

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:

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

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

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

AND

Randall Geist

Respondents

DOCKET NO. RCRA-05-2009-0013

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

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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 Elite Enterprises, Inc., Creative Liquid Coatings, Inc., formerly doing business as Creative Coatings, Inc., and Randall Geist. For the purpose of this

Complaint the location of the alleged violations is 2701 South Coliseum Blvd. Suite 1158, Fort Wayne, Indiana 46803 (Suite 1158 or Elite Enterprises, Inc.).

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 29 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 29 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 29 IAC §§ 3.1-1-7 and 4-1, a *facility* includes all contiguous land and structures, other improvements, 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 29 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 29 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 29 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 29 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 29 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 29 IAC §§ 3.1-1-7 and 3-1, 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 29 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 29 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).

Information about Respondents

31. Elite Enterprises, Inc. is a corporation organized under the laws of the state of Indiana.
32. Randall Geist has a home located at 2715 Clifford Lane, Fort Wayne, Indiana, 46825-7133. He has owned 80% of the stock of Elite Enterprises, Inc. since approximately 1994.
33. Creative Liquid Coatings, Inc. and Creative Coatings, Inc. are corporations organized under the laws of the state of Indiana.
34. Creative Coatings, Inc. was founded in 1995.
35. Creative Coatings, Inc. changed its name to Creative Liquid Coatings, Inc. in 2005. References to Creative Liquid Coatings, Inc. shall include Creative Coatings, Inc. unless indicated otherwise.
36. Randall Geist owns more than 50% of the stock of Creative Liquid Coatings, Inc. He is the President of Creative Liquid Coatings, Inc.
37. Richard Lain was the Vice-President of Finance and Chief Financial Officer (CFO) of Creative Coatings, Inc., Creative Liquid Coatings, Inc. and Elite Enterprises, Inc.

Operations

38. Elite Enterprises, Inc. and Creative Liquid Coatings, Inc. provided custom painting of plastic and metal parts and components.
39. Elite Enterprises, Inc. and Creative Liquid Coatings, Inc. conducted painting operations at 2701 South Coliseum Boulevard, Fort Wayne, Indiana. This is the site of the former International Harvester truck manufacturing complex in Fort Wayne, Indiana (complex).
40. The complex is presently known as the International Park Commerce and Industrial Business Center (International Park). It is owned by Wayne Coliseum Limited Partnership (Wayne Coliseum).
41. The complex consists of approximately 103 acres. It includes approximately 3 million square feet of various buildings and structures. There are no street names or numbers

within the complex. There are suite numbers associated with various locations within International Park. Tennants retain the original suite number regardless of where they relocate within International Park.

42. Elite Enterprizes, Inc. operated in Building 5 within International Park from approximately 1992-1993. It used suite number 1158 at that time. Elite Enterprizes, Inc. changed its name to Elite Enterprises, Inc. and moved to Building 13 within International Park in 1993. It retained Suite number 1158 for operations within Building 13. Elite Enterprises, Inc. continued operations within Building 13 but changed suite numbers to Suite 1284 in 2003.
43. Building 13 within International Park contained operations that were identified as Suite 1158 (1993-2002) and Suite 1284 (after 2003)
44. Creative Coatings, Inc. subleased space within International Park to Elite Enterprises, Inc. from January 3, 2003, to December 31, 2004. At that time Creative Coatings, Inc. purchased Elite Enterprises, Inc.'s paint and related equipment located within International Park.
45. On or about March 31, 2004, Creative Coatings, Inc. took over from Elite Enterprises, Inc. the operation of two surface coating lines located within International Park. The operations included one overhead conveyor paint line and one floor conveyor paint line.
46. Respondents have referred to Suite 1158 as Building or Plant 1. There were four paint booths (PB1- 4) at Suite 1158 by April of 2003.
47. Respondents have referred to Suites 1284 and 1206 as Building or Plant 2. By April of 2003 there were overhead and floor painting lines located within Suite 1284.
48. Elite Enterprises, Inc. conducted painting operations at Suite 1284 from approximately 1994 to April of 2003.
49. Elite Enterprises, Inc. moved its painting work to Suite 1158 in April of 2003.
50. Elite Enterprises, Inc. moved its prime painting operations from Suite 1158 to Suite 1284 in August 2003.
51. By October 2004 a dual use paint booth (base coat and clear coat) was permitted for operation at Building 2, Suite 1206 under the name Creative Liquid Coatings.
52. Elite Enterprises, Inc. discontinued operations at Suite 1158 in February 2006.

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

Hazardous Waste Notifications and Annual Reports

54. On May 25, 1993, Elite Enterprises, Inc. signed a First Notification of Hazardous Waste Activity form (EPA Form 8700-22 - Notification form) showing that Elite Enterprises, Inc. was doing business at Suite 1158. It was assigned identification number IND 985 102 607. It identified itself as a small quantity generator of hazardous waste with hazardous waste codes D001 and F005. It revised its generator status to a large quantity generator on June 18, 1998.
55. On February 14, 2006, Richard Lain, as CFO submitted an amended Notification as part of Elite Enterprises, Inc.'s Annual Report. The amended Notification showed Elite Enterprises, Inc. doing business at Suite 1158. It identified Elite Enterprises, Inc. as the owner of the operations and as a large quantity generator of hazardous waste in 2005 and 2006 with hazardous waste codes D001, D007, D008, D0035, F003 and F005.
56. On April 5, 2006, Richard Lain as CFO on Creative Coatings stationary informed the Indiana Department of Environmental Management (IDEM) that Elite Enterprise, Inc.'s operations at Suite 1158 were discontinued and the identification number should be deactivated.

Information Request Response

57. 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").
58. On October 25, 2005, Richard Lain, as CFO of Elite Enterprises, Inc. and on letterhead with the Elite Enterprises, Inc.'s name on it submitted a response for both Elite Enterprises, Inc. and Creative Coatings, Inc.

Hazardous Waste Inspection

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

60. On June 22, 2005, there were sixteen 55-gallon drums located in the hazardous waste storage area at Elite Enterprise, Inc. (Suite 1158). All but one of the drums was labeled hazardous waste. The contents of the drums were further described as "Paint Solvent" or "Catalyzed Paint."
61. On June 22, 2005, seven of the 55-gallon drums in the storage area were marked with accumulation start dates more than 90 days before June 22, 2005. The drums were marked with accumulation start dates of July 1, August 10, September 23 and October 19, 2004, and March 9 and 14, 2005. All of these drums, except one, were marked "catalyzed paint." One drum was marked as "paint solvent" with an accumulation start date of February 24, 2005.
62. On June 22, 2005, one drum in the storage area incorrectly identified the accumulation start date as two years after the inspection - July 14, 2007. It was labeled as containing "catalyzed paint."
63. During the June 22, 2005, inspection hazardous waste manifests, training records, inspection logs and contingency plans for Elite Enterprises, Inc. and Creative Coatings, Inc. were located and reviewed at Elite Enterprises, Inc.
64. The EPA inspector reviewed ten hazardous waste manifests for calendar year 2003-2005 that were available at Elite Enterprises, Inc. There was one manifest for calendar year 2005; six manifests for calendar year 2004; and three manifests for calendar year 2003.
65. The latest manifest was dated as signed by the generator on March 21, 2005.
66. All of the manifests were completed with the generator identified as Elite Enterprises, Inc. The address was identified as 2701 Coliseum Boulevard, Fort Wayne, Indiana. No Suite number was provided.
67. All of the manifests identified the wastes as either spent solvent or catalyzed paint. All of them had the hazardous waste codes F003, F005, D001 and D035. The manifests with catalyzed paint wastes had the additional hazardous waste codes D007 and D008. The amounts identified as shipped on the manifests ranged from 715 gallons to 4,500 pounds.
68. EPA Hazardous Waste Identification Number IND985102607 was listed on all of the manifests. This is the EPA Hazardous Waste Identification Number for Suite 1158.
69. The EPA inspector reviewed the inspection logs for both Elite Enterprise, Inc. and Creative Coatings, Inc. The same form was used for both companies.

70. Inspection logs for Suite 1158 were available for the period December 27, 2004 - March 1, 2005.
71. The EPA inspector reviewed the employee training records. The same form was used for both Elite Enterprises, Inc. and Creative Coatings, Inc. to document employee training and the job description of the hazardous waste positions.
72. The EPA inspector reviewed the contingency plan. The same plan was used for both Elite Enterprises, Inc. and Creative Coatings, Inc.
73. The EPA inspector reviewed the 2004 Annual Manifest Summary Report. It listed both Elite Enterprises, Inc. and Creative Coatings, Inc. as the generator of hazardous waste. It identified a single waste stream – paint process residues, solids, spent solvents and thinners with the hazardous waste codes D001, D007, D008, D035, F003 and F005.
74. Operations at Elite Enterprises, Inc. were not in existence in 1980 and therefore do not qualify for interim status.
75. Respondents do not have a permit with EPA or IDEM for the storage of hazardous waste at Elite Enterprise, Inc.

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

76. Elite Enterprises, Inc., Creative Coatings, Inc. and Creative Liquid Coatings, Inc. were the same company operating under the name Elite Enterprises, Inc. from 1994 to 2005 and the name Creative Liquid Coatings, Inc. since 2005.
77. On September 3, 1999, IDEM's, Office of Air Management (OAM) issued to Elite Enterprises, Inc. a Part 70 Operating Permit. The permit included air emission limitations from painting operations located at Suite 1284.
78. On January 23, 2004, IDEM, Office of Air Quality (OAQ) issued a Part 70 Operating Permit which included air emission limitations for painting operations.
79. 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. The request was on stationary with the names Elite Enterprises, Inc and Creative Coatings, Inc. and the address Suite 1158.
80. On March 31, 2004, Creative Coatings, Inc. notified IDEM that Creative Coatings, Inc. took over portions of the paint operations formerly used and permitted to Elite Enterprises, Inc. and the Creative Coatings, Inc. was operating at Suite 1284 and Elite Enterprise, Inc. was operating at Suite 1158.

31. 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.
32. 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.
33. 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.
34. Elite Enterprises, Inc. reported "VOC usage" from October-December 2004 and July-September 2005 at Suite 1158
35. Elite Enterprises, Inc. reported "VOC usage" at Suite 1284 from November-December 2004 and July-September 2005.
36. 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.
37. The Notice of Excess Air Emissions identified the plant as consisting of operations at Suites 1158 and Suite 1284.
38. The Notice of Excess Air Emissions reported "VOC usage" from Suite 1158 from January of 2003 and from Suite 1284 from November 2004.
39. 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.
90. On April 11, 2006, Richard Lain, as CFO of Creative Liquid Coatings, Inc. submitted an "application for an air permit revision requesting simplification of the Building 1/Building 2 existing air permit structure..." In the application he reported that Creative Liquid Coatings, Inc. had recently operated under the name Elite Enterprises, Inc.

91. On April 19, 2006, Creative Liquid Coatings, Inc. submitted to IDEM, OAQ a Notice of Excess Air Emissions stating "Creative Liquid Coatings (formerly Elite Enterprises) provides custom painting services..." The cover letter was on stationary identifying Creative Liquid Coatings at Suite 1284.
92. 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.
93. On September 28, 2006, Creative Liquid Coatings submitted to IDEM, OAQ a letter indicating possible reactivation of operations at Suite 1158 and requesting deletion of individual source VOC emission limitations for Suite 1284 with consolidation of those emissions under the VOC emission limitations for Suite 1158.
94. On September 28, 2007, Randall Geist, as President of Creative Liquid Coatings submitted to IDEM, OAQ an "Air Permit Application to Restore Prior Terms and Conditions" for VOC emissions at Suite 1158. In this permit application Creative Liquid Coatings reported that the legal name of the company was Elite Enterprises from 1994 to 2005 and Creative Liquid Coatings, Inc. since 2005.

Randall Geist's involvement with property and business

95. Randall Geist was Guarantor on a lease dated June 16, 2003, between Elite Enterprises, Inc. and Wayne Coliseum for Suite 1284.
96. Randall Geist, as the authorized representative of Creative Coatings, Inc. on January 3, 2004, entered into an equipment sales and property lease agreement ("Sales Agreement") with Elite Enterprises, Inc. for Suite 1284. Creative Coatings, Inc. subleased Suite 1284 to Elite Enterprises, Inc. from January 3, 2003 to December 31, 2004. Creative Coatings, Inc. purchased Elite Enterprises, Inc.'s paint and related equipment located at Suite 1284.
97. Randall Geist, as Chairman of Creative Coatings, Inc., on August 1, 2004, signed a lease agreement with Wayne Coliseum for Suite 1284.
98. Randall Geist as Chairman of Creative Coatings, Inc. on December 1, 2004, signed a lease agreement as Guarantor for Suite 1284. He also signed the lease agreement as Chairman of Elite Enterprises as the Lessee. He signed subsequent amendments as President of Elite Enterprises, Inc. on August 10, 2005 and August 1, 2006.
99. Representatives of Wayne Coliseum notified Randall Geist on or about September 12, 2005, of the fourth complaint it received regarding hydraulic fluid found on the ground and around storm drains at property located at Suite 1158.

100. Since approximately 2002, representatives of Wayne Coliseum have routinely dealt with Randall Geist to correct problems that occurred at either Elite Enterprises, Inc. or Creative Liquid Coatings, Inc.
101. On or about March 23, 2006, Wayne Coliseum, sent a letter to Elite Enterprises regarding its compliance with environmental obligations under the lease for Suite 1158. The environmental concerns that were identified included removal of drums and hazardous waste manifests at Suite 1158; sampling of drains in the first floor drum storage area; and possible venting of painting and spraying activities to the atmosphere.
102. 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."
103. Randall Geist, as President of Creative Liquid Coatings, on January 31, 2007, informed IDEM that Creative Coatings, Inc. signed the leases and made the financial commitment to build new equipment for businesses it operated within International Park. He stated that Creative Coatings, Inc. obtained air permits for both the existing and new equipment at Suite 1284 as Creative Coatings, Inc. Mr. Geist also stated that Creative Coatings, Inc. has ownership and is operating all of the assets at Suite 1284.
104. On June 1, 2008, Stephen Geist as Operations Manager of Creative Liquid Coatings, Inc. submitted a letter to Derrick Samaranski of EPA. Mr. Geist stated that Creative Liquid Coatings, Inc. was the same as Creative Coatings, Inc. He stated that Creative Coatings, Inc. was not to have any involvement in the business operations of Elite 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

105. Paragraphs 1-104 are incorporated by reference as if fully presented in this Count I. Respondents are *persons* as defined by 329 IAC § 3.1-4-20, 40 C.F.R § 260.10.
106. Under 329 IAC §§ 3.1-1-7 and 13-1, 40 C.F.R § 270.1(c), owners and operators of hazardous waste management units are required to have a permit for the storage of hazardous waste.
107. Under 329 IAC § 3.1-1-7, 4-1 and 6-1, a *solid waste* is defined as any discarded material that is not excluded by 40 C.F.R. § 261.4(a) or that is not excluded pursuant to 40 C.F.R. §§ 260.30 and 260.31. *See also*, 40 C.F.R. § 261.2.
108. On June 22, 2005, the drums in the hazardous waste storage area at Elite Enterprises, Inc. (Suite 1158) were identified as containing wastes from the painting operations, including

paint solvent and catalyzed paint. The contents of the drums were solid wastes as defined by 329 IAC §§ 3.1-1-7, 4-1 and 6-1, 40 C.F.R. § 261.2.

109. On June 22, 2005, the drums were labeled with the hazardous waste codes F003, F005, D001, D007, D008, and D035. The contents of the drums were hazardous wastes as defined by 329 IAC §§ 3.1-1-7, 4-1 and 6-1, 40 C.F.R. § 261.3, and meeting the criteria in 40 C.F.R. §§ 261.21, 24 and 30.
110. On June 22, 2005, some of the drums in the hazardous waste storage area at Suite 1158 were labeled as having an accumulation start date in excess of 90-days. All drums were shipped off-site for subsequent disposal or treatment. The drums in the hazardous waste storage area were in storage as that term is defined in 329 IAC §§ 3.1-1-7 and 4-1, 40 C.F.R. § 260.10.
111. The hazardous waste storage area at Suite 1158 was a hazardous waste management unit as defined by 329 IAC §§ 3.1-1-7 and 4-1, 42 C.F.R. § 260.10, and a hazardous waste storage facility as defined by 329 IAC §§ 3.1-1-7 and 4-1, 40 C.F.R. § 260.10.
112. On June 22, 2005, Respondents owned or operated the equipment and hazardous wastes in the hazardous waste storage area at Suite 1158. Respondents were responsible for the overall operation of Suite 1158 and owned the equipment located therein. Respondents were owners or operators as those terms are defined in 329 IAC §§ 3.1-1-7 and 4-1, 40 C.F.R. § 260.10.
113. Respondents did not have a permit or interim status to operate the hazardous waste storage area at Suite 1158 as a hazardous waste management unit. Consequently, Respondents were in violation of 329 IAC §§ 3.1-1-7 and 13-1, 40 C.F.R. § 270.1(c).
114. 329 IAC §§ 3.1-7 and 13-1, 40 C.F.R. § 262.34, exempts generators of hazardous waste from the permit requirements if certain conditions are met.
115. Respondents were generators of hazardous waste at Suite 1158 as that term is defined in 329 IAC §§ 3.1-1-7 and 4-1, 40 C.F.R. § 260.10.
116. 329 IAC §§ 3.1-1-7 and 7-1; 40 C.F.R. § 262.34(a) and (b) limit the on-site storage of hazardous waste to 90 days. During the June 22, 2005, there were at least seven 55-gallon drums of hazardous waste that were stored on-site for greater than 90 days at Suite 1158. Consequently, the Respondents failed to meet the conditions 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.

117. 329 IAC §§ 3.1-1-7 and 7-1, 40 C.F.R. § 262.34(a)(2), require a generator to label containers with the accumulation start date. On June 22, 2005, the Respondents' container storage area at Suite 1158 had a drum which was mislabeled July 14, 2007. Consequently, Respondents failed to meet the conditions of 329 IAC §§ 3.1-1-7 and 7-1; 40 C.F.R. § 262.34(a)(2) and therefore did not qualify for a permit exemption.
118. 329 IAC §§ 3.1-1-7, 7-1, 9-1 and 10-1, 40 C.F.R. §§ 262.34(a)(4) and 265.51 requires a generator that stores hazardous waste on-site to have a contingency plan as a condition for qualifying for an exemption from the permit requirements.
119. The contingency plan must include the following items: 1) the address of the emergency coordinator(s); 2) a list of all emergency equipment at the facility including its location and a physical description and brief outline of each item on the list; and 3) an evacuation plan describing signals that are to be used to begin evacuation and primary and secondary evacuation routes. *See also*, 329 IAC §§ 3.1-1-7, 7-1, 9-1 and 10-1; 40 C.F.R. §§ 262.34(a)(4) and 265.52(d), (e) and (f); 264.52(d) and (e) and (f). Consequently, Respondents failed to meet the conditions of 329 IAC §§ 3.1-1-7, 7-1 and 10-1, 40 C.F.R. §§ 262.34(a)(4) and 265.52(d), (e) and (f), and therefore did not qualify for a permit exemption.
120. At the time of the inspection, Respondents' contingency plan for Suite 1158 did not include the information required by the regulations cited in preceding paragraph. Respondents therefore failed to meet the conditions of 329 IAC §§ 3.1-1-7, 7-1, and 10-1; 40 C.F.R. §§ 262.34(a)(4), 40 C.F.R. §§ 265.52(d), (e) and (f). Therefore, Respondents did not qualify for a permit exemption.
121. 329 IAC §§ 3.1-1-7, 7-1 and 10-1, 40 C.F.R. §§ 262.34(a)(1)(i) and 265.174, require a generator using containers to store hazardous waste to inspect those areas where the containers are stored at least weekly, looking for leaks and deterioration caused by corrosion or other factors.
122. Inspection logs for Suite 1158 were missing for the periods: July 1, 2004 through December 20, 2004, March 7, 2005 through July 11, 2005, and July 25, 2005 through October 3, 2005. Respondents have not demonstrated that they inspected the hazardous waste storage area at Suite 1158 during these time periods. Respondents therefore failed to meet the conditions of 329 IAC §§ 3.1-1-7, 7-1 and 10-1; 40 C.F.R. §§ 262.34(a)(1)(i) and 265.174 and did not qualify for the permit exemption.
123. 329 IAC §§ 3.1-1-7, 7-1 and 10-1, 40 C.F.R. §§ 262.34(a)(4), 265.16 (a), (b) and (c), require a generator, as a condition for an exemption from the permit requirements, to provide initial and annual training for its employees with duties involving hazardous

waste management that teaches them to perform their duties in a way that ensures compliance with 40 C.F.R. Part 265.

124. 329 IAC §§ 3.1-1-7, 7-1 and 10-1, 40 C.F.R. §§ 262.34(a)(4) and 265.16(d)(4) and (e), requires a generator, as a condition for an exemption from the permit requirements, to document that the training required by the previous paragraph has been given to, and completed by, company personnel, and to maintain those documents for at least three years from the date that the employee last worked at the location.
125. 329 IAC §§ 3.1-7-1, 40 C.F.R. §§ 265.16(d)(1), requires a generator, as a condition for an exemption from the permit requirements, to maintain a document that lists the job title for each position related to hazardous waste management and the name of the person filling that position
126. At the time of the inspection, Respondents were unable to provide the required training documentation upon the request of the EPA inspector. Therefore, Respondents failed to meet the conditions of 329 IAC 3.1-1-7, 7-1 and 10-1, 40 C.F.R. §§ 262.34(a)(4), 265.16 (a), (b) and (c); (d)(1), (4) and (e), and therefore did not qualify for a permit exemption.
127. As alleged in paragraphs 105-126 above Respondents failed to comply with the conditions necessary for an on-site generator to qualify for an exemption from a hazardous waste storage permit under 35 IAC §§ 3.1-1-7, 7-1 and 10-1, 40 C.F.R. § 262.34. Respondents did not and do not have a permit for the storage of hazardous waste. Consequently, Respondents stored hazardous waste without a permit or interim status in violation of Section 3005 of RCRA, 42 U.S.C. § 6925(a) and the regulations found at 329 IAC §§ 3.1-13-1, 40 CFR Part 264, §§ 270.1(c).

Count II

Failure to comply with manifest requirements

128. Paragraphs 1-104 are incorporated by reference as if fully presented in this Count II. Respondents are *persons* as defined by 329 IAC § 3.1-4-20, 40 C.F.R. § 260.10.
129. 329 IAC §§ 3.1-1-7 and 7-1, 40 C.F.R. §§ 262.40(a), 262.42(a)(1) and (2), require a generator of hazardous waste to obtain and maintain a copy of the manifest signed by the facility designated to receive the hazardous waste. If the generator does not receive a signed manifest within 35 days it is to make inquiries related to the shipment. If it does not receive a signed manifest within 45 days it is to submit a Manifest Exception Report to IDEM.

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

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 seven drums of these hazardous wastes on-site without a permit or complying with the contingency plan, inspection and training requirements. Respondents stored five of the drums for over 180 days with some drums stored even longer. 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 - prior to December 2004 and after March 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 violated numerous provisions of the contingency plan, training and emergency preparedness requirements imposed on generators and storage facilities.

b. **Count II - Failure to comply with manifest requirements.** The Complainant will propose a penalty for no more than 180 days of violation. The manifest is the central element of the cradle-to-grave management of hazardous wastes. The manifest is the mechanism that is used to track off-site shipments of hazardous waste. Receipt of a signed manifest by the designated facility is the method that is used to ensure the waste arrives at a facility which is able to treat, store or dispose of hazardous waste. Respondents' failure to obtain a signed copy of the manifest until after the inspection was a significant deviation from the regulations. Respondents' inaction prevented EPA or IDEM from determining if these shipments were properly disposed. Respondents' violations are particularly egregious in that they were not detected until EPA conducted the inspection on June 22, 2005 - approximately two years after the initial date of each shipment.

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

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AUG 04 2009

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

RCRA-05-2009-0013

Complaint Docket No. _____