RELIABLE GALVANIZING CO.

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December 16, 2010

VIA FEDERAL EXPRESS
Tracking #8668 5033 6641

Regional Hearing Clerk (E-19J)
U.S. EPA, Region V
77 West Jackson Boulevard
Chicago, Illinois 60604

Re: I.D. Number: ILD 044 225 050
Reliable Galvanizing Company
8800 South Genoa Avenue
Chicago, Illinois 60620
Docket No. RCRA-05-2010-0026
Answer to Complaint and Compliance Order

To Whom It May Concern:

Please find attached, the timely filing of one original and one copy of an *Answer to Complaint and Compliance Order and Request for Hearing.*

If you have any questions concerning this response to the Complaint and Compliance Order, please contact me at (773) 651-2500. Thank you for your assistance in this matter.

Sincerely,

Michael Eisner
President
RELIABLE GALVANIZING COMPANY

ME/tjm
Enclosure (1)

cc: Mr. Andre Daugavietis/U.S. EPA (via Fed Express Tracking No. 8668 5033 6630)
Mr. Thomas McNamee/Environmental Compliance Consulting, Ltd. (via standard U.S. Mail)
File: CCAresponseFinal1210CvrLtr.doc

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:	)	
	)	**Docket No. RCRA-05-2010-0026**
Reliable Galvanizing Company	)	
Chicago, Illinois,	)	**ANSWER TO COMPLAINT AND**
	)	**COMPLIANCE ORDER AND**
Respondent.	)	**REQUEST FOR HEARING**
	)	

SERVING PARTY: UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

RESPONDING PARTY: RELIABLE GALVANIZING COMPANY

Respondent Reliable Galvanizing Company ("Reliable") answers the United States Environmental Protection Agency's ("U.S. EPA") civil administrative complaint as follows:

Preliminary Statement

Paragraphs 1-5.

Answer: The allegations contained in paragraphs 1 through 5 constitute legal conclusions for which no response is required.

Statutory and Regulatory Background

Paragraphs 6-10.

Answer: The allegations contained in paragraphs 6 through 10 constitute legal conclusions for which no response is required.

General Allegations

11. Respondent is a "person" as defined by 35 IAC § 720.110 and Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

Answer: Admitted.

12. Respondent is an "owner" or "operator," as those terms are defined under IAC § 720.110 and 40 C.F.R. § 260.10, of a facility, located at 8800 South Genoa Avenue, Chicago Illinois, and performs hot-dip galvanizing and zinc coating operations (Facility).

Answer: Respondent admits that it is the "owner of the property" located at 8800 South Genoa Avenue, Chicago, Illinois; admits that it is the "operator of the business" located at 8800 South Genoa Avenue, Chicago, Illinois; denies that the manufacturing plant and associated property is a "facility" as that term is defined under 35 IAC § 720.110 and 40 C.F.R. § 260.10; and denies that the Respondent is an "owner or operator of a facility located at 8800 South Genoa Avenue, Chicago, Illinois," as those terms are defined under 35 IAC § 720.110 and 40 C.F.R. § 260.10. The Respondent has never used its land and structures, other appurtenances, and improvements on the land to treat, store, or dispose of hazardous waste.

13. At all times relevant to this Complaint, Respondent's Facility consisted of land and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste.

Answer: Respondent denies that its property is a "Facility" and denies that its land and structures, other appurtenances, and improvements on the land, were used for treating, storing, or disposing of hazardous waste.

14. Respondent's Facility is a "facility," as that term is defined under 35 IAC § 720.110 and 40 C.F.R. § 260.10.

Answer: Respondent denies that it is a "facility," as that term is defined under 35 IAC § 720.110 and 40 C.F.R. § 260.10. The Respondent has never used its land and structures, other appurtenances, and improvements on the land to treat, store, or dispose of hazardous waste.

15. At all times relevant to this Complaint, Respondent used sulfuric acid as part of its operations at the Facility.

Answer: Respondent admits that it used sulfuric acid as part of its operations but denies that it is a Facility.

16. Once the sulfuric acid was no longer usable, the sulfuric acid became a spent sulfuric acid-based hazardous waste, also containing metals, which Respondent either stored in the process bath or collected in a storage tank in the process area of the Facility.

Answer: Respondent admits that at certain times relevant to this Complaint, once the sulfuric acid was no longer usable, the sulfuric acid became a spent sulfuric acid-based hazardous waste. Respondent denies that during those times when the sulfuric acid became spent and thus a hazardous waste it was "either stored in the process bath or collected in a storage tank in the process area". The sulfuric acid contained in the process tank (bath) was always a functional product up until the time it was transferred from the process tank to the tanker truck being contracted to ship the sulfuric acid waste from the property to the disposal facility. The sulfuric acid became spent and a hazardous waste once it entered the tanker truck. No sulfuric acid was ever collected in a storage tank in the process area; it was directly transferred from the process tank to the tanker truck. Respondent admits that at certain times relevant to this Complaint, when the sulfuric acid was no longer effective for its intended purpose, it was shipped off-site as spent pickle liquor and was "used" or "reused" as defined by 40 C.F.R. § 261.1(c)(5) because the spent pickle liquor was "employed in a particular function or application as an effective substitute for a commercial product" pursuant to 40 C.F.R. § 261.1(c)(5)(ii), thus exempting the sulfuric acid from being classified as a hazardous waste. The Respondent denies that its property is a Facility.

17. At all times relevant to this Complaint, Respondent held sulfuric acid waste, a discarded material, for temporary periods either in the process bath or in a storage tank before the material was shipped from the Facility for treatment, storage, disposal, burning or incineration elsewhere.

Answer: Respondent denies that at all times relevant to this Complaint, it held sulfuric acid waste for temporary periods. At certain times relevant to this Complaint, the product sulfuric acid became a spent hazardous waste only after it entered the disposal truck for shipment off-site. No hazardous waste was held for temporary periods. Respondent denies that it is a Facility.

18. Respondent characterized its acid waste with hazardous waste codes D002, D007, D008, D010 and D011.

Answer: Admitted.

19. Respondent stored, transported, disposed of, or otherwise handled its acid waste in a process bath or in a "tank," as that term is defined under 35 IAC § 720.110 and 40 C.F.R. § 260.10.

Answer: Respondent denies that it stored, transported, disposed of, or otherwise handled its acid waste in a process bath or in a "tank" as that term is defined under 35 IAC § 720.110 and 40 C.F.R. § 261.10. The sulfuric acid did not become a waste until it had been transferred to the vacuum truck for off-site disposal and therefore, was never stored in a process bath. The process bath does not meet the definition of "tank" under 35 IAC § 720.110 and 40 C.F.R. § 261.10 because the process bath is not a stationary device, designed to contain an accumulation of hazardous waste. The Respondent never transported, disposed of, or otherwise handled its acid waste.

20. At all times relevant to this Complaint, Respondent's acid waste was a "solid waste" as that term is defined under 35 IAC § 721.102 and 40 C.F.R. § 261.2.

Answer: Respondent admits that at certain times relevant to this Complaint, its acid waste was a "solid waste". Respondent admits that at certain times relevant to this Complaint when its sulfuric acid no longer served its intended purpose, it was shipped off-site as an effective substitute for a commercial product and therefore, not a solid waste.

21. At all times relevant to this Complaint, Respondent's acid waste was a "hazardous waste" as that term is defined under 35 IAC § 721.103 and 40 C.F.R. § 261.3.

Answer: Respondent admits that at certain times relevant to this Complaint, its acid waste was a "hazardous waste". Respondent admits that at certain times relevant to this Complaint when its acid no longer served its intended purpose, it was shipped off-site as an effective substitute for a commercial product.

22. At all times relevant to this Complaint, Respondent's holding of acid waste in a "tank" constituted hazardous waste "storage," as that term is defined under 35 IAC § 720.110 and 40 C.F.R. § 260.10.

Answer: Respondent denies this allegation. The Respondent never held acid waste in a "tank" or a container for a temporary period; therefore, hazardous waste accumulation or "storage" did not take place. The acid did not become a waste until it exited the tank and entered the disposal truck.

23. Respondent is a "generator," as that term is defined under 35 IAC § 720.110 and 40 C.F.R. § 260.10.

Answer: Respondent admits that at certain times relevant to this complaint it was a "generator" of hazardous waste. Respondent admits that at certain time relevant to this complaint it was also an "episodic generator of hazardous waste" as that term is addressed in the Federal Register, Volume 51, Number 56 dated Monday March 24, 1986. Respondent denies that it was a generator of hazardous waste at all times relevant to this complaint. During 72% of the time relevant to this Complaint (21 months out of 36), the Respondent did not generate any hazardous waste but shipped its sulfuric acid offsite as an effective substitute for a commercial product.

24. Respondent generated and managed hazardous waste at the Facility after November 19, 1980.

Answer: Respondent admits that up until February 1, 2009 it generated hazardous waste at its plant. Respondent denies that it managed hazardous waste at its plant after November 19, 1980. Waste was never managed on-site because it became waste once it entered the disposal tanker truck for delivery off-site. Therefore, at a minimum, the following hazardous waste management activities did not take place nor needed to take place at the plant: transfer of waste to containers or tanks, dating of containers or tanks, closing containers, maintaining isle space, performing weekly inspections, remediating hazardous waste spills, checking compatibility of waste containers or tanks, assessing condition of containers or tanks, marking or labeling containers or drums, managing incompatible waste streams, et. al. The Respondent denies that it generated and managed hazardous waste after February 1, 2009 at its operations and denies that it is a Facility.

25. At all times relevant to this Complaint, the State of Illinois had not issued a permit to Respondent to treat, store, or dispose of hazardous waste at its Facility.

Answer: Respondent admits that at all times relevant to this Complaint, the State of Illinois had not issued a permit to the Respondent. Respondent has never been required to obtain a permit to treat, store, or dispose of hazardous waste nor is one required presently. Respondent denies that it is a Facility.

26. At all times relevant to this Complaint, Respondent did not have interim status for the treatment, storage, or disposal of hazardous waste at its Facility.

Answer: Respondent admits that it did not have interim status for the treatment, storage, or disposal of hazardous waste but denies that interim status applied to the Respondent or that Respondent needed to apply for interim status. Respondent denies that it is a Facility.

27. On or about July 18, 1980, Respondent submitted a Hazardous Waste Notification, dated July 14, 1980, to U.S. EPA for the Facility.

Answer: Respondent admits that it submitted a Hazardous Waste Notification but denies that it is a Facility.

28. In its Hazardous Waste Notification, dated July 14, 1980, Respondent identified itself as a generator.

Answer: Admitted.

29. At all times relevant to this Complaint, Respondent generated during a calendar month more than 1000 kg of hazardous waste at the Facility.

Answer: Respondent denies that at all times relevant to this Complaint it generated during a calendar month more than 1000 kg of hazardous waste at its plant. Only during fifteen (15) months of the 3-year period relevant to this complaint did the Respondent generate more than 1000 kg of hazardous waste during a calendar month. During the remaining twenty-one (21) months Respondent did not generate any hazardous waste at its plant and was classified as a conditionally exempt small quantity generator. Respondent admits that during the majority of the

time relevant to this Complaint it was an episodic generator of hazardous waste. Respondent admits that the month prior to the Inspection and during the month of the Inspection (March 2009) it was a conditionally exempt small quantity generator and since that time to the present has not generated hazardous waste. Respondent denies that it is a Facility.

30. On March 10, 2009, U.S. EPA conducted a Compliance Evaluation Inspection of the Facility (the Inspection).

Answer: Respondent admits on March 10, 2009 a Compliance Evaluation Inspection was completed at its plant but denies that Respondent is a Facility.

31. On February 24, 2010, U.S. EPA issued a Notice of Violation to Respondent alleging certain violations of RCRA identified as a result of the Inspection.

Answer: Admitted.

32. On April 5, 2010, Respondent submitted to U.S. EPA a written response to the Notice of Violation.

Answer: Admitted.

Count 1: Storage of Hazardous Waste without a Permit or Interim Status.

33. Paragraphs 1 through 32 of this Complaint are incorporated herein as though set fully forth in this paragraph.

Answer: The Answers to paragraphs 1 through 32 in this Answer to the Complaint are incorporated herein as though set fully forth in this paragraph.

34. Pursuant to 3005(a) of RCRA, 42 U.S.C. § 6925(a) and the regulations at 40 C.F.R. Part 270, the treatment, storage, or disposal of hazardous waste by any person who has not applied for or received a permit is prohibited.

Answer: The allegations contained in paragraph 34 constitute legal conclusions for which no response is required. To the extent that it might be deemed to allege facts, those allegations are denied.

35. Pursuant to 35 IAC § 722.134(a) and 40 C.F.R. § 262.34(a), however, and subject to certain exceptions, a generator of hazardous waste may accumulate hazardous waste

on-site for ninety (90) days or less without having a permit or interim status, provided that the generator complies with all applicable conditions set forth in 35 IAC § 722.134(a) and 40 C.F.R. § 262.34(a) including, but not limited to, requirements for owners and operators in Subparts C and D of 35 IAC Part 725 and 35 IAC § 725.116.

Answer: The allegations contained in paragraph 35 constitute legal conclusions for which no response is required. To the extent that it might be deemed to allege facts, those allegations are denied.

36. The failure to comply with any of the conditions of 35 IAC §§ 722.134(a)(1)-722.134(a)(4) subjects the generator of hazardous waste to the requirements of 35 IAC Part 724 or 725 and the permit requirements of 35 IAC § 703.121, 35 IAC § 702.120, and 35 IAC § 702.123.

Answer: The allegations contained in paragraph 36 constitute legal conclusions for which no response is required. To the extent that it might be deemed to allege facts, those allegations are denied.

Count 1.a: Failure to Provide Training and Failure to Maintain Training Records.

37. As a result of Respondent's failure to meet all of the applicable conditions for the generator exemption provided by 35 IAC § 722.134(a), Respondent became an operator of a hazardous waste storage facility subject to the requirement of 35 IAC § 724.116 [40 C.F.R. § 264.16].

Answer: Respondent denies that it failed to meet all of the applicable conditions for the generator exemption provided by 35 IAC § 722.134(a). Some of those conditions have been met. Respondent denies that it became an operator of a hazardous waste storage facility subject to the requirements of 35 IAC § 724.116 [40 C.F.R. § 264.16]. Compliance with 35 IAC § 722.134(a) [40 C.F.R. § 262.34(a)] gives permission for the generator to accumulate hazardous waste on-site for up to ninety (90) days without having a permit or interim status. "Accumulate" is not defined in 35 IAC § 720.110 [40 C.F.R. § 260.10]. "Storage" per 35 IAC § 720.110 [40 C.F.R. § 260.10] means "the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere". The Respondent has never accumulated, stored, or held hazardous waste for a temporary period. Nor did it need to. The sulfuric acid in

the Respondent's industrial process tank was used up until the time it was placed into the tanker truck for disposal. Therefore, permission to accumulate, store, or temporarily hold hazardous waste on-site was not needed nor warranted. The exception at 35 IAC § 722.134(a) [40 C.F.R. § 262.34(a)] does not apply to the Respondent; therefore it cannot be violated. Additionally, Respondent can not become an operator of a hazardous waste storage facility pursuant to 40 C.F.R. § 270.1(c)(2)(i) because it did not exceed the time period provided in 40 C.F.R. § 262.34(a) and therefore is specifically exempt from having to obtain a RCRA permit.

38. The regulation at 35 IAC § 724.116(a)(1) [40 C.F.R. § 264.16(a)(1)] requires that facility personnel successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of 35 IAC § 724.116 [40 C.F.R. § 264.16].

Answer: The allegations contained in paragraph 38 constitute legal conclusions for which no response is required. To the extent that it might be deemed to allege facts, those allegations are denied.

39. The regulation at 35 IAC § 724.116(a)(2) [40 C.F.R. § 264.16(a)(2)] requires that the program of classroom instruction or on-the-job training be directed by a person trained in hazardous waste management procedures, and include instruction which teaches facility personnel hazardous waste management procedures, including contingency plan implementation, relevant to the positions in which they are employed.

Answer: The allegations contained in paragraph 39 constitute legal conclusions for which no response is required. To the extent that it might be deemed to allege facts, those allegations are denied.

40. The regulation at 35 IAC § 724.116(a)(3) [40 C.F.R. § 264.16(a)(3)] requires, at a minimum, that the training program be designed to ensure that facility personnel are able to respond effectively to emergencies by familiarizing them with emergency procedures, emergency equipment, and emergency systems, including, where applicable: (1) procedures for using, inspecting, repairing, and replacing facility emergency and monitoring equipment; (2) response to groundwater contamination incidents; and, (3) shutdown of operations.

Answer: The allegations contained in paragraph 40 constitute legal conclusions for which no response is required. To the extent that it might be deemed to allege facts, those allegations are denied.

41. The regulation at 35 IAC § 724.116(b) [40 C.F.R. § 264.16(b)] requires that facility personnel successfully complete the program required in paragraph (a) of 35 IAC § 724.116 [40 C.F.R. § 264.16] within six months after the effective date of the regulations or six months after the date of employment or assignment to a facility, or to a new position at a facility, whichever is later.

Answer: The allegations contained in paragraph 41 constitute legal conclusions for which no response is required. To the extent that it might be deemed to allege facts, those allegations are denied.

42. The regulation at 35 IAC § 724.116(c) [40 C.F.R. § 264.16(c)] requires that facility personnel take part in an annual review of the initial training required in 35 IAC § 724.116(a) [40 C.F.R. § 264.16(a)].

Answer: The allegations contained in paragraph 42 constitute legal conclusions for which no response is required. To the extent that it might be deemed to allege facts, those allegations are denied.

43. The regulation at 35 IAC §§ 724.116(d)(2), (3) and (4) [40 C.F.R. §§ 264.16(d)(2), (3) and (4)] require that owners and operators of hazardous waste facilities maintain the following documents and records:

> A written job description for each position listed under paragraph (d)(1) of 35 IAC § 724.116. This description may be consistent in its degree of specificity with descriptions for other positions in the same company location or bargaining unit, but must include the requisite skill, education, or other qualifications, and duties of facility personnel assigned to each position; and,
>
> The type and amount of both introductory and continuing training to be given to each employee filling a hazardous waste management position listed under paragraph (d)(1) of 35 IAC § 724.116.
>
> Records that document that the training or job experience required under 35 IAC §§ 724.116(a), (b) and (c) has been given to, and completed by, facility personnel.

Answer: The allegations contained in paragraph 43 constitute legal conclusions for which no response is required. To the extent that it might be deemed to allege facts, those allegations are denied.

44. In 2005, 2006 and 2007, Respondent did not ensure that all classroom instruction or on-the-job training received by Facility personnel satisfied the criteria of 35 IAC §§ 724.116(a)(2) relevant to the positions in which Facility personnel were employed.

Answer: Respondent is without sufficient knowledge to admit or deny this allegation and therefore denies such allegations.

45. In 2005, 2006 and 2007, Respondent did not ensure that all Facility personnel filling a hazardous waste management position received initial training or annual review of the initial training.

Answer: Respondent is without sufficient knowledge to admit or deny this allegation and therefore denies such allegations.

46. Respondent's failure to provide adequate classroom instruction or on-the-job training to, as alleged in paragraph 44 above, violated 35 IAC § 724.116(a) [40 C.F.R. § 264.16(a)].

Answer: Respondent is without sufficient knowledge to admit or deny this allegation and therefore denies such allegations.

47. Respondent's failure to provide initial training or annual review of the initial training, as alleged in paragraph 45 above, violated 35 IAC §§ 724.116(a), (b) and (c) [40 C.F.R. §§ 264.16(a), (b) and (c)].

Answer: Respondent is without sufficient knowledge to admit or deny this allegation and therefore denies such allegations.

48. At the time of the Inspection, Respondent failed to maintain documents and records providing a written job description that included the requisite skill, education, or other qualifications, and duties for each position at the facility related to hazardous waste management.

Answer: Respondent is without sufficient knowledge to admit or deny this allegation and therefore denies such allegations.

49. At the time of the Inspection, Respondent failed to maintain documents and records providing the type and amount of both introductory and continuing training to be given to each employee filling a position at the facility related to hazardous waste management.

Answer: Respondent is without sufficient knowledge to admit or deny this allegation and therefore denies such allegations.

50. At the time of the Inspection, Respondent failed to maintain documentation that the training or job experience required under 35 IAC §§ 724.116(a), (b) and (c) had been given to, and completed by, all appropriate facility personnel for 2005, 2006 and 2007.

Answer: Respondent is without sufficient knowledge to admit or deny this allegation and therefore denies such allegations.

51. Respondent's failure to maintain records that provided a written job description for each position related to hazardous waste management, and the type and amount of both introductory and continuing training to be given to each employee filling a hazardous waste management position, and documentation that the training or job experience required under 35 IAC §§ 724.116(a), (b) and (c) had been given to, and completed by, facility personnel, violated 35 IAC §§ 274.116(d)(2), (3) and (4) [40 C.F.R. §§ 264.16(d)(2), (3) and (4)].

Answer: Respondent is without sufficient knowledge to admit or deny this allegation and therefore denies such allegations.

Count 1.b: Failure to Have a Contingency Plan.

52. As a result of Respondent's failure to meet all of the applicable conditions for the generator exemption provided by 35 IAC § 722.134(a), Respondent became an operator of a hazardous waste storage facility subject to the requirements of 35 IAC §§ 724.152(c), (d), and (e) [40 C.F.R. §§ 264.52(c), (d), and (e)].

Answer: Respondent denies that it failed to meet all of the applicable conditions for the generator exemption provided by 35 IAC § 722.134(a). Some of those conditions have been met. Respondent denies that it became an operator of a hazardous waste storage facility subject to the requirements of 35 IAC §§ 724.152(c), (d), and (e) [40 C.F.R. §§ 264.52(c), (d), and (e)]. Compliance with 35 IAC § 722.134(a) [40 C.F.R. § 262.34(a)] gives permission for the generator to accumulate hazardous waste on-site for up to ninety (90) days without having a permit or interim status. "Accumulate" is not defined in 35 IAC § 720.110 [40 C.F.R. § 260.10].

"Storage" per 35 IAC § 720.110 [40 C.F.R. § 260.10] means "the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere". The Respondent has never accumulated, stored, or held hazardous waste for a temporary period. Nor did it need to. The sulfuric acid in the Respondent's industrial process tank was used up until the time it was placed into the tanker truck for disposal. Therefore, permission to accumulate, store, or temporarily hold hazardous waste on-site was not needed nor warranted. The exception at 35 IAC § 722.134(a) [40 C.F.R. § 262.34(a)] does not apply to the Respondent; therefore it cannot be violated. Additionally, Respondent can not become an operator of a hazardous waste storage facility pursuant to 40 C.F.R. § 270.1(c)(2)(i) because it did not exceed the time period provided in 40 C.F.R. § 262.34(a) and therefore is specifically exempt from having to obtain a RCRA permit.

53. The regulation at 35 IAC Subpart D [40 C.F.R. Subpart D] requires that an owner or operator have a contingency plan for a hazardous waste storage facility. The contingency plan must be designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil or surface water pursuant to 35 IAC § 724.151 [40 C.F.R. § 264.51].

Answer: The allegations in Paragraph 53 constitute legal conclusions for which no response is required. To the extent that it might be deemed to allege facts, those allegations are denied.

54. The regulation at 35 IAC § 724.152(a) [40 C.F.R. § 264.52(a)] requires that a hazardous waste storage facility's contingency plan must describe the actions facility personnel must take to comply with 40 C.F.R. § 264.51.

Answer: The allegations in Paragraph 54 constitute legal conclusions for which no response is required. To the extent that it might be deemed to allege facts, those allegations are denied.

55. The regulation at 35 IAC § 724.152(c) [40 C.F.R. § 264.52(c)] requires that a hazardous waste storage facility's contingency plan must describe arrangements agreed to by local police departments, fire departments, hospitals, contractors, and State and local emergency response teams to coordinate emergency services pursuant to 40 C.F.R. § 264.37.

Answer: The allegations in Paragraph 55 constitute legal conclusions for which no response is required. To the extent that it might be deemed to allege facts, those allegations are denied.

56. The regulation at 35 IAC § 724.152(d) [40 C.F.R. § 264.52(d)] requires that a hazardous waste storage facility's contingency plan must list names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator, and that this list be kept up to date.

Answer: The allegations in Paragraph 56 constitute legal conclusions for which no response is required. To the extent that it might be deemed to allege facts, those allegations are denied.

57. The regulation at 35 IAC § 724.152(e) [40 C.F.R. § 264.52(e)] requires that a hazardous waste storage facility's contingency plan include a list of all emergency equipment at the facility (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 and must include the location and a physical description of each item on the list, and a brief outline of its capabilities.

Answer: The allegations in Paragraph 57 constitute legal conclusions for which no response is required. To the extent that it might be deemed to allege facts, those allegations are denied.

58. The regulation at 35 IAC § 724.153 [40 C.F.R. § 264.53] requires that copies, and all revisions, of a hazardous waste storage facility's contingency plan be maintained at the facility and submitted to all local police departments, hospitals, and State and local emergency response teams that may be called upon to provide emergency services.

Answer: The allegations in Paragraph 58 constitute legal conclusions for which no response is required. To the extent that it might be deemed to allege facts, those allegations are denied.

59. At the time of the Inspection, Respondent failed to have a contingency plan for its Facility.

Answer: Respondent is without sufficient knowledge to admit or deny this allegation and therefore denies such allegations.

60. Respondent's failure to have a contingency plan violated 35 IAC 724 Subpart D, Contingency Plan and Emergency Procedures [40 C.F.R. 264 Subpart D].

Answer: Respondent is without sufficient knowledge to admit or deny this allegation and therefore denies such allegations.

61. Accordingly, Respondent failed to satisfy all of the conditions for maintaining its exemption from the requirement that it have an operating permit or interim status.

Answer: Respondent denies that it failed to satisfy all of the conditions for maintaining its exemption from the requirement that it have an operating permit or interim status. Some of those conditions have been met.

62. As a result of Respondent's failure to meet all of the applicable conditions for the generator exemption provided by 35 IAC § 722.134(a), Respondent became an operator of a hazardous waste storage facility subject to the requirement of 35 IAC § 724.137 [40 C.F.R. § 264.37].

Answer: Respondent denies that it failed to meet all of the applicable conditions for the generator exemption provided by 35 IAC § 722.134(a). Some of those conditions have been met. Respondent denies that it became an operator of a hazardous waste storage facility subject to the requirement of 35 IAC § 724.137 [40 C.F.R. § 264.37]. Compliance with 35 IAC § 722.134(a) [40 C.F.R. § 262.34(a)] gives permission for the generator to accumulate hazardous waste on-site for up to ninety (90) days without having a permit or interim status. "Accumulate" is not defined in 35 IAC § 720.110 [40 C.F.R. § 260.10]. "Storage" per 35 IAC § 720.110 [40 C.F.R. § 260.10] means "the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere". The Respondent has never accumulated, stored, or held hazardous waste for a temporary period. Nor did it need to. The sulfuric acid in the Respondent's industrial process tank was used up until the time it was placed into the tanker truck for disposal. Therefore, permission to accumulate, store, or temporarily hold hazardous waste on-site was not needed nor warranted. The exception at 35 IAC § 722.134(a) [40 C.F.R. § 262.34(a)] does not apply to the Respondent; therefore it cannot be violated. Additionally, Respondent can not become an operator of a hazardous waste storage facility pursuant to 40 C.F.R. § 270.1(c)(2)(i) because it did not exceed the time period provided in 40 C.F.R. § 262.34(a) and therefore is specifically exempt from having to obtain a RCRA permit.

63. The regulation at 35 IAC § 724.137 [40 C.F.R. §264.37] requires that the owner or operator of a hazardous waste storage facility must attempt to make arrangements, as appropriate for the type of waste handled at the facility and the potential need for the services of these organizations, to familiarize police, fire departments, and emergency response teams with

the layout of the facility, properties of hazardous waste handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to roads inside the facility, and possible evacuation routes; must make agreements designating primary emergency authority to a specific police and specific fire department, and agreements with any others to provide support to the primary emergency authority; must make agreements with State emergency response teams, emergency response contractors and equipment suppliers; and must document the refusal of State or local authorities to enter into such arrangements if occurred.

Answer: The allegations in Paragraph 63 constitute legal conclusions for which no response is required. To the extent that it might be deemed to allege facts, those allegations are denied.

64. At the time of the Inspection, Respondent had not made such arrangements with local authorities.

Answer: Respondent is without sufficient knowledge to admit or deny this allegation and therefore denies such allegations.

65. By Respondent not making such arrangements with local authorities, Respondent violated 35 IAC § 724.137 [40 C.F.R. § 264.37].

Answer: Respondent is without sufficient knowledge to admit or deny this allegation and therefore denies such allegations.

66. Accordingly, Respondent failed to satisfy all of the conditions for maintaining its exemption from the requirement that it have an operating permit or interim status.

Answer: Respondent denies that it failed to satisfy all of the conditions for maintaining its exemption from the requirement that it have an operating permit or interim status. Some of those conditions have been met.

Count 2: Failure to Determine if a Waste is a Hazardous Waste.

67. Paragraphs 1 through 32 of this Complaint are incorporated herein as though set fully forth in this paragraph.

Answer: The Answers to Responses 1 through 32 in this Answer to the Complaint are incorporated herein as though set fully forth in this paragraph.

68. The regulation at 35 IAC § 722.111 [40 C.F.R. § 262.11] requires that a person who generates a solid waste, as defined in 40 C.F.R. § 261.2, must determine if that waste is a hazardous waste.

Answer: The allegations in Paragraph 68 constitute legal conclusions for which no response is required. To the extent that it might be deemed to allege facts, those allegations are denied.

69. At the time of the Inspection, Respondent failed to make a waste determination regarding aerosol cans and a liquid being stored in an un-labeled 55-gallon container.

Answer: The Respondent denies this allegation. The aerosol cans and the liquid being stored in an un-labeled 55-gallon container were not wastes and therefore, no waste determination was needed. This allegation has been cited in error.

70. Respondent's failure to make a waste determination violated 35 IAC § 722.111 [40 C.F.R. § 262.11].

Answer: The Respondent denies this allegation. The aerosol cans and the liquid being stored in an un-labeled 55-gallon container were not wastes and therefore, no waste determination was needed for the following reasons.

(1) Recyclable Material - The subject aerosol cans observed by the U.S. EPA Inspector on March 10, 2009 were being stockpiled for recycling. The aerosol cans meet the definition of excluded scrap metal and processed scrap metal pursuant to 40 C.F.R. §§ 261.1(9) and §261.1(10), respectively. The empty cans are specifically excluded from being classified a solid waste under 40 C.F.R. § 261.4(a)(13) because they are regulated as excluded scrap metal (processed scrap metal) being recycled. Under 40 C.F.R. § 261.3(a), a hazardous waste must first be a solid waste and the aerosol paint cans are not solid wastes. Since the paint cans are not a solid waste, a waste determination is not necessary. This allegation has been cited in error.

(2) Stored Liquid – It is reported by Jamie Paulin in the Notice of Violation dated February 24, 2010 on Page 2 "At the time of the inspection, Reliable Galvanizing was storing, outside along the wall of the west-side of the galvanizing building, one 55-gallon container of several gallons of

WET-1102A Boiler Treatment, with no label. At the time of the inspection, Reliable Galvanizing could not identify the hazards of the material. An MSDS of the WET-1102A Boiler Treatment shows the material as hazardous for corrosivity." The several gallons of WET-1102A Boiler Treatment at the time of the inspection were a chemical product and not a waste. The few gallons left in the bottom of the barrel observed by the Inspector were unable to be pumped out by the process commonly employed by Reliable because the end of the pump does not reach all the way to the bottom of the barrel, thus leaving a few gallons remaining once a 55-gallon drum has been emptied. For economical reasons, the few gallons left from each drum are always poured into a new drum of Boiler Treatment once enough space is available in the new drum. Since the leftover gallons in question were intended to be used and were indeed used after the Inspection, the product was not a waste, making a waste determination neither necessary nor warranted. Additionally, the Material Safety Data Sheet for the WET-1102 Boiler Treatment reports the pH to be 12.0+. Corrosivity is defined in §261.22(a)(1) as a material having a pH 12.5 or greater. It was not shown by the EPA that the material had a pH greater than 12.5 making the Inspector's statement that the material was hazardous for Corrosivity misleading and premature. This allegation has been cited in error.

Count 3: Failure to Submit an Exception Report.

71. Paragraphs 1 through 32 of this Complaint are incorporated herein as though set fully forth in this paragraph.

Answer: Responses 1 through 32 in this Answer to the Complaint are incorporated herein as though set fully forth in this paragraph.

72. The regulation at 35 IAC § 722.142(a)(2) [40 C.F.R. § 262.42(a)(2)] requires that a generator of greater than 1000 kilograms of hazardous waste in a calendar month, who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 45 days of the date the waste was accepted by the initial transporter, must submit an Exception Report to the EPA Regional Administrator for the Region in which the generator is located.

Answer: The allegations contained in paragraph 72 constitute legal conclusions for which no response is required. To the extent that it might be deemed to allege facts, those allegations are denied.

73. At the time of the Inspection, Respondent failed to submit several required Exception Reports to the EPA Regional Administrator, of Region 5, within 45 days of the date the waste was accepted by the initial transporter.

Answer: The allegations in paragraph 73 are neither admitted nor denied for lack of information sufficient to form a belief as to the truth thereof. Copies of the manifests in question may have been received by the Respondent from the owner or operator of the designated facility but may have been misplaced or misfiled by the Respondent. Such actions would have rendered the submittal of an Exception Report unnecessary.

74. Respondent's failure to submit such Exception Reports violated 35 IAC § 722.142(a)(2) [40 C.F.R. § 262.42(a)(2)].

Answer: The allegations in paragraph 74 are neither admitted nor denied for lack of information sufficient to form a belief as to the truth thereof. Copies of the manifests in question may have been received by the Respondent from the owner or operator of the designated facility but may have been misplaced or misfiled by the Respondent. Such actions would have rendered the submittal of an Exception Report unnecessary.

Count 4: Failure to Maintain a Copy of the Land Disposal Notification.

75. Paragraphs 1 through 32 of this Complaint are incorporated herein as though set fully forth in this paragraph.

Answer: Responses 1 through 32 in this Answer to the Complaint are incorporated herein as though set fully forth in this paragraph.

76. The regulation at 35 IAC § 728.107(a)(8) [40 C.F.R. §268.7(a)(8)] requires that generators retain, on-site, a written land disposal notification for at least three years from the date that the waste was last sent to the treatment or storage facility receiving the waste, and place a copy in the file.

Answer: The allegations contained in paragraph 76 constitute legal conclusions for which no response is required.

77. At the time of the Inspection, Respondent failed to retain on-site at the Facility a copy of any land disposal notification for at least three years from the date that the waste was sent to the treatment or storage facility that received the waste.

Answer: At the time of the Inspection, Respondent was a conditionally exempt small quantity generator, not subject to record keeping requirements. Respondent admits that at the time of the Inspection, it could not find a copy of any land disposal notification in its files. Such notice may have been on-site at the plant, but misplaced. Respondent denies that it is a Facility.

78. Respondent's failure to retain such notification violated 35 IAC § 728.107(a)(8) [40 C.F.R. § 268.7(a)(8)].

Answer: The allegations in paragraph 78 are neither admitted nor denied for lack of information sufficient to form a belief as to the truth thereof. Copies of the notification in question may have been retained on-site, but may have been misplaced or misfiled by the Respondent.

CIVIL PENALTY

Answer: Respondent neither admits or denies the legal allegations contained in the "Proposed Civil Penalty" portion of the complaint, and further responds that the asserted penalty of $106,645 is excessive.

COMPLIANCE ORDER

Respondent no longer generates hazardous waste and is a conditionally exempt small quantity generator subject to the requirements of 40 C.F.R. § 261.5. Respondent certifies that it is is in compliance with the requirements of a conditionally exempt small quantity generator.

AFFIRMATIVE DEFENSES

Respondent states the following affirmative defenses, and expressly reserves the right to amend this Answer to raise additional affirmative defenses as may arise during the course of

discovery and information exchange in this matter, including reliance on the advice of counsel and others.

FIRST AFFIRMATIVE DEFENSE
(Reasonableness and Good Faith)

Respondent at all times acted reasonably and in good faith, based on all relevant facts and circumstances known by Respondent at the time it acted.

SECOND AFFIRMATIVE DEFENSE
(Arbitrary and Capricious, and Abuse of Discretion)

Complainant's allegations constitute agency action that is arbitrary and capricious, and an abuse of discretion under the Administrative Procedure Act. 5 U.S.C. §§ 553 and 706(2).

REQUEST FOR HEARING

Respondent hereby requests a hearing on the facts alleged in the Complaint and the civil penalties proposed thereunder.

REQUEST FOR SETTLEMENT CONFERENCE

Respondent hereby requests an informal conference to discuss the possible settlement of this matter.

Dated: December 16, 2010

Respectfully submitted,

Michael Eisner, President
Reliable Galvanizing Company
8800 South Genoa Avenue
Chicago, Illinois 60620

CERTIFICATE OF SERVICE

One original and one copy of the foregoing Answer to the Compliant and Compliance Order and Request for Hearing was served this 16th day of December 2010, via Federal Express priority overnight, Tracking Number 8668 5033 6641, upon:

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

and by Federal Express priority overnight to:

Mr. Andre Daugevietis, Esquire (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604
Tracking Number: 8668 5033 6630

and by first-class mail to:

Mr. Thomas J. McNamee, President
Environmental Compliance Consulting, Ltd.
334 East Riverside Boulevard
Rockford, Illinois 61111

Mr. Michael Eisner
Reliable Galvanizing Company
8800 South Genoa Avenue
Chicago, Illinois 60620