



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

30 SEP 2006

REPLY TO THE ATTENTION OF

**CERTIFIED MAIL - 7001 0320 006 1448 4639**  
**RETURN RECEIPT REQUESTED**

DE-9J

James K. Lee, President  
Crest Industries Ltd.  
1066 Industry Road  
New Lenox, Illinois 60451

Re: Administrative Complaint and Compliance Order  
Crest Industries Ltd.  
New Lenox, Illinois  
ILD 096 785 217  
**RCRA-05-2005 0024**

Dear Mr. Lee:

Enclosed please find an Administrative Complaint and Compliance Order (Complaint), which the United States Environmental Protection Agency, Region 5 (U.S. EPA) has filed against Crest Industries Ltd. (Crest) for violations of the Resource Conservation and Recovery Act (RCRA) as amended, 42 U.S.C. § 6901 *et seq.* The allegations set forth in the Complaint are based on Crest's failure to comply with Illinois' RCRA hazardous waste regulations; specifically, the generator conditions for a permit exemption of Illinois Rules 35 IAC 722.134; the permitting requirement of 35 IAC § 703.121; the training, contingency plan, and tank systems requirements of 35 IAC § 725; and the U.S.EPA air emission standards for tanks, of 40 C.F.R. § 265.1080.

Also enclosed is a copy of 40 C.F.R. Part 22 - Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits. A copy of the Revised (June 2003) RCRA Civil Penalty Policy (RCPP) will be made available to you upon request. You can also find the RCPP on the internet at:

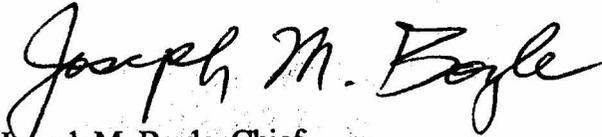
<http://www.epa.gov/Compliance/resources/policies/civil/rcra/rcpp2003-f.nl.pdf>

Should you wish to contest the Complaint, you must file a written Answer and in the Answer request a hearing with the Regional Hearing Clerk within thirty (30) days of the date of this Complaint. You must file the Answer and request for hearing with the Regional Hearing Clerk (E-19J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. You must also send a copy of your Answer and request to Michael J. McClary, Associate Regional Counsel, Office of Regional Counsel (C-14J), at the above address. Please include the docket number on all documents submitted to the Regional Hearing Clerk and Mr. McClary.

Regardless of whether you choose to request a hearing within the prescribed time limit following the filing of this Complaint, U.S. EPA extends to you the opportunity to request an informal settlement conference. The settlement conference discussions may include the mitigation of the proposed penalty in accordance with U.S. EPA guidance on supplemental environmental projects. A request for an informal settlement conference with U.S. EPA will not affect or extend the thirty (30) day deadline to file an Answer in order to avoid a Finding of Default on the Complaint.

If you have any questions or want to request an informal settlement conference with Waste, Pesticides and Toxics Division staff, please contact Spiros Bourgikos, United States Environmental Protection Agency, RCRA Enforcement and Compliance Assurance Branch (DE-9J), 77 West Jackson Boulevard, Chicago, Illinois 60604. He may also be reached at (312) 886-6862. Please contact Mr. McClary at (312) 886-7163 if you have any legal questions.

Sincerely yours,



Joseph M. Boyle, Chief  
Enforcement and Compliance Assurance Branch  
Waste, Pesticides and Toxics Division

Enclosures (2)

cc: Todd Marvel, Illinois EPA (w/Encls)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

IN THE MATTER OF: )

Crest Industries Ltd. )  
1066 Industry Road )  
New Lenox, Illinois 60451-0085 )

[U.S. EPA ID No.: 096 785 217 )

Respondent )  
\_\_\_\_\_ )

DOCKET NO. RCRA-09-2005 0024

US ENVIRONMENTAL  
PROTECTION AGENCY  
REGION V

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REGIONAL OFFICE  
SEP 29 2009

COMPLAINT AND COMPLIANCE ORDER

I. COMPLAINT

Preliminary Statement and Jurisdiction

1. This is 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). This action is also instituted pursuant to Sections 22.01(a)(4), 22.13 and 22.37 of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits" ("Consolidated Rules"), 40 C.F.R. Part 22.
2. Jurisdiction for this action is conferred upon U.S. 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 Chief, Enforcement and Compliance Assurance Branch, Waste, Pesticides and Toxics Division, Region 5, United States Environmental Protection Agency (U.S. EPA).
4. U.S. EPA has 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.
5. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, the Administrator of U.S. 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 pursuant to Subtitle C (Sections 3001-3023 of RCRA, 42 U.S.C. §§ 6921-6939e) or of any state provision authorized pursuant to 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.
6. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the Administrator of U.S. EPA granted the State of Illinois 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. 3778 (January 31, 1986). The Administrator of U.S. EPA granted Illinois final authorization to administer certain HSWA and additional RCRA requirements effective March 5, 1988, 53 Fed. Reg. 126 (January 5, 1988); April 30, 1990, 55 Fed. Reg. 7320 (March 1, 1990); June 3, 1991, 56 Fed. Reg. 13595 (April 3, 1991); August 15, 1994, 59 Fed. Reg. 30525 (June 14, 1994); May 14, 1996, 61 Fed. Reg. 10684

(March 15, 1996); and October 4, 1996, 61 Fed. Reg. 40520 (August 5, 1996). The U.S. EPA-authorized Illinois regulations are codified at 35 Illinois Administrative Code (IAC) Part 703 *et seq.* See also 40 C.F.R. § 272.700 *et seq.*. The State of Illinois RCRA Program is not yet authorized to enforce the RCRA Subpart CC air emission control requirements at 40 CFR §§ 265.1080 *et seq.*, and therefore those federal RCRA Subpart CC requirements apply to “existing” hazardous waste management (including storage) facilities in Illinois.

7. Pursuant to Section 3006(g) of RCRA, 42 U.S.C. § 6926(g), requirements imposed pursuant to HSWA take effect immediately in all States.
8. U.S. EPA has provided notice of commencement of this action to the State of Illinois pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

#### **General Allegations**

At all times relevant to this Complaint, unless otherwise indicated

9. The Respondent is Crest Industries Ltd. (Crest).
10. Respondent is a firm, corporation, partnership, or other business organization.
11. Respondent is the owner or operator of contiguous land and structures, other appurtenances, and improvements on the land, located at 1066 Industry Road, New Lenox, Illinois (hereinafter the “Facility”).
12. Respondent uses the Facility to hold discarded material for temporary periods, before the material is shipped from the Facility site for treatment, storage, or disposal elsewhere.
13. The discarded material referenced in paragraph 12, above, includes waste paint.
14. Respondent characterized the waste paint as D001, F003 or F005 hazardous waste.

15. The discarded material referenced in paragraph 12, above, includes tank wash solvents consisting of acetone, toluene or mineral spirits.
16. Respondent characterized the tank wash solvents as D001, D035, F003 or F005 hazardous waste.
17. The discarded material referenced in Paragraphs 13 - 16 are wastes or waste materials.
18. The discarded materials referenced in Paragraphs 13 - 16 are solid waste.
19. The Respondent's discarded materials referenced in Paragraphs 13 - 16 above are hazardous waste.
20. The Respondent's hazardous wastes referenced in Paragraphs 13 - 16 above, are a type or types of hazardous waste that is or are identified or listed in 35 IAC §§ 721.120 - 721.131.
21. Respondent's acts or processes at the Facility produce the discarded material referenced in paragraphs 13 - 16 above.
22. The tank wash solvents referenced in Paragraph 15 above are generated at the Facility when Respondent cleans the process tanks between batches.
23. Respondent's Facility was in existence and first began generating and managing hazardous waste, before November 19, 1980.
24. On or about May 7, 1986, Respondent submitted to U.S. EPA a Hazardous Waste Notification for the Facility, dated May 7, 1986.
25. The May 7, 1986, Hazardous Waste Notification specified in paragraph 24 above, indicates that Crest generates hazardous waste.
26. From on or about May 7, 1986, to September 30, 2005, the Facility generated during each calendar month more than 1,000 kilograms of hazardous waste.

27. On or about August 20, 2002, the Illinois Environmental Protection Agency (Illinois EPA) conducted an inspection at the Facility.
29. On or about January 22, 2004, U.S. EPA conducted an inspection at the Facility.
30. On January 22, 2004, Respondent allowed the U.S. EPA inspector to walk through Respondent's Facility and to review Respondent's records related to hazardous waste management, including hazardous waste management manifests, hazardous waste training records, and contingency plan records.
31. On January 22, 2004, the inspector reviewed Respondent's hazardous waste manifests, but Respondent did not have any hazardous waste training records or contingency plan records for the inspector to review.
32. On or about March 24, 2004, Respondent received in the mail from U.S. EPA, an information request regarding the management of hazardous waste at Respondent's Facility.
33. On or about April 22, 2004, Respondent submitted to U. S. EPA its response to the March 24, 2004, U.S. EPA information request.
34. On or about December 30, 2002, Illinois EPA, approved a Closure Plan of the type, and with the contents, specified in 35 IAC § 725.210, for two parts of the Facility designated as Drum Storage Area 1 and Drum Storage Area 2.
35. Respondent has never had a Closure Plan of the type, and with the contents, specified in 35 IAC § 725.210, for four hazardous waste storage tanks at the Facility designated as Tank #1, Tank #2, Tank #4 and Tank #5.
36. Respondent has never had financial assurance for the Facility of the type, and with the

contents, specified in 35 IAC § 725.240.

37. Respondent has never had a ground water monitoring plan for the Facility of the type, and with the contents, specified in 35 IAC § 725.210.

**COUNT 1: Tank Assessment Violations**

38. The allegations of paragraphs 1- 37 of the complaint are incorporated by reference as though set forth in full.
39. Pursuant to 35 IAC § 725.291(a) [40 C.F.R § 265.191(a)], owners and operators of hazardous waste management facilities that use tank systems to store or accumulate hazardous waste are required to obtain a written assessment, reviewed and certified by an independent, qualified registered professional engineer in accordance with 35 IAC 702.126(d), that attests that each tank system at the facility has sufficient structural integrity and is acceptable for the storage of hazardous waste.
40. 35 IAC § 722.134(a)(1)(B) [40 CFR § 262.34(a)(1)(ii)] provides that a generator may accumulate hazardous waste on site without obtaining a permit or interim status for hazardous waste storage, provided that it complies with, *inter alia*, the tank assessment provisions of 35 IAC § 725.291 [40 C.F.R. § 265.191].
41. Pursuant to 35 IAC §§ 722.134(a)(1)(B) and 702.110 [40 CFR §§ 262.34(a)(1)(ii) and 270.2], a large quantity generator facility that comes into existence before November 19, 1980, and that accumulates hazardous waste on site but does not comply with the conditions of 35 IAC § 722.134(a)(1)(B) [262.34(a)(1)(ii)] for exemption from regulation and permitting as a storage facility, is the owner or operator of a hazardous waste storage

facility, and subject to the storage facility tank assessment requirements of 35 IAC § 725.291 [40 C.F.R. § 265.191].

42. From January 1, 1990 through September 30, 2005, Respondent had four stationary devices at the Facility which were designed to contain an accumulation of hazardous waste.
43. The four stationary devices referenced in paragraph 42 above were constructed primarily of non-earthen materials which provide structural support.
44. Respondent used the four stationary devices specified in paragraph 42 above (“tanks”) to hold the materials specified in paragraphs 15 and 16 above.
45. Respondent designated the four tanks referenced in paragraph 42 above as Tank #1, Tank #2, Tank #4, and Tank #5.
46. Tank #1 has a storage capacity of 2,400 gallons.
47. Tank #2 has a storage capacity of 1,300 gallons.
48. Tank #4 has a storage capacity of 600 gallons.
49. Tank #5 has a storage capacity of 1,300 gallons.
50. The four tanks, referenced in paragraphs 46 through 48 above, were installed at the Facility on an undocumented date in 1979.
51. Respondent uses Tank #1 to store tank wash solvents.
52. Tanks #2, #4 and #5 are also process tanks that Respondent uses to store tank wash solvents when storage capacity is needed.
53. From on or about January 1, 1990, through September 30, 2005, Respondent stored tank wash solvents in Tanks #1, #2, #4 and #5.

54. From January 1, 1990, through September 30, 2005, Respondent did not have a written assessment for Tank #1, reviewed and certified by an independent, qualified registered professional engineer, that attests that the Tank #1 tank system has sufficient structural integrity and is acceptable for the storage of hazardous waste.
55. From January 1, 1990, through September 30, 2005, Respondent did not have a written assessment for Tank #2, reviewed and certified by an independent, qualified registered professional engineer, that attests that the Tank #2 tank system has sufficient structural integrity and is acceptable for the storage of hazardous waste.
56. From January 1, 1990, through September 30, 2005, 2005, Respondent did not have a written assessment for Tank #4, reviewed and certified by an independent, qualified registered professional engineer, that attests that the Tank #4 tank system has sufficient structural integrity and is acceptable for the storage of hazardous waste.
57. From January 1, 1990, through September 30, 2005, Respondent did not have a written assessment for Tank #5, reviewed and certified by an independent, qualified registered professional engineer, that attests that the Tank #5 tank system has sufficient structural integrity and is acceptable for the storage of hazardous waste.
58. From January 1, 1990, through September 30, 2005, Respondent failed to comply with the condition in 35 IAC § 722.134(a)(1)(B) [40 CFR § 262.34(a)(1)(ii)] for an exemption from regulation and permitting as a storage facility, that it have a written assessment for its hazardous waste storage tanks pursuant to 35 IAC § 725.291(a).
59. From January 1, 1990, through September 30, 2005, Respondent owned or operated a hazardous waste storage facility subject to the tank system written assessment

requirements of 35 IAC § 725.291 [40 C.F.R. § 265.191].

60. From January 1, 1990, to September 30, 2005, Respondent's failures to have written assessments for Tanks #1, #2, #4 or #5 at the Facility, violated 35 IAC § 725.291(a) [40 C.F.R. § 265.191(a)].

**COUNT 2: Secondary Containment Violations**

61. The allegations of paragraphs 1- 60 of the complaint are incorporated by reference as though set forth in full.
62. Pursuant to 35 IAC §§ 725.293(a) and 720.110 [40 C.F.R. §§ 265.193(a) and 260.10], owners and operators of hazardous waste management facilities that use tank systems for which the age can not be documented, in order to store or accumulate hazardous waste, are required to install secondary containment that meets the requirements of 35 IAC § 725.293(b), by January 12, 1995.
63. Pursuant to 35 IAC § 725.293(b) [40 C.F.R. § 265.193(b)], secondary containment must be able to prevent migration of wastes to the environment, and detect and collect releases and accumulated liquids until they can be removed.
64. Pursuant to 35 IAC § 722.134(a)(1)(B) [40 CFR § 262.34(a)(1)(ii)], a large quantity generator may accumulate hazardous waste on site without obtaining a permit or interim status for hazardous waste storage, provided that it complies with, *inter alia*, the tank secondary containment requirements of 35 IAC Part 725, Subpart J, § 725.293(a) [40 C.F.R. § 265.193(a)].
65. Pursuant to 35 IAC §§ 722.134(a)(1)(B) and 702.110 [40 CFR §§ 262.34(a)(1)(ii) and 270.2], a large quantity generator facility that comes into existence before November 19,

1980, and that accumulates hazardous waste on site but does not comply with the conditions for a permit exemption of 35 IAC § 722.134(a)(1)(B) [40 CFR § 262.34(a)(1)(ii)], is the owner or operator of an existing hazardous waste storage facility, and subject to the hazardous waste storage facility tank system secondary containment requirements of 35 IAC §§ 725.293(a) and (b) [40 C.F.R. § 265.193(a) and (b)].

66. From January 13, 1995, through September 30, 2005, Respondent did not have any secondary containment for Tank #1 that was designed, installed, and operated to prevent any migration of wastes or accumulated liquid out of the system to the soil, ground water, or surface water during the use of the tank system.
67. From January 13, 1995, through September 30, 2005, Respondent did not have any secondary containment for Tank #1 that was capable of detecting and collecting releases and accumulated liquids until they are removed.
68. From January 13, 1995, through September 30, 2005, Respondent did not have any secondary containment for Tank #2 that was designed, installed, and operated to prevent any migration of wastes or accumulated liquid out of the system to the soil, ground water, or surface water during the use of the tank system.
69. From January 13, 1995, through September 30, 2005, Respondent did not have any secondary containment for Tank #2 that was capable of detecting and collecting releases and accumulated liquids until they are removed.
70. From January 13, 1995, through September 30, 2005, Respondent did not have any secondary containment for Tank #4 that was designed, installed, and operated to prevent any migration of wastes or accumulated liquid out of the system to the soil, ground water,

- or surface water during the use of the tank system.
71. From January 13, 1995, through September 30, 2005, Respondent did not have any secondary containment for Tank #4 that was capable of detecting and collecting releases and accumulated liquids until they are removed.
  72. From January 13, 1995, through September 30, 2005, Respondent did not have any secondary containment for Tank #5 that was designed, installed, and operated to prevent any migration of wastes or accumulated liquid out of the system to the soil, ground water, or surface water during the use of the tank system.
  73. From January 13, 1995, through September 30, 2005, Respondent did not have any secondary containment for Tank #5 that was capable of detecting and collecting releases and accumulated liquids until they are removed.
  74. From January 13, 1995, through September 30, 2005, Respondent failed to comply with the condition in 35 IAC 722.134 (a)(1)(B) [40 CFR § 262.34(a)(1)(ii)] for an exemption from regulation and permitting as a storage facility, that it have secondary containment for its hazardous waste storage tanks pursuant to 35 IAC § 725.293(a).
  75. From January 13, 1995, through September 30, 2005, Respondent owned or operated a hazardous waste storage facility subject to the tank system secondary containment requirements of 35 IAC § 725.293(a)(4) [40 C.F.R. § 265.193(a)(4)].
  76. Respondent's failures to have secondary containment for Tanks #1, #2, #4, or #5 at the Facility, violated 35 IAC § 725.293(a) [40 C.F.R. § 265.193(a)].

**COUNT 3: Subpart CC Air Emission Control Violations**

77. The allegations of paragraphs 1-76 of the complaint are incorporated by reference as though set forth in full.
78. Pursuant to 40 C.F.R § 265.1085(b)(1)(i)(C), owners and operators of hazardous waste management facilities that use hazardous waste storage tanks with design capacity less than 75 cubic meters (m<sup>3</sup>) systems, to store hazardous waste with vapor pressure of 76.6 Kpa or less, must control the air emissions from such tanks in accordance with Tank Level 1 controls meeting the requirements specified in 40 C.F.R §§ 265.1085(c)(1) through (c)(4).
79. Pursuant to 40 C.F.R § 265.1085(c)(1), owners and operators of hazardous waste storage tanks of the kind specified in Paragraph 78 above must determine the maximum organic vapor pressure of the hazardous waste contained in the tank.
80. Pursuant to 40 C.F.R § 265.1085(c)(2), tanks of the kind specified in Paragraph 78 above must be equipped with a fixed roof designed to meet the requirements of 40 C.F.R §§ 265.1085(c)(2)(i)-(iv).
81. Pursuant to 40 C.F.R. § 262.34(a)(1)(ii), a generator may accumulate hazardous waste on site without obtaining a permit or interim status for hazardous waste storage, provided that it complies with, *inter alia*, the hazardous waste storage facility tank system air emission detection requirements of 40 C.F.R. Part 265, Subpart J, § 265.1085.
82. Pursuant to 40 CFR §§ 262.34(a)(1)(ii) and 270.2, a large quantity generator facility that comes into existence before November 19, 1980, and that accumulates hazardous waste on site but does not comply with the conditions of 40 CFR § 262.34(a)(1)(ii) for an exemption from regulation and permitting as a hazardous waste storage facility, is the

owner or operator of an existing hazardous waste storage facility, and subject to the storage facility air emission standards for tanks, of 40 C.F.R. § 265.1085(b).

83. The design capacity of Tank #1 at the Facility is less than 75 m<sup>3</sup>.
84. The design capacity of Tank #2 at the Facility is less than 75 m<sup>3</sup>.
85. The design capacity of Tank #4 at the Facility is less than 75 m<sup>3</sup>.
86. The design capacity of Tank #5 at the Facility is less than 75 m<sup>3</sup>.
87. The tank wash referenced in paragraph 15 above that Respondent stores in Tank #1, has a maximum vapor pressure less than 76.6 Kpa.
88. The tank wash referenced in paragraph 15 above that Respondent stores in Tank #2, has a maximum vapor pressure less than 76.6 Kpa.
89. The tank wash referenced in paragraph 15 above that Respondent stores in Tank #4, has a maximum vapor pressure less than 76.6 Kpa.
90. The tank wash referenced in paragraph 15 above that Respondent stores in Tank #5, has a maximum vapor pressure less than 76.6 Kpa.
91. Respondent does not heat the waste tank wash it holds in Tank #1 to a temperature that is greater than the temperature at which the maximum organic vapor pressure of the hazardous waste is determined.
92. Respondent does not heat the waste tank wash it holds in Tank #1 using a waste stabilization process.
93. Respondent does not heat the waste tank wash it holds in Tank #2 to a temperature that is greater than the temperature at which the maximum organic vapor pressure of the hazardous waste is determined.

94. Respondent does not heat the waste tank wash it holds in Tank #2 using a waste stabilization process.
95. Respondent does not heat the waste tank wash it holds in Tank #4 to a temperature that is greater than the temperature at which the maximum organic vapor pressure of the hazardous waste is determined.
96. Respondent does not heat the waste tank wash it holds in Tank #4 using a waste stabilization process.
97. Respondent does not heat the waste tank wash it holds in Tank #5 to a temperature that is greater than the temperature at which the maximum organic vapor pressure of the hazardous waste is determined.
98. Respondent does not heat the waste tank wash it holds in Tank #5 using a waste stabilization process
99. From January 1, 1990, through September 30, 2005, Tank #1 at the Facility did not have a fixed roof in the form of a separate cover installed on the tank, or in the form of an integral part of the tank structural design.
100. From January 1, 1990, through September 30, 2005, Tank #2 at the Facility did not have a fixed roof in the form of a separate cover installed on the tank, or in the form of an integral part of the tank structural design.
101. From January 1, 1990, through September 30, 2005, Tank #4 at the Facility did not have a fixed roof in the form of a separate cover installed on the tank, or in the form of an integral part of the tank structural design.
102. From January 1, 1990, through September 30, 2005, Tank #5 at the Facility did not have a

fixed roof in the form of a separate cover installed on the tank, or in the form of an integral part of the tank structural design.

103. On January 22, 2005, Tank #1 at the Facility was open to the atmosphere.
104. On January 22, 2005, Tank #1 at the Facility had no closure device or closed vent system.
105. On January 22, 2005, Tank #2 at the Facility was open to the atmosphere.
106. On January 22, 2005, Tank #2 at the Facility had no closure device or closed vent system
107. On January 22, 2005, Tank #4 at the Facility was open to the atmosphere.
108. On January 22, 2005, Tank #4 at the Facility had no closure device or closed vent system
109. On January 22, 2005 Tank #5 at the Facility was open to the atmosphere.
110. On January 22, 2005, Tank #5 at the Facility had no closure device or closed vent system
111. From January 1, 1990, through September 30, 2005, Respondent did not determine the maximum organic vapor pressure of the hazardous waste stored in the Tank #1 at the Facility.
112. From January 1, 1990, through September 30, 2005, Respondent did not determine the maximum organic vapor pressure of the hazardous waste stored in the Tank #2 at the Facility.
113. From January 1, 1990, through September 30, 2005, Respondent did not determine the maximum organic vapor pressure of the hazardous waste stored in the Tank #4 at the Facility.
114. From January 1, 1990, through September 30, 2005, Respondent did not determine the maximum organic vapor pressure of the hazardous waste stored in the Tank #5 at the Facility.

115. From January 1, 1990, through September 30, 2005, Respondent failed to comply with the condition in 40 CFR § 262.34(a)(1)(ii) for an exemption from permitting and regulation as a storage facility, that it have a fixed roof, and a closure device or closed vent system, on each of its hazardous waste storage tanks pursuant to 40 CFR Part 265, Subpart CC, § 265.1085.
116. From January 1, 1990, to September 30, 2005, Respondent failed to comply with the condition in 40 CFR § 262.34(a)(1)(ii) for an exemption from permitting and regulation as a storage facility, that it determine, pursuant to 40 CFR Part 265, Subpart CC, § 265.1085(c)(1), the maximum organic vapor pressure of the tank wash stored in its hazardous waste storage tanks.
117. From January 1, 1990, through September 30, 2005, Respondent owned or operated an existing hazardous waste storage facility subject to the control requirements of 40 C.F.R § 265.1085.
118. From January 1, 1990, to September 30, 2005, Respondent owned or operated an existing hazardous waste storage facility subject to 40 C.F.R § 265.1085(b) and (c).
119. Respondent's failures to equip Tanks #1, #2, #4, or #5 at the Facility with a fixed roof, and closure device or closed vent system, violated 40 C.F.R §§ 265.1085(b)(1) and 265.1085(c)(2)(i) - (iv).
120. Respondent's failures to determine the maximum organic vapor pressure of the hazardous waste stored in Tanks #1, #2, #4 or #5 at the Facility, violated 40 C.F.R §§ 265.1085(b)(1) and 265.1085(c)(1).

#### **COUNT 4: Contingency Plan Violations**

121. The allegations of paragraphs 1-120 of the complaint are incorporated by reference as though set forth in full.
122. Pursuant to 35 IAC §§ 725.151, 725.152(a) and (c), and 725.153(a) [40 C.F.R. §§ 265.51, 265.52(a) and (c), and 265.53(a)], owners or operators of hazardous waste storage facilities must have and maintain at the facility a contingency plan that is 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 constituents to air, soil, or surface water; and that, *inter alia*, describes actions facility personnel must take to comply with 35 IAC §§ 725.51 and 725.56 in response to fires and explosions or any release of hazardous waste; and that describes arrangements agreed to by local police departments, fire departments, hospitals, contractors, and State and local emergency response teams to coordinate emergency services.
123. Pursuant to 35 IAC § 725.153, an owner or operator of a hazardous waste storage facility must submit copies of the contingency plan to all local police departments, fire departments, hospitals and State and local emergency response teams that may be called to provide emergency services.
124. Pursuant to 35 IAC § 725.153(a) [40 CFR § 265.53(a)], an owner or operator of a hazardous waste storage facility must maintain at the facility a copy of the written contingency plan for the Facility, required by 35 IAC § 725.151(a) [40 CFR § 265.53(a)]
125. Pursuant to 35 IAC § 722.134(a)(4) [40 CFR § 262.34(a)(4)], a generator may accumulate hazardous waste on site without obtaining a permit or interim status for hazardous waste

storage, provided that it complies with, *inter alia*, the storage facility contingency plan requirements of 35 IAC Part 725, Subpart D, §§ 725.151 through 725.153 [40 C.F.R. Part 265, Subpart D, §§ 265.51 through 265.53].

126. Pursuant to 35 IAC §§ 722.134(a)(1)(B) and 702.110 [40 CFR § 262.34(a)(4) and 270.2], a large quantity generator facility that comes into existence before November 19, 1980, and that accumulates hazardous waste on site but does not comply with the conditions of 35 IAC 722.134(a)(4) [40 CFR § 262.34(a)(4)] for exemption from regulation and permitting as a storage facility, is the owner or operator of a hazardous waste storage facility, and subject to the contingency plan requirements of 35 IAC §§ 725.151 through 725.153 [40 C.F.R. §§ 265.51 - 265.53].
127. From May 7, 1986, to January 22, 2004, Respondent did not have a written contingency plan for the Facility, that was 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 constituents to air, soil, or surface water.
128. From May 7, 1986, to January 22, 2004, Respondent did not have a written contingency plan for the Facility, that describes actions facility personnel must take to comply with 35 IAC §§ 725.51 and 725.56 in response to fires and explosions or any release of hazardous waste
129. From May 7, 1986, to January 22, 2004, Respondent did not have a written contingency plan for the Facility, that describes arrangements agreed to by local police departments, fire departments, hospitals, contractors, and State and local emergency response teams to coordinate emergency services.

130. From May 7, 1986, to January 22, 2004, Respondent did not have any written contingency plan for the Facility.
131. On January 22, 2004, Respondent did not maintain at the Facility a copy of a written contingency plan for the Facility.
132. From January 1, 1990, to January 22, 2005, Respondent failed to comply with the condition in 35 IAC § 722.134(a)(4) [40 CFR § 262.34(a)(4)] for an exemption from permitting and regulation as a storage facility, that it have a written contingency plan pursuant to 35 IAC Part 725, Subpart D, §§ 725.151 through 725.153 [40 C.F.R § 265.51 - 265.153].
133. From January 1, 1990, through September 30, 2005, Respondent owned or operated at the Facility a hazardous waste storage facility subject to the contingency plan requirements of 35 IAC §§ 725.151 through 725.153 [40 C.F.R § 265.51 - 265.153].
134. Respondent's failures to have a written contingency plan violated 35 IAC §§ 725.151 and 725.152(a) and (c)-(f) [40 C.F.R. §§ 265.51, 265.52(a) and (c)-(f)].
135. Respondent's failures to maintain at the Facility a copy of a written contingency plan, violated 35 IAC §725.153(a) [40 C.F.R. §§ 265.51, 265.52(a) and (c)-(f), and 265.53].

**COUNT 5: Personnel Training and Training Records Violations**

136. Complainant incorporates paragraphs 1 through 135 of this Complaint as though set forth fully in this paragraph.
137. Pursuant to 35 IAC §§ 725.116 (a)(1) and (b) [40 C.F.R. §§ 265.16(a)(1) and (b)], within 6 months after the effective date of the regulation or six months after the date of their

- employment or assignment to a facility, or to a new position at the facility, hazardous waste facility personnel must 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 § 725.116.
138. Pursuant to 35 IAC §725.116 (b) [40 CFR § 265.16(b)], employees in unsupervised positions involving hazardous waste management must complete hazardous waste personnel training prior to beginning unsupervised work.
  139. Pursuant to 35 IAC § 725.116 (b)(2) [40 C.F.R. § 265.16(a)(2)], hazardous waste personnel training programs must be directed by a person trained in hazardous waste management procedures.
  140. Pursuant to 35 IAC § 725.116 (a)(3) [40 C.F.R. §265.16(a)(3)] the hazardous waste training program for hazardous waste storage facility personnel must include instruction which teaches facility personnel hazardous waste management procedures relevant to the positions in which they are employed, including contingency plan implementation procedures, and 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.
  141. Pursuant to 35 IAC 725.116 (c), [40 C.F.R. § 265.16(c)] the owner or operator of a hazardous waste management facility must provide to the facility personnel employed in positions related to hazardous waste management, annual review of the initial hazardous waste training.
  142. Pursuant to 35 IAC §§ 725.116 (b)(2), (3),(4), [40 C.F.R. §§ 265.16(d)(2), (3), and (4)],

- the owner or operator of a hazardous waste management facility must maintain at the facility a written job description for each position at the facility related to hazardous waste; a written description of the type and amount of both introductory and continuing training that will be given to each person in a position related to hazardous waste management; and records that document that the hazardous waste personnel training or job experience has been given to, and completed by, facility personnel.
143. Pursuant to 35 IAC § 725.134(a)(4) [40 CFR § 262.34(a)(4)], a large quantity generator may accumulate hazardous waste on site without obtaining a permit or interim status for hazardous waste storage, provided that it complies with, *inter alia*, the hazardous waste storage facility personnel training requirements of 35 IAC § 725.116.
  144. Pursuant to 35 IAC §§ 722.134(a)(4) and 702.110 [40 CFR §§ 262.34(a)(4) and 270.2], a large quantity generator facility that comes into existence before November 19, 1980, and that accumulates hazardous waste on site but does not comply with the conditions of 35 IAC § 722.134(a)(4) [40 CFR § 262.34(a)(4)] for exemption from regulation and permitting as a storage facility, is the owner or operator of a hazardous waste storage facility, and subject to the hazardous waste personnel training and recordkeeping requirements of 35 IAC § 725.116 [40 CFR § 265.16].
  145. From on or about November 1, 1986, to September 30, 2005, Respondent employed James Lee at the Facility.
  146. From on or about November 1, 1986, James Lee's responsibilities at Respondent's Facility included hazardous waste management.
  147. From on or about November 15, 1986, to September 30, 2005, James Lee performed his

- duties without supervision.
148. From on or about November 15, 1986, to February 28, 2003, Respondent did not provide James Lee with hazardous waste personnel training, directed by a person trained in hazardous waste management procedures, that included instruction in procedures for using, inspecting, repairing or replacing emergency equipment.
  149. From on or about November 15, 1986, to February 28, 2003, Respondent did not provide James Lee with hazardous waste personnel training, directed by a person trained in hazardous waste management procedures, that included instruction in emergency communications or alarm systems.
  150. From on or about November 15, 1986, to February 28, 2003, Respondent did not provide James Lee with hazardous waste personnel training, directed by a person trained in hazardous waste management procedures, that included instruction in procedures for shutdown of operations.
  151. From November 15, 1986 to February 28, 2003, Respondent did not provide James Lee with hazardous waste personnel training, directed by a person trained in hazardous waste management procedures, that taught him to perform his duties in a way that ensured the facility's compliance with the requirement of 35 IAC 725 to minimize the possibility of releases of hazardous waste to land or water, or with other requirements of 35 IAC Part 725 relevant to his position.
  152. From on or about September 1, 1993, to September 30, 2005, Respondent employed Richard Sleckman at the Facility.
  153. From on or about September 1, 1993, Richard Sleckman's responsibilities at

Respondent's Facility included hazardous waste management.

154. From on or about September 15, 1993, to September 30, 2005, Richard Sleckman performed his duties without supervision.
155. From on or about September 15, 1993, to February 28, 2003, Respondent did not provide Richard Sleckman with hazardous waste personnel training, directed by a person trained in hazardous waste management procedures, that included instruction in procedures for using, inspecting, repairing or replacing emergency equipment.
156. From on or about September 15, 1993, to February 28, 2003, Respondent did not provide Richard Sleckman with hazardous waste personnel training, directed by a person trained in hazardous waste management procedures, that included instruction in emergency communications or alarm systems.
157. From on or about September 15, 1993, to February 28, 2003, Respondent did not provide Richard Sleckman with hazardous waste personnel training, directed by a person trained in hazardous waste management procedures, that included instruction in procedures for shutdown of operations.
158. From on or about September 15, 1993 to February 28, 2003, Respondent did not provide Richard Sleckman with hazardous waste personnel training, directed by a person trained in hazardous waste management procedures, that taught him to perform his duties in a way that ensured the facility's compliance with the requirement of 35 IAC 725 to minimize the possibility of releases of hazardous waste to land or water, or with other requirements of 35 IAC Part 725 relevant to his position.
159. From on or about September 1, 1988, to September 30, 2005, Respondent employed

Richard Roman at the Facility.

160. From on or about September 1, 1988, Richard Roman's responsibilities at Respondent's Facility included hazardous waste management.
161. From on or about September 15, 1998, to September 30, 2005, Richard Roman performed his duties without supervision.
162. From on or about September 15, 1988, to February 28, 2003, Respondent did not provide Richard Roman with hazardous waste personnel training, directed by a person trained in hazardous waste management procedures, that included instruction in procedures for using, inspecting, repairing or replacing emergency equipment.
163. From on or about November 1, 1988, to February 28, 2003, Respondent did not provide Richard Roman with hazardous waste personnel training, directed by a person trained in hazardous waste management procedures, that included instruction in emergency communications or alarm systems.
164. From on or about November 1, 1988, to February 28, 2003, Respondent did not provide Richard Roman with hazardous waste personnel training, directed by a person trained in hazardous waste management procedures, that included instruction in procedures for shutdown of operations.
165. From on or about November 1, 1988 to February 28, 2003, Respondent did not provide Richard Roman with hazardous waste personnel training, directed by a person trained in hazardous waste management procedures, that taught him to perform his duties in a way that ensured the facility's compliance with the requirement of 35 IAC 725 to minimize the possibility of releases of hazardous waste to land or water, or with other requirements of

- 35 IAC 725 relevant to his position.
166. From on or about October 1, 2000, to September 30, 2005, Respondent employed Kathy Spencer at the Facility.
  167. From on or about October 1, 2000, to September 30, 2005, Kathy Spencer's responsibilities at Respondent's Facility included hazardous waste management.
  168. From on or about October 15, 2000, to September 30, 2005, Kathy Spencer performed her duties without supervision.
  169. From on or about October 15, 2000, to February 28, 2003, Respondent did not provide Kathy Spencer with hazardous waste personnel training, directed by a person trained in hazardous waste management procedures, that included instruction in procedures for using, inspecting, repairing or replacing emergency equipment.
  170. From on or about October 15, 2000, to February 28, 2003, Respondent did not provide Kathy Spencer with hazardous waste personnel training, directed by a person trained in hazardous waste management procedures, that included instruction in emergency communications or alarm systems.
  171. From on or about October 15, 2000, to February 28, 2003, Respondent did not provide Kathy Spencer with hazardous waste personnel training, directed by a person trained in hazardous waste management procedures, that included instruction in procedures for shutdown of operations.
  172. From on or about October 15, 2000, to February 28, 2003, Respondent did not provide Kathy Spencer with hazardous waste personnel training, directed by a person trained in hazardous waste management procedures, that taught her to perform her duties in a way

that ensured the facility's compliance with the requirement of 35 IAC 725 to minimize the possibility of releases of hazardous waste to land or water, or with other requirements of 35 IAC 725 relevant to his position.

173. From on or about November 15, 1986, to January 22, 2004, Respondent did not have at the Facility, records containing the job title for each position related to hazardous waste management, required by 35 IAC § 725.116(d)(1) [40 C.F.R. § 265.16(d)(1)].
174. From on or about November 15, 1986, to January 22, 2004, Respondent did not have at the Facility records containing a written job description for each position related to hazardous waste management, required by 35 IAC § 725.116(d)(2) [40 C.F.R. § 265.16(d)(2)].
175. From on or about November 15 1986, to January 22, 2004, Respondent did not have at the Facility records containing a written description of the type and amount of both introductory and continuing training that will be given to each person filling a position related to hazardous waste management pursuant to pursuant to 35 IAC § 725.116(d)(3) [40 C.F.R. § 265.16(d)(3)].
176. From on or about November 15, 1986, to February 28, 2003, Respondent failed to comply with the condition in 35 IAC § 722.134(a)(4) [40 CFR § 262.34(a)(4)] for an exemption from regulation and permitting as a storage facility, that it train its hazardous waste personnel pursuant to 35 IAC § 725.116 [40 CFR § 265.16].
177. From on or about November 15, 1986, to February 28, 2003, Respondent owned or operated a hazardous waste storage facility subject to the personnel training, and training recordkeeping, requirements of 35 IAC § 725.116 [40 C.F.R. § 265.16]

178. Respondent's failures to provide hazardous waste training to its personnel in positions involving hazardous waste management violated 35 IAC § 725.116(a)(1) [40 C.F.R. § 265.16(a)(1)].
179. Respondent's failures to maintain at the facility the job title, written job description, and written description of training that will be provided, for each employee in a position involving hazardous waste management, violated 35 IAC §§ 725.116(d) (1), (2) and (3) [40 CFR §§ 265.16(d)(1), (2), and (3).]

**COUNT 6: Prohibited Storage and Permitting Violation**

180. The allegations of paragraphs 1-179 of the complaint are incorporated herein by reference as though set forth in full.
181. Pursuant to Section 3005(a) of RCRA, 42 U.S.C. §§ 6925(a), the storage of hazardous waste by a facility in existence on or after November 19, 1980, or on the effective date of regulations requiring a permit, is prohibited except in accordance with a permit.
182. Pursuant to 35 IAC §§ 703.121(a)(1) and (b), and 40 CFR §§ 270.1(c), no person may conduct any hazardous waste storage without a RCRA permit for the hazardous waste management facility, and an owner or operator of hazardous waste management units must have a permit for each unit during the active life of the unit.
183. Pursuant to 35 IAC § 702.110, and 40 CFR § 270.2, a generator of hazardous wastes, the facility of which has been in existence since on or before November 19, 1980, and that accumulates hazardous waste, is the owner or operator of an "existing" hazardous waste management facility. Pursuant to 35 IAC § 703.150(a) and 703.180(a), and 40 CFR §

- 270.10(a) and (e), a hazardous waste management facility that has been in existence since on or before November 19, 1980, and that is not exempt from the permitting requirement, must file a Part A permit application as the initial step in obtaining a permit. .
184. Pursuant to 35 IAC §§ 722.134(a) and (b) [40 C.F.R. § 262.34(a) and (b)], a generator of hazardous wastes who accumulates hazardous waste for more than 90 days, or fails to comply with any other condition for a permit exemption in 35 IAC § 722.134, is an owner or operator of a hazardous waste storage facility, and is subject to the requirements of 35 IAC Part 724 or 725 [40 C.F.R. Part 264 or 265], and the permit requirements of 35 IAC Part 703 [40 C.F.R. Part 270].
185. Pursuant to 40 C.F.R. § 262.34(a) and (b), a generator of hazardous wastes in Illinois who fails to comply with the condition for a permit exemption in 40 CFR § 262.34(a)(1)(i), that it comply with the tank air emission control requirements of 40 CFR Part 265, Subpart CC, § 265.1085, is an owner or operator of a hazardous waste storage facility, and is subject to the requirements of 40 C.F.R. Part 264 or 265, and the permit requirements of 40 CFR Part 270.
186. On August 20, 2002, Respondent was holding one hundred and sixty-eight 55-gallon drums containing hazardous waste in two semi-trailer trucks, in an area at the Facility that the Respondent designated as Drum Storage Area 1 (DSA 1).
187. Respondent held drums of hazardous waste referenced in paragraph 186 above at the Facility from on or about January 1, 1993, until September 10, 2002.
188. The drums referenced in paragraph 186 above contained waste paint referenced in paragraph 13 above.

189. On August 20, 2002, Respondent was holding fifty-one 55-gallon drums containing hazardous waste in an area at the Facility that Respondent designated as Drum Storage Area 2 (DSA 2).
190. Respondent held the drums referenced in paragraph 189 at the Facility from on or about January 1, 1999, until September 10, 2002.
191. The drums referenced in paragraph 189 above contained waste paint referenced in paragraphs 13 and 14 above.
192. On or about October 2, 2002, Respondent submitted to Illinois EPA a Closure Plan for DSA1 and DSA2.
193. On or about December 1, 2003, Respondent certified closure of DSA1 and DSA2.
194. From on or about January 1, 1993, until on or about September 10, 2002, Respondent failed to comply with the condition for an exemption from a hazardous storage permit in 35 IAC § 722.134(a) [40 CFR § 262.34(a)], that it accumulate hazardous waste no longer than 90 days.
195. From November 15, 1986, through September 30, 2005, Respondent failed to comply with the conditions in 35 IAC § 722.134 for an exemption from a hazardous waste storage permit, that are referenced in paragraphs 58, 74, 132 and 176 above.
196. From November 15, 1986, through September 30, 2005, Respondent's Facility was an existing hazardous waste management facility for the storage of hazardous waste, and was subject to the permitting and permit application requirements of 35 IAC §§ 703.121(a)(1) and (b), and 703.180 [40 CFR §§ 270.1(c), and 270.10(a) and (e)].
197. Respondent has never filed with the Illinois Environmental Protection Agency (Illinois

EPA), a RCRA Part A permit application for the storage of hazardous waste at the Facility.

198. Respondent never obtained from the Illinois EPA a permit or interim status for the storage of hazardous waste at the Facility.
199. From January 1, 1990, through September 30, 2005, Respondent failed to comply with the conditions in 40 CFR § 262.34(a)(1)(i) for an exemption from a hazardous waste storage permit, that it comply with the air emission control requirements of subpart CC of 40 CFR Part 265, that are referenced in paragraphs 115 and 116 above.
200. From January 1, 1990, through September 30, 2005, Respondent's Facility was an existing hazardous waste management facility for the storage of hazardous waste, and was subject to the permitting and permit application requirements of 40 CFR §§ 270.1(c), and 270.10(a) and (e).
201. Respondent has never filed with the U.S. EPA, a RCRA Part A permit application for the storage of hazardous waste at the Facility.
202. Respondent never obtained from the U.S. EPA a permit or interim status for the storage of hazardous waste at the Facility.
203. Respondent's storage of hazardous waste not in accordance with a permit violated Section 3005(a) of RCRA, 42 U.S.C. 6925(a).
204. Respondent's failure to obtain a permit from the Illinois EPA for the storage of hazardous waste, and its failure to file a Part A permit application, violated 35 IAC §§ 703.121(a)(1) and (b), and 703.180(a) [40 CFR §§ 270.1(c), and 270.10(a) and (e)].
205. Respondent's failure to obtain a permit from the U.S. EPA for the storage of hazardous

waste, and its failure to file a Part A permit application, violated 40 CFR §§ 270.1(c), and 270.10(a) and (e).

## II. PROPOSED CIVIL PENALTY

According to RCRA Section 3008, 42 U.S.C. § 6928, the Administrator of U.S. EPA may assess a civil penalty of up to \$25,000 per day for each violation of Subtitle C of RCRA. 42 U.S.C. § 6928. Specifically, Section 3008(c) of RCRA, 42 U.S.C. § 6928(c), states that:

Any penalty assessed in the order shall not exceed \$25,000 per day of noncompliance for each violation of a requirement of this subchapter. In assessing such a penalty, the Administrator shall take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements.

The Federal Civil Penalties Inflation Adjustment Act of 1990, Act Oct. 5, 1990, P.L. 101-410, §§ 1-6, 104 Stat. 890-892; April 26, 1996, P.L. 104-134, Title III, Ch 10, § 31001(s)(1), 110 Stat. 1321-373, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, required U.S. EPA to periodically adjust its penalties under RCRA for inflation. Specifically, Section 4 of the Act reads as follows:

"Sec. 4. The head of each agency shall, not later than 180 days after the date of enactment of the Debt Collection Improvement Act of 1996 [enacted April 26, 1996], and at least once every 4 years thereafter--"(1) by regulation adjust each civil monetary penalty provided by law within the jurisdiction of the Federal agency, except for any penalty (including any addition to tax and additional amount) under the Internal Revenue Code of 1986 [26 USCS §§ 1 et seq.], the Tariff Act of 1930 [ 19 USCS §§ 1301 et seq. generally; for full classification, consult USCS Tables volumes], the Occupational Safety and Health Act of 1970 [ 29 USCS §§ 651 et seq. generally; for full classification, consult USCS Tables volumes], or the Social Security Act [ 42 USCS §§ 301 et seq.], by the inflation adjustment described under section 5 of this Act; and "(2) publish each such regulation in the Federal Register.

Pursuant to the Civil Monetary Penalty Inflation Adjustment Rule, published at 40 C.F.R. Part 19,

and more specifically 40 CFR § 19.4, U.S. EPA may assess a civil penalty of up to \$27,500 per day for each violation of Subtitle C of RCRA occurring or continuing on or after January 31, 1997. Complainant relies upon the statutory penalty authorities recited above in requesting a civil penalty for Respondent's violations. Title 40, Section 22.14(a)(4)(ii) of the Code of Federal Regulation 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 RCRA Section 3008(c), and the Federal Civil Penalties Inflation Adjustment Act of 1990, both recited above, in an amount not greater than \$27,500 per day of violation for each of the six counts alleged herein.

In addition, Complainant has considered the facts and circumstances of this case with specific reference to U.S. EPA's 1990 RCRA Civil Penalty Policy, as revised June 23, 2003. A copy of the penalty policy is being provided with this Complaint. The Penalty Policy provides a consistent method of applying the statutory penalty factors to this case. Consistent with the Penalty Policy, Complainant states the following regarding the Respondent's violations, pursuant to 40 CFR § 22.14(a)(4)(ii):

a. Count 1: Tank Assessment Violations [35 IAC § 725.292(a) and (g) (40 CFR §§ 265.192(a) and (g)]

A penalty will be sought for 180 days of violation of the requirement to have a certified tank assessment. This violation represented a moderate potential for harm and a major deviation from the regulatory requirement.

b. Count 2: Secondary Containment Violations [35 IAC § 725.293(e)(1)(C) [40 CFR 265.193(e)(1)(iii)].

A penalty will be sought for 180 days of violation of these requirements. The violation represented a moderate potential for harm and a major deviation from the regulatory requirement.

c. Count 3: Tank System Air Emission Violations [(40 CFR § 265.1080)] .

A penalty will be sought for 180 days of violation of this requirement. Respondent's violation represented a moderate potential for harm, and a major deviation from the regulatory requirement.

d. Count 4: Contingency Plan Violations [35 IAC § 724.153 (40 CFR § 264.53)].

A penalty will be sought for one day of violation of this requirement. Respondent's violation represented a minor potential for harm, and a major deviation from the regulatory requirement.

e. Count 5: Hazardous Waste Training Violations [35 IAC § 724.116 (40 CFR § 264.16)]

A penalty will be sought for 180 days of violation of this requirement. Respondent's violation represented a moderate potential for harm, and a major deviation from the regulatory requirement.

f. Count 6: Prohibited Storage and Permitting Violations.

A penalty will be sought for 180 days of violation of this requirement. Respondent's violation represented a major potential for harm, and a major deviation from the regulatory requirement.

Pursuant to 40 CFR § 22.19(a)(4), U.S. EPA will propose a specific civil penalty after the pre-hearing information exchange. Once a civil penalty has been proposed and accepted or

ordered, the Respondent shall make payment by certified or cashier's check payable to the Treasurer of the United States of America, which shall be remitted to the U.S. Environmental Protection Agency, Region 5, P.O. Box 70753, Chicago, Illinois 60673.

A copy of the check shall be sent to:

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

and

Spiros Bourgikos  
Waste, Pesticides & Toxics Division (DE-9J)  
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, Respondent is hereby ordered-- pursuant to authority in 3008(a) of RCRA, 42 U.S.C. § 6928(a), and § 22.37(b) of the Consolidated Rules-- to comply with the following requirements immediately upon the effective date of this Order:

1. Respondent shall achieve, and certify to U.S. EPA and the Illinois EPA, full compliance with all applicable conditions in 35 IAC § 722.134 for a large quantity generator exemption from full regulation as a storage facility and the requirement to obtain a hazardous waste storage permit; or cease operations and obtain a hazardous waste storage permit from the Illinois EPA for all of the hazardous waste management units at the

Facility, and a hazardous waste storage permit from the U.S. EPA for the hazardous waste storage tanks at the Facility, to implement the Facility's compliance with subpart CC of 40 CFR Part 264.

3. Respondent shall provide U.S. EPA a written assessment for each of the four tanks at the Facility that are used to store hazardous waste, by an independent, qualified registered engineer in accordance with 35 IAC § 702.126(d), that attests that each tank system at the facility has sufficient structural integrity and is acceptable for the storage of hazardous waste.
4. Respondent shall equip each of the four tanks that are used to store hazardous waste, with secondary containment pursuant to 35 IAC § 725.293(a) [40 C.F.R § 265.193(a)], that fully complies with the requirements of 35 IAC § 725.293(c) (1)-(4) [40 C.F.R § 265.193(c)(1)-(4)].
5. Respondent shall control the air emissions from each of the four tanks pursuant to 40 C.F.R §265.1085(b)(1)(i)(C), and 265.1085(c)(1), meeting the specifications of 40 C.F.R § 265.1085(c)(2).
6. Respondent shall develop and maintain at the Facility a written contingency plan pursuant to 35 IAC §§ 725.151 - 153 [40 C.F.R § 265.51 - 53].
7. Respondent shall provide U.S. EPA a copy of all training records required by 35 IAC § 725.116 [40 CFR § 265.16], including but not limited to job and training descriptions.
8. Respondent shall notify U.S. EPA in writing upon achieving compliance with this Order within 15 calendar days after the date it achieves compliance. If Respondent has not taken or completed any requirement of this Order, Respondent shall notify U.S. EPA of the

failure, its reasons for the failure, and the proposed date for compliance within 10 calendar days after the due date set forth in this Order.

9. Respondent shall submit all reports, submissions, and notifications required by this Order the United States Environmental Protection Agency, Region 5, Waste, Pesticides and Toxics Division, Enforcement and Compliance Assurance Branch, Attention: Spiros Bourgikos (DE-9J), 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 the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits," to be codified at 40 C.F.R. Part 22. A copy of these rules accompanies this Complaint. **To request a hearing, Respondent must specifically make the request in a written Answer to this Complaint. Respondent must file its written Answer with the Regional Hearing Clerk within 30 days after service of this Complaint.** Consolidated Rules at § 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. Consolidated Rules at § 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 Respondent has any knowledge, or clearly state that Respondent has no knowledge as to particular factual allegations in the Complaint. The Answer shall also state:

1. The circumstances or arguments alleged to constitute the grounds of defense;
2. the facts Respondent intends to place at issue; and
3. **whether Respondent requests a hearing.**

Where Respondent states that it has no knowledge of a particular factual allegation, the allegation is deemed denied. Respondent's failure to admit, deny, or explain any material fact in the Complaint constitutes an admission of that allegation. Consolidated Rules at § 22.15.

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 to Michael McClary, Office of Regional Counsel (C-14J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590. Michael McClary may be telephoned at (312) 886-7163.

**If 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** pursuant to § 22.17 of the Consolidated Rules. For purposes of this action only, default by Respondent constitutes an admission of all facts alleged in the Complaint and a waiver of Respondent's right to a hearing on the factual allegations under Section 3008 of RCRA, 42 U.S.C. § 6928. Default will also result in the penalty proposed in the Complaint becoming due and payable by Respondent without further proceedings 30 days after issuance of a final order upon

default under § 22.27(c) of the Consolidated Rules. 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 Respondent in the Answer) and conducted according to the Administrative Procedures Act, 5 U.S.C. §§ 551 *et seq.*. The hearing will be in a location determined pursuant to § 22.21(d) of the Consolidated Rules.

## V. SETTLEMENT CONFERENCE

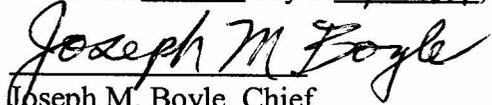
Whether or not you as Respondent request a hearing, you may request an informal conference to discuss the facts of this case and to arrive at a settlement. To request a settlement conference, Respondent should write to Spiros Bourgikos, Enforcement and Compliance Assurance Branch (DE-9J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, or telephone him at (312) 886-6862.

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. Respondent may pursue the informal conference procedure simultaneously with the adjudicatory hearing procedure.

U.S. EPA encourages all parties for whom a civil penalty is proposed to pursue the possibilities of settlement through an informal conference. U.S. 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, Waste, Pesticides and Toxics Division, U.S. EPA, Region 5. The

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

Dated this 30<sup>th</sup> day of September, 2005.



Joseph M. Boyle, Chief  
Enforcement and Compliance Assurance Branch  
Waste, Pesticides and Toxics Division  
U.S. Environmental Protection Agency  
Region 5

Complaint Docket No. RCRA-05- 2005 0024

CASE NAME: Crest Industries Ltd.  
DOCKET NO: RCRA-05- 2005 0024

**CERTIFICATE OF SERVICE**

I hereby certify that today I filed the original of this **Complaint and Compliance Order** and this **Certificate of Service** in the office of the Regional Hearing Clerk (E-19J), United States Environmental Protection Agency, Region 5, 77 W. Jackson Boulevard, Chicago, IL 60604-3590.

I further certify that I then caused true and correct copies of the filed document to be mailed on 30 SEP 2005 Via Certified Mail, Return Receipt Requested to the following:

#7001 0320 0006 1448 4639 James K. Lee.  
President  
Crest Industries Ltd.  
1066 Industry Road.  
New Lenox, Illinois 60451

And Via 1<sup>st</sup> Class Mail Todd Marvel  
Bureau of Land  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
Post Office Box 19276  
Springfield, Illinois 62794-9276

Dated: 30 SEP 2005

  
Ronza J. Jordan  
Administrative Program Asst.  
Waste, Pesticides and Toxics  
Division  
United States Environmental  
Protection Agency  
77 W. Jackson Boulevard  
Chicago, IL 60604-3590  
(312) 353-0849

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PROTECTION AGENCY  
REGION V