1158 and 1284 since the two locations are

separated by several complex roads and Creative Coatings, Inc. was generating a majority of the wastes.

63. On December 23, 2005, Richard Lain, as the CFO of Elite Enterprises, Inc. submitted an amendment to the notification for the business located at Suite 1284. It was the same as the April 25, 2005, Notification except that it eliminated hazardous waste codes D001 and D007.
64. On or about April 8, 2006, Richard Lain as CFO of Elite Enterprises, Inc. submitted a Notification which showed that the name of the business and the owner of Suite 1284 should be changed from Elite Enterprises Inc. to Creative Liquid Coatings, Inc. It changed the status of the business from a small quantity generator to a large quantity generator.
65. On or about January 30, 2008, Randall Geist, as President of Creative Liquid Coatings, Inc. submitted a Notification showing that Creative Liquid Coatings, Inc. was the owner of the business at Suite 1284. He identified Creative Liquid Coatings, Inc. as a large quantity generator of hazardous waste in 2007.

Information Request Response

66. On October 5, 2005, EPA sent separate requests for information to Elite Enterprises, Inc. and Creative Coatings, Inc. for operations at Suites 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").
67. 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.

Hazardous Waste Inspection

68. On June 22, 2005, EPA inspected Suite 1284. During the inspection EPA observed operations at Suite 1284 and talked with the Production and General Managers of Creative Coatings, Inc.
69. The Production and/or General Manager informed EPA's inspector that Creative Coatings, Inc. started operating and generating hazardous waste at Suite 1284 at the beginning of 2004.
70. On June 22, 2005, Creative Coatings, Inc. was operating a paint shop at Suite 1284. It was painting metal and plastic parts. Spent solvents and paint sludges were being generated from the cleaning of paint guns.

71. On June 22, 2005, parts were hanging from an automated conveyor in Overhead Line 1. Near Overhead Line 2 there was a 5-gallon container of waste solvent. It was labeled and closed.
72. On June 22, 2005, there was a storage area for paint that was used in the production process ("Paint Product Storage Area"). There were empty product containers in this area.
73. On June 22, 2005, there were two separate areas where wastes from the production process were stored. Storage Room #1 was adjacent to the Paint Product Storage Area. Storage Room #2 was adjacent to Storage Room #1.
74. On June 22, 2005, there were two drums and five 5-gallon buckets located nearby in Storage Room #1. The drums had accumulation start dates of June 9 and 22, 2005. Both drums had funnels protruding from their lids and were labeled hazardous waste.
75. The buckets in Storage Room #1 were not closed. They were not labeled. Used paint filters were in one bucket and a grey sludge material was in three of the buckets. An employee of Creative Coatings, Inc. explained to the EPA inspector that the four buckets contained solvent waste from the purging of paint lines that would be emptied into the 55 gallon drums.
76. There were seventeen 55-gallon drums located in Storage Room #2. Sixteen of the drums were labeled "hazardous waste." One of the drums was labeled "used oil." The drums were tightly packed and it was difficult to see their labels.
77. Four of the hazardous waste labeled drums had accumulation start dates of March 2, 18, 22 and 24, 2005. The labels also identified the wastes with hazardous waste codes F003, F005, D001 (characteristic for ignitability), D007, D008 and D035 (characteristic - methyl ethyl ketone).
78. The name Elite Enterprises, Inc. was pre-typed on the labels of all the hazardous waste drums located in Storage Rooms #1 and #2.
79. The Production and/or General Manager of Creative Coatings, Inc. informed EPA's inspector that hazardous waste was picked up from Suite 1284 by the same waste hauler and at the same time that hazardous waste was picked up from Elite Enterprise, Inc.'s operations at Suite 1158.

80. During the June 22, 2005, inspection hazardous waste manifests, training records, inspection logs and contingency plans were not present at Suite 1284. These documents and records were located at Elite Enterprise Inc.'s facility located at Suite 1158.
81. The EPA inspector reviewed the hazardous waste manifests for calendar year 2003-2005 that were available at Elite Enterprises, Inc. 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.
82. EPA Hazardous Waste Identification Number IND985102607 was listed on all of the manifests. This is the EPA Hazardous Waste Identification Number for Elite Enterprises, Inc. at Suite 1158. There were no manifests identifying wastes generated at Suite 1284.
83. The EPA inspector reviewed the inspection logs for Elite Enterprise, Inc. and Creative Coatings, Inc. The same form was used for both companies. Different employees completed the forms.
84. Inspection logs for Elite Enterprise, Inc. at Suite 1158 were available for the period December 27, 2004 - March 1, 2005. Inspection logs for Creative Coatings, Inc. at Suite 1284 were available only for the period March 21, 2005 - June 11, 2005.
85. The EPA inspector reviewed the employee training records. Elite Enterprises, Inc. and Creative Coatings, Inc. used the same form to document employee training and the job description of the hazardous waste positions.
86. Operations at Suite 1284 do not qualify for interim status since Creative Coatings was not in existence in 1980.
87. Respondents do not have a permit with EPA or IDEM for the storage of hazardous waste at Suite 1284.

Applications and Documents showing single identity of Elite Enterprises and Creative Liquid Coatings

88. 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.
89. 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 limitations from painting operations located at Suite 1284.

90. On January 23, 2004, IDEM, Office of Air Quality (OAQ) issued a Part 70 Operating Permit which included air emission limitations for painting operations.
91. On January 27, 2004, Richard Lain, as Chief Financial Officer (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 names Elite Enterprises, Inc and Creative Coatings, Inc. and the address Suite 1158.
92. 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.
93. Prior to April 2005, Elite Enterprises, Inc. submitted to IDEM, OAQ a request to modify its Part 70 Operating Permit seeking a consolidated plant-wide annual VOC limit for operations at Suites 1158 and 1284.
94. 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.
95. Elite Enterprises, Inc. reported "VOC usage" from October–December 2004 and July–September 2005 at Suite 1158
96. Elite Enterprises, Inc. reported "VOC usage" at Suite 1284 from November-December 2004 and July–September 2005.
97. 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 Suites 1284 and 1158.
98. The Notice of Excess Air Emissions identified the plant as consisting of operations at Suites 1158 and Suite 1284.
99. The Notice of Excess Air Emissions reported "VOC usage" from Suite 1158 from January of 2003 and from Suite 1284 from November 2004.

100. 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.
101. 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.
102. 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.
103. On June 6, 2006, Randall Geist as President of Elite Enterprises, Inc. submitted to IDEM, OAQ an "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.
104. 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.
105. 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.

Randall Geist's involvement with property and business

106. Randall Geist was Guarantor on a lease dated June 16, 2003, between Elite Enterprises, Inc. and Wayne Coliseum for Suite 1284.
107. 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.

108. Randall Geist, as Chairman of Creative Coatings, Inc., on August 1, 2004, signed a lease agreement with Wayne Coliseum for Suite 1284.
109. 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.
110. On October 16, 2007, Wayne Coliseum sent a letter to Randall Geist, President, Creative Liquid Coatings, Inc. regarding compliance with environmental conditions of the lease agreement. The letter was based on the site walk through conducted by their environmental consultant SESTECH Environmental, LLC (SESTECH). SESTECH identified environmental issues including: drum or raw and spent material in an overhead door receiving area with storm drains nearby; possible drainage of waste water into a storm drain; and venting of paint particulate emissions.
111. On October 23, 2007, Randall Geist met with representatives of SESTECH to resolve the environmental compliance issues identified in the preceding paragraph and Creative Liquid Coatings, Inc.'s commitment to correct them.
112. 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.
113. 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.
114. Randall Geist as President of Elite Enterprises, Inc. on April 4, 2006, submitted Wayne Coliseum's plans for "cleanup of the collection pit and drains in the complex."
115. 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.

116. 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 Enterprise, Inc. at Suite 1284. He asserted that the waste EPA observed on June 22, 2005, at Suite 1284 was generated by Elite Enterprises, Inc.

Count I

Storage of Hazardous Waste without a Permit or Interim Status

117. Paragraphs 1-116 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.
118. 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.
119. 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.
120. On June 22, 2005, Storage Area #1 and #2 at Suite 1284 had 55-gallon drums, and 5-gallon buckets that contained wastes from painting operations. The contents of the drums and buckets were solid wastes as defined by 329 IAC §§ 3.1-1-7, 4-1 and 6-1, 40 C.F.R. § 261.2.
121. On June 22, 2005, some of the drums in Storage Areas #1 and #2 were labeled paint solvent or catalyzed paint. Some of the buckets contained residue from the cleaning of paint equipment with solvents. Some of the drums were labeled with hazardous waste codes F003, F005, D001, D007, D008, and D035. The contents of the drums and buckets 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 the criteria in 40 C.F.R. §§ 261.21, 24 and 30.
122. On June 22, 2005, some of the drums in Storage Areas #1 and/or #2 were labeled as having an accumulation start date in excess of 90 days. Other drums were stacked and stored in a manner which suggested that they had been in storage for a while. All drums were shipped off-site for subsequent disposal or treatment. Consequently, the drums in Storage Areas #1 and #2 were in storage as that term is defined in 329 IAC §§ 3.1-1-7 and 4-1, 40 C.F.R. § 260.10.
123. Storage Areas #1 and #2 were contiguous and part of Creative Liquid Coatings, Inc. (Suite 1284) and stored hazardous waste in drums and buckets. Storage Areas #1 and #2 were hazardous waste management units as defined by 329 IAC §§ 3.1-1-7 and 4-1, 42

C.F.R. § 260.10. Creative Liquid Coatings, Inc.'s Suite 1284 was a hazardous waste storage facility with two hazardous waste storage units as defined by 329 IAC §§ 3.1-1-7 and 4-1-, 40 C.F.R. § 260.10.

124. On June 22, 2005, Respondents owned or operated the equipment and hazardous wastes in Suite 1284 and Storage Areas #1 and #2. Respondents were responsible for the overall operation of Suite 1284 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.
125. Respondents did not have a permit or interim status to operate Storage Areas #1 and #2 as hazardous waste management units. Consequently, Respondents were in violation of 329 IAC §§ 3.1-1-7 and 13-1, 40 C.F.R. § 270.1(c)
126. 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.
127. Respondents were generators of hazardous waste at Suite 1284 at various times from some time in 2003 or 2004 to the present as that term is defined in 329 IAC §§ 3.1-1-7 and 4-1, 40 C.F.R. § 260.10.
128. 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. 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.
129. 329 IAC §§ 3.1-1-7 and 7-1, 40 C.F.R. § 262.34(a)(3) requires a generator storing hazardous waste in containers to label those containers with the words, "Hazardous Waste." On June 22, 2005, Respondents' container storage area had three buckets of hazardous solvent and paint waste that were not labeled with the words, "Hazardous Waste." Consequently, Respondents failed to meet the conditions of 329 IAC §§ 3.1-1-7 and 7-1, 40 C.F.R. § 262.34(a)(3) and therefore did not qualify for a permit exemption.
130. 329 IAC §§ 3.1-1-7 and 7-1, 40 C.F.R. § 262.34(a)(2), requires a generator to label containers with the accumulation start date and make that date visible for inspection. On June 22, 2005, Respondents' container storage area had 3 buckets of hazardous solvent and paint waste that were not labeled with accumulation start dates. Respondents also had 16 drums of hazardous waste tightly arranged in three rows such that the accumulation start dates were difficult to see. 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.

131. 329 IAC §§ 3.1-1-7, 7-1 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. A facility which stores hazardous waste on-site must also have a contingency plan. 329 IAC §§ 3.1-1-7, 9-1 and 10-1, 40 C.F.R. §§ 264.1(b), 265.1(b) and 264.51(a), and 265.51(a). On June 22, 2005, Respondents did not have a contingency plan on-site at Suite 1284. 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 265.51 and therefore did not qualify for a permit exemption.
132. 329 IAC §§ 3.1-1-7, 7-1, 9-1 and 10-1, 40 C.F.R. §§ 262.34(a)(4) and 265.51 and 265.53 require a generator that stores hazardous waste on-site to have a contingency plan. At the time of the inspection Respondents did not have a copy of the contingency plan at Suite 1284. Consequently, Respondents did not meet the requirements of 329 IAC §§ 3.1-1-7, 7-1 and 10-1, 40 C.F.R. §§ 262.34(a)(4), 265.51 and 265.53 and therefore did not qualify for a permit exemption.
133. 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). Consequently, Respondents did not meet the requirements 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.
134. At the time of the inspection, Respondents' contingency plan for Suite 1284 was located at Elite Enterprises' offices located at Suite 1158. That contingency did not include the information required by the regulations cited in preceding paragraph. Respondents therefore did not meet the requirements 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.
135. 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. 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 a permit exemption.
136. At the time of the inspection, logs for Suite 1284 were available only for the period March 21, 2005 - June 11, 2005. Respondents have not demonstrated that they inspected the hazardous waste storage areas at Suite 1284 prior to March 21, 2005. Respondents therefore did not 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 a permit exemption.

137. 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 of hazardous waste 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.
138. 329 IAC §§ 3.1-1-7, 7-1 and 10-1, 40 C.F.R. §§ 265.16(d)(4) and (e) require a generator to document that this required training 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.
139. 329 IAC §§ 3.1-7-1, 40 C.F.R. §§ 265.16(d)(1) require a generator 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.
140. At the time of the inspection, Respondents were unable to provide the required training documentation upon the request of the EPA inspector. Therefore, Respondents did not meet the requirements 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.
141. As alleged in paragraphs 127-139 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 did not meet the requirements of 329 IAC §§ 3.1-1-7, 7-1 and 10-1; 40 C.F.R. §262.34(a) as alleged in paragraphs 117-140 above and did not qualify for a permit exemption. Consequently, Respondents violated 329 IAC §§ 3.1-13-1, 40 C.F.R. § 270.1(c).

Count II

Failure to comply with manifest requirements

142. Paragraphs 1-116 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.
143. 329 IAC §§ 3.1-1-7 and 7-1, 40 C.F.R. § 262.20(a) requires a generator of hazardous waste to properly complete the uniform hazardous waste manifest (EPA Form 8700-22) when shipping hazardous waste off-site.
144. Respondents shipped hazardous waste from Suite 1284 off-site on June 27, 2005, July 21, 2005, October 6 and 31, 2005. The Respondents used the EPA identification number for another location - Suite 1158. Respondents therefore violated 329 IAC §§ 3.1-7-1, 40

C.F.R. § 262.20(a).

II. PROPOSED CIVIL PENALTY

The Administrator of EPA may assess a civil penalty of up to \$25,000 per day for each violation of Subtitle C of RCRA according to Section 3008 of RCRA, 42 U.S.C. § 6928. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, requires EPA to adjust its penalties for inflation on a periodic basis. Under the Civil Monetary Penalty Inflation Adjustment Rule, published at 40 C.F.R. Part 19, EPA may assess a civil penalty of up to \$32,500 per day for each violation of Subtitle C of RCRA occurring or continuing between March 15, 2004, to January 12, 2009, and \$37,500 after January 12, 2009.

In assessing a civil penalty, the Administrator of EPA must consider “the seriousness of the violation and any good faith efforts to comply with applicable requirements.” Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3). Complainant will consider the facts and circumstances of this case with specific reference to U.S. EPA’s 2003 RCRA Civil Penalty Policy. A copy of the penalty policy is available upon request. This policy provides a consistent method of applying the statutory penalty factors to this case.

40 C.F.R. §22.14(a)(4)(ii) provides that Complainant may demand a non-specific penalty amount, so long as the Complaint states “the number of violations (where applicable, days of violation) for which a penalty is sought, a brief explanation of the severity of each violation alleged and a recitation of the statutory penalty authority applicable for each violation alleged in the complaint.”

Complainant accordingly demands a penalty pursuant to Section 3008(g), recited above, in an amount not greater than \$32,500 per day of violation for each day of violation between March 15, 2004, and January 12, 2009, and not greater than \$37,500 after January 12, 2009, for each of the two counts alleged herein, as follows:

a. Count I - Storage of hazardous waste without a permit or interim status and in violation of the requirements of Section 3005 of RCRA, 42 U.S.C. § 6925(a) and the regulations found at 329 IAC §§ 3.1-13-1, 40 CFR Part 264, §§ 270.1(c). The Complainant will propose a penalty for no more than 180 days of violation. The violations alleged in Count I are significant in that they involved the improper storage and handling of hazardous waste paints and residues with hazardous waste codes D001, D007, D008, D035, F003, F005. Some of these wastes contained lead (D008), and spent solvents such as toluene (F005) and methyl ethyl ketone (D035, F003). Some of these wastes were ignitable and posed a potential fire hazard. Respondents stored at least four drums of these hazardous wastes on-site without a permit or complying with the contingency plan, inspection and training requirements. The other twelve drums were stored in a manner that made it difficult to inspect. The four drums were stored for greater than 90

days. Respondents failed to maintain space between the sixteen drums of hazardous waste. This prevented a complete inspection of their accumulation date and condition. It also increased the likelihood of a fire or other hazard. Respondents' failure to have an adequate contingency plan, training records and conduct the required weekly inspections made the potential for mismanagement or a release greater in the case of an emergency. Respondents failed to identify the name of the emergency coordinator, list the emergency equipment and its location and have an evacuation plan in its contingency plan. It failed to have inspection logs for significant periods of time – nothing prior to March 21, 2005. Respondents' actions resulted in a significant deviation from the regulations in that Respondents stored hazardous wastes in excess of 90 days, did not have a permit, and did not meet the conditions for a permit exemption such as contingency plan, training and emergency preparedness.

b. Count II - Incorrectly completed manifests. The Complainant will propose a penalty for no more than 180 days of violation. The Hazardous Waste Identification Number is an important element of the manifest in that it is a unique number assigned to a specific location. Respondents failure to include the correct facility Hazardous Waste Identification Number and identify the location of the waste generation (i.e., Suite 1284) on four hazardous waste manifests on four separate occasions undermined the ability of the EPA or IDEM to track hazardous wastes generated at Suite 1284. The Hazardous Waste Identification Number is an important element of the manifest in that it is a unique number assigned to a specific location.

Pursuant to 40 C.F.R. § 22.19(a)(4), U.S. EPA will propose a specific civil penalty, which shall include any economic benefit realized by the Respondents as a result of Respondents' non-compliance with the applicable requirements of RCRA, after any pre-hearing information exchange. Once a civil penalty has been proposed and accepted or ordered, the Respondents shall make payment by certified or cashier's check payable to the

"Treasurer, the United States of America," and remit to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 631197-9000

A copy of the check shall be sent to each person as follows:

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

Derrick Samaranski
Land and Chemicals Division (LR-8J)
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

A transmittal letter identifying this Complaint shall accompany the remittance and the copy of the check.

III. COMPLIANCE ORDER

Based on the foregoing, Respondents are hereby ordered, under the authority in 3008(a) of RCRA, 42 U.S.C. § 6928(a), and 40 C.F.R. § 22.37(b), to comply with the following requirements immediately upon the effective date of this Order:

1. Respondents shall immediately achieve and maintain compliance with all requirements and prohibitions governing the generation, storage, treatment and disposal of hazardous waste, codified at or incorporated by 329 IAC Article 3.1 *et seq.*, and 40 C.F.R. Parts 260 through 279.

2. Respondents shall submit all reports, submissions, and notifications required by this Order to the United States Environmental Protection Agency, Region 5, Land and Chemicals Division, RCRA Branch, Attention: Derrick Samaranski (LR-8J), 77 West Jackson Boulevard, Chicago, Illinois 60604-3590.

IV. OPPORTUNITY TO REQUEST A HEARING

You have the right to request a hearing to contest any material fact in this Complaint, or to contest the amount of the proposed penalty, or both, as provided in Section 3008(b) of RCRA, 42 U.S.C. § 6928(b), and in accordance with Consolidated Rules. A copy of these rules accompanies this Complaint. To request a hearing, Respondents must specifically make the request in a written Answer to this Complaint. Each Respondent must file its written Answer with the Regional Hearing Clerk within 30 days of the date this Complaint is filed with the Regional Hearing Clerk. *See also*, 40 C.F.R. § 22.15(a). In counting the 30-day time period, the actual date of receipt is not included. Saturdays, Sundays, and federal legal holidays are included in the computation. If the 30-day period expires on a Saturday, Sunday or federal legal holiday, the time period is extended to include the next day which is not a Saturday, Sunday or federal legal holiday. *See also*, 40 C.F.R. § 22.7(a).

The Answer must clearly and directly admit, deny or explain each of the factual allegations contained in the Complaint with respect to which Respondents have any knowledge, or clearly state that the Respondents have no knowledge as to particular factual allegations in the

Complaint. The Answer shall also state the following:

1. The circumstances or arguments alleged to constitute the grounds of defense;
2. the facts Respondents intend to place at issue; and
3. whether Respondents request a hearing.

Where a Respondent states that it has no knowledge of a particular factual allegation, the allegation is deemed denied. Respondents' failure to admit, deny, or explain any material fact in the Complaint constitutes an admission of that allegation. *See also*, 40 C.F.R. § 22.15.

Each Respondent must file its Answer with the Regional Hearing Clerk (R-19J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. A copy of the Answer and any subsequent documents filed in this action should be sent as follows:

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

Mr. Clarizio may be contacted at (312) 886-0559.

If a Respondent fails to file a timely written Answer to the Complaint, with or without a request for a hearing, the Regional Administrator or Presiding Officer may issue a Default Order under 40 C.F.R. § 22.17. For purposes of this action only, default by a Respondent constitutes an admission of all facts alleged in the Complaint and a waiver of that Respondent's right to a hearing on the factual allegations under Section 3008 of RCRA, 42 U.S.C. § 6928.

Default may result in a penalty and compliance order consistent with § 22.17(b) and (c) becoming due and payable by Respondents without further proceedings thirty (30) calendar days after issuance of a final order upon default under § 22.27 of the Consolidated Rules. In addition, the default penalty is subject to the provisions relating to imposition of interest, penalty and handling charges set forth in the Federal Claims Collection Act of 1966, 31 U.S.C. § 3717. Interest will accrue on the default penalty at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. EPA will impose a late payment handling charge of \$15.00 for each subsequent thirty (30) day period over which an unpaid balance remains. In addition, EPA will apply a six (6) percent per annum penalty on any principal amount not paid within ninety

(90) days of the date that the Default Order is signed by the Regional Administrator or Presiding Officer. In addition, default will preclude Respondent from obtaining adjudicative review of any of the provisions contained in the Compliance Order section of the Complaint.

A hearing upon the issues raised in the Complaint and Answer shall be held (upon the request of Respondents in their Answer) and conducted according to the Administrative Procedures Act, 5 U.S.C. § 551 *et seq.* The hearing will be in a location determined under 40 C.F.R. § 22.21(d).

V. SETTLEMENT CONFERENCE

Whether or not you request a hearing, you may request an informal conference to discuss the facts of this case and to arrive at a settlement. To request a settlement conference, you should write to Derrick Samaranski, Land and Chemicals Division (LR-8J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, or telephone Mr. Samaranski at (312) 886-7812.

Your request for an informal settlement conference does not extend the 30-day period during which you must submit a written Answer and Request for Hearing. Respondents may pursue the informal conference procedure simultaneously with the adjudicatory hearing procedure.

EPA encourages all parties for whom a civil penalty is proposed to pursue the possibilities of settlement through an informal conference. EPA, however, will not reduce the penalty simply because the parties hold a conference. The parties will embody any settlement that they may reach as a result of the conference in a written Consent Agreement and Final Order (CAFO) issued by the Director, Land and Chemicals Division, EPA, Region 5.

The issuance of a CAFO shall constitute a waiver of that Respondent's right to request a hearing on any stipulated matter in the CAFO.

Dated this 31st day of July, 2009.



Margaret M. Guerriero
Director
Land and Chemicals Division
U.S. Environmental Protection Agency
Region 5

RECEIVED
AUG 04 2009

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

Complaint Docket No. RCRA-05-2009-0012

