

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

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BEFORE THE ADMINISTRATOR

IN THE MATTER OF: )  
)  
Creative Liquid Coatings, Inc. )  
(formerly d/b/a Creative Coatings, Inc.) )  
2701 S. Coliseum Blvd., Suite 1284 )  
Fort Wayne, IN 46803 ) Docket No. RCRA-05-2009-0012  
)  
U.S. EPA ID No. INR 000 109 322 )  
)  
Elite Enterprises, Inc. )  
)  
AND )  
)  
Randall Geist )  
)  
Respondents. )

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IN THE MATTER OF: )  
)  
Elite Enterprises, Inc. )  
2701 S. Coliseum Blvd., Suite 1158 )  
Fort Wayne, IN 46803 )  
)  
U.S. EPA ID No. INR 985 102 607 ) Docket No. RCRA-05-2009-0013  
)  
Creative Liquid Coatings, Inc. )  
(formerly d/b/a Creative Coatings, Inc.) )  
)  
AND )  
)  
Randall Geist )  
)  
Respondents. )

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**COMPLAINANT'S CORRECTED MOTION  
TO CONSOLIDATE RELATED MATTERS**

**Complainant respectfully requests that the Presiding Officer consider this Corrected Motion in lieu of the Motion to Consolidate Related Matters and the Memorandum In Support of the same, which were dated March 12, 2010. Complainant inadvertently submitted the**

**exhibits to the original Memorandum In Support Of Complainant's Motion To Consolidate Related Matters in the incorrect order and files and submits this Corrected Motion and Memorandum In Support with the exhibits in the correct order.**

Comes now the United States Environmental Protection Agency, Region 5 ("Complainant" or "EPA"), pursuant to 40 C.F.R. §§ 22.16 and 22.12 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules"), and respectfully requests that the Presiding Officer enter an order consolidating the above-captioned cases into one proceeding for the purposes of the hearing and related matters. In support of this Motion, Complainant relies on the Consolidated Rules and the facts and law set forth in the accompanying Memorandum In Support of Complainant's Corrected Motion to Consolidate Related Matters.

Prior to filing this Motion, the undersigned contacted counsel for Respondents Creative Liquid Coatings, Inc. and Randall Geist advising him of the Complainant's intention to file this motion.

Respectfully submitted,

DATE: March 17, 2010



Richard J. Clarizio  
Karen Peaceman  
Associate Regional Counsels  
Gary E. Steinbauer  
Assistant Regional Counsel  
United States EPA – ORC Region 5  
77 W. Jackson Blvd. (C14-J)  
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*Attorneys for Complainant*

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**MEMORANDUM IN SUPPORT OF COMPLAINANT'S  
CORRECTED MOTION TO CONSOLIDATE RELATED MATTERS**

**I. Relevant Background**

These civil administrative penalty cases are brought pursuant to Section 3008(a) of the Resource Conservation and Recovery Act, as amended (RCRA), 42 U.S.C. § 6928(a), and RCRA's federal and state implementing regulations. Complainant has filed two separate, but related, cases. These cases are captioned as follows: (1) In re Creative Liquid Coatings, Inc., et al., Docket No. RCRA-05-2009-0012 (Exhibit 1); and (2) In re Elite Enterprises, Inc., et al., Docket No. RCRA-05-2009-0013 (Exhibit 2). Creative Liquid Coatings, Inc. ("Creative"), Elite Enterprises, Inc. ("Elite"), and Randall Geist ("Mr. Geist") (collectively, "Respondents") are named as respondents in both of these related cases.

Complainant's allegations against Respondents in these cases are similar. Count I in both Complaints alleges that Respondents stored 55-gallon drums of hazardous waste for more than 90 days without a hazardous waste storage permit, failed to keep an adequate contingency plan on-site at the facilities, failed to conduct weekly inspections of the hazardous waste storage areas, and failed to provide required training documentation. (See Exhibit 1, ¶¶ 117-41, Exhibit 2, ¶¶ 105-27). Count II in both of these cases alleges that Respondents failed to comply with manifest requirements. (Exhibit 1, ¶¶ 142-44; Exhibit 2, ¶¶ 128-30). In both Complaints, Complainant alleges that Elite and Creative constitute a single enterprise, and thus, one can be held liable for any penalty assessed against the other. (Exhibit 1, ¶¶ 88-105; Exhibit 2, ¶¶ 76-94). Complainant also alleges that Mr. Geist's overlapping ownership interests, his control and management of Creative and Elite, and his day-to-day involvement with the environmental issues arising at Suite

1284 and Suite 1158, should render him personally responsible for any penalty assessed against Creative and Elite. (Exhibit 1, ¶¶ 106-116, Exhibit 2, ¶¶ 95-104).

Creative and Mr. Geist's answers to the Complaints contain nearly identical allegations, and Creative and Mr. Geist's defenses to these cases likewise are identical. (See Exhibits 3 and 4). Finally, these cases currently are scheduled for a single hearing at the same date, location, and time, May 18, 2010 in Fort Wayne, Indiana. (Exhibit 5).

## **II. Discussion**

Consolidated Rule 22.12(a) governs consolidation of matters at issue in two or more proceedings. According to Consolidated Rule 22.12(a), a Presiding Officer may consolidate any or all matters at issue in two or more proceedings where: (1) there exists common parties or common questions of fact or law; (2) consolidation would expedite and simplify consideration of the issues; and (3) consolidation would not adversely affect the rights of parties engaged in otherwise separate proceedings. 40 C.F.R. § 22.12(a). Here, all of the requirements for consolidation are satisfied.

Both Complaints involve the same parties and the same or very similar questions of fact and law. (See Exhibits 1 and 2). Indeed, these cases were assigned to the same Presiding Officer, without any prompting by Complainant, and the prehearing exchanges of Complainant and Respondents Creative and Mr. Geist have been identical in both cases. For these same reasons, consolidation would expedite and simplify consideration of the issues.

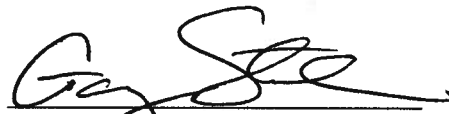
Finally, consolidation would not adversely affect the rights of the respondents that have appeared (through counsel) and responded to the allegations in the Complaints. As noted in the Presiding Officer's Prehearing Orders, Elite, despite being properly served

with the Complaints, has not answered or otherwise responded to Complainant's allegations in these cases. Creative and Mr. Geist, however, have answered and contested Complainant's allegations in both cases. Thus, consolidating these cases would not adversely affect the rights of Creative and Mr. Geist; on the contrary, it would spare the parties of separate hearings on similar liability- and penalty-related issues, and would spare the parties of the burden of filing multiple copies of identical documents in two separate cases.

### **III. Conclusion**

For all of the foregoing reasons, Complainant respectfully requests that this Tribunal grant its Motion to Consolidate Related Matters in its entirety and enter an Order consolidating the cases captioned In re Creative Liquid Coatings, Inc., Docket No. RCRA-05-2009-0012 and In re Elite Enterprises, Inc., Docket No. RCRA-05-2009-0013 into one proceeding for the purposes of the hearing and related matters.

Respectfully submitted,



Richard J. Clarizio  
Karen Peaceman  
Associate Regional Counsels  
Gary E. Steinbauer  
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(312) 886-4306  
*Attorneys for Complainant*

DATE: March 17, 2010

**CERTIFICATE OF SERVICE**

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I certify that the foregoing Complainant's Corrected Motion to Consolidate Related Matters and the Memorandum in Support of Complainant's Corrected Motion to Consolidate Related Matters, dated March 17, 2010, were sent this day in the following manner to the addresses listed below:

Original by Hand-Delivery to:

La Dawn Whitehead  
Regional Hearing Clerk  
United States EPA – ORC Region 5  
77 W. Jackson Blvd. (E-19J)  
Chicago, IL 60604-3590

Copy by First Class Mail to:

Attorney for Respondents Creative Liquid  
Coatings, Inc. and Mr. Randall Geist  
David L. Hatchett, Esq.  
Hatchett & Hauck LLP  
111 Monument Circle, Suite 301  
Indianapolis, IN 46204-5124

The Honorable Barbara A. Gunning  
Office of Administrative Law Judges  
U.S. Environmental Protection Agency  
Mail Code 1900L  
1200 Pennsylvania Ave., NW  
Washington, D.C. 20460-2001

Copy by Certified Mail to:

Mr. Randall Geist  
Registered Agent  
Elite Enterprises, Inc.  
2701 S. Coliseum Blvd, Suite 1158  
Fort Wayne, IN

DATE: March 17, 2010



Patricia Jeffries-Harwell  
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