UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:	)	
	)	DOCKET NO. RCRA-05-2009-0013
Elite Enterprises, Inc. 2701 S. Coliseum Blvd. Suite 1158 Fort Wayne, IN 46803	)	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)
U.S. EPA ID No. IND 985 102 607	)	
Creative Liquid Coatings, Inc. (formerly doing business as Creative Coatings, Inc.)	)	**COMPLAINANT'S REBUTTAL PREHEARING EXCHANGE**
AND	)	
Randall Geist	)	
Respondents	)	

COMPLAINANT'S REBUTTAL PREHEARING EXCHANGE

Complainant is filing this Prehearing Exchange pursuant to Judge Gunning's October 22, 2009, Prehearing Order. This Rebuttal Prehearing Exchange supplements Complainant's previously submitted Prehearing Exchange dated December 30, 2009, and responds to Respondents' Prehearing Exchange dated February 2, 2010. The Complainant reserves its right to supplement it prehearing exchanges with additional documents or witnesses. The Complainant further reserves the ability to request additional discovery pursuant to Section 22.19(c) of the Consolidated Rules of Practice, 40 C.F.R. 22.19(c).

1. A. Witness

Complainant may call any of the witnesses it has previously identified and those identified by the Respondent in rebuttal. The Complainant may call the following individuals in rebuttal or in its case-in-chief:

1. **Fact Witnesses**

Ted Zachariah. Mr. Zachariah is a former driver for K-Com Transport Services. Mr. Zachariah may be called upon to testify as to his knowledge regarding the hazardous waste picked up at Elite Enterprises, Inc., Creative Coatings, Inc. and Creative Liquid Coatings, Inc. during the relevant time period. His testimony may include information regarding how Suites 1158 and 1284 managed, stored, transported and disposed of hazardous wastes.

Mark Wiegel. Mr. Wiegel is a former driver for K-Com Transport Services. Mr. Wiegel may be called upon to testify as to his knowledge regarding the hazardous waste picked up at Elite Enterprises, Inc., Creative Coatings, Inc. and Creative Liquid Coatings, Inc. during the relevant time period. His testimony may include information regarding how Suites 1158 and 1284 managed, stored, transported and disposed of hazardous wastes.

Patrick Kemp. Mr. Kemp is the Owner of K-Com Transport Services. Mr. Kemp may be called upon to testify as to his knowledge regarding the hazardous waste picked up at Elite and Creative during the relevant time period. His testimony may include information regarding how Suite 1158 and 1284 managed, stored, transported and disposed of hazardous wastes.

Carolyn Wright. Ms. Wright former employee of K-Com Transport Services. Ms. Wright may be called upon to testify as to her knowledge regarding the hazardous waste picked up at Elite and Creative during the relevant time period. Her testimony may include information regarding how Suites 1158 and 1284 managed, stored, transported and disposed of hazardous wastes.

Greg David, former employee of Elite and Creative – In addition to the areas of testimony identified in the Complainant's Prehearing Exchange the Complainant may call upon Mr. David

to testify as to his knowledge regarding operations of Elite Enterprises, Inc. and Creative Liquid Coatings, Inc. at Suites 1158 and 1284, including without limitation, the generation, management, storage and disposal of hazardous wastes. Mr. David may also testify regarding the activities and involvement of Randall Geist in the operations of Elite Enterprise, Inc. and Creative Liquid Coatings, Inc.

Maureen O'Neill, USEPA – In addition to her testimony identified in the Prehearing Exchange, Ms. O'Neill may be called upon to testify as to her interviews with various relevant individuals, including former employees of K-Com Transport Services. She may also be called upon to testify to her observations and photographs taken of activities at 2701 S. Coliseum Boulevard.

B. Exhibits

Complainant has included additional exhibits that it may use in rebuttal or as part of its case-in-chief. The exhibits are included as an attachment to this Rebuttal Prehearing Exchange.

2. Factual information relevant to assessment of penalty.

See Attachment 1.

3. **Proposed Penalty** - $313,722

See Attachment 1 for an explanation of how it was calculated.

Respectfully submitted,

Richard J. Clarizio
Karen L. Peaceman
Gary Steinbauer

Attorneys for USEPA, Region 5
Office of Regional Counsel

Date: Feb. 17, 2010

In the Matter of ***Elite Enterprises, Inc. (USEPA ID No. IND 985 102 607); Creative Liquid Coatings, Inc. (fdb Creative Coatings, Inc.) and Randall Geist,*** **Respondents**
Docket No. RCRA-05-2009-0013.

CERTIFICATE OF SERVICE

I certify that the foregoing **Rebuttal Prehearing Exchange,** dated FEB 17 2010, was sent this day in the following manner to the addressees listed below:

La Dawn Whitehead
Regional Hearing Clerk
USEPA
77 West Jackson Boulevard, E-19J
Chicago, Illinois 60604-3590

Copy by Regular Mail To:

David L. Hatchett, Esquire
Jaimie K. Saylor, Esquire
Hatchett & Hauck LLP
111 Monument Circle, Suite 301
Indianapolis, IN 46204-5124

Copy by Pouch Mail To:

Honorable Barbara A. Gunning
USEPA
Office of Administrative Law Judges
1200 Pennsylvania Avenue, N.W.
Mail Code 1900L
Washington D.C., 20005

Elizabeth Rosado
USEPA, Region 5, ORC

Date: FEB 17 2010

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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Creative Liquid Coatings, Inc. (formerly doing business as Creative Coatings, Inc.)	)	**COMPLAINANT'S REBUTTAL PREHEARING EXCHANGE**
AND	)	
Randall Geist	)	
Respondents	)	

COMPLAINANT'S REBUTTAL PREHEARING EXCHANGE

ATTACHMENT 1

PENALTY FACTS
SUITE 1158 – IND 985 102 607

Count I – Storage of hazardous waste without a permit or interim status

I. Regulations Violated: 329 IAC 3.1-1-7, 3.1-7-1, 3.1-10-1, and 3.1-13-1; 40 CFR §§ 270.1(c), 262.34(a) and (b)

II. Short description of violation: Respondents stored hazardous waste greater than 90 days; without a contingency plan on-site; with inadequate employee training during years 2001 to 2004, container dating; without weekly inspections during July 2004 to October 2005; and without a permit for the storage of hazardous waste.

III. Short summary of information reviewed:

EPA reviewed a number of documents and information available to it. Presented below is a summary list of most of the documents EPA relied on. It is not an exhaustive list. EPA's prehearing exchange has identified additional documents and potential testimony that may be relevant to the calculation of the appropriate penalty. EPA reserves the right to present that additional information or potential testimony.

- June 23, 2003, Final revised RCRA Civil Penalty Policy.
- July 7, 2005, Inspection Report by Todd Brown.
- October 25, November 8, 14, and 28, 2005, correspondence from Elite Enterprises responding to EPA's October 5, 2005, information request.
- January 7, 2006, correspondence from Elite Enterprises responding to EPA's December 16, 2005, Notice of Violation.
- January 31, 2007, correspondence from Randall Geist to Matthew Chaifetz related to operations at Elite Enterprises and Creative Coatings.
- January 4 and February 15, 2008, correspondence from Randall Geist responding to EPA's prefiling notice letter.
- June 1, 2008, correspondence from Stephen Geist responding to EPA's prefiling notice letter.
- Manifests dated May 2 and 13, August 15 and 19 and November 11, 2003.
- Manifests dated January 20 (2), April 3 and 26, July 17 and 27, 2004.
- Manifests date June 27 and July 21, 2005.
- Material Safety Data Sheets (MSDSs) submitted with the October 25, 2005, response to EPA's information request.
- October 15, 2005 and December 23, 2005, copies of 2004 Annual Hazardous Waste Reports.
- May 25, 1993, February 14, 2006 and April 5, 2006, Notification of Hazardous Waste Activity form (Notifications) for IND 985 102 607.
- January 24 and July 22, 2005, weekly inspection logs.
- Contingency plans, training records, and hazardous waste related inspection logs related to operations at Suite 1158 and/or 1284.

- Discussions with Todd Brown related to his inspection on June 22, 2005.
- August 4, 2009, Complaint, RCRA 05-2009-0013.

IV. Penalty calculated: $312,433

V. Short explanation of how penalty calculated: EPA used the 2003 RCRA Civil Penalty Policy (2003 Penalty Policy) to calculate the proposed penalty. See Attachment A for a summary of the calculation. Based on a review of the facts identified below and the 2003 Penalty Policy EPA characterizes the Count I violations as moderate for potential for harm and major for extent of deviation. The potential for harm was significant.

The probability of exposure was moderate due to storage over 90-days, missing information in the Contingency Plan, lack of accurate container dating, and lack of training and weekly inspection records. The potential seriousness of contamination was also moderate, considering that the amount of hazardous waste stored on-site was 880 gallons and the waste was listed and characteristic.

The potential harm to the regulartory program was moderate. Respondents failed to comply with conditions and regulatory requirements applicable to large quantity generators of hazardous waste. The Respondents stored hazardous wastes for more 90-days without a hazardous waste storage permit and without complying with the more stringent storage facility requirements.

The extent of deviation was substantial. The Respondents stored sixteen 55-gallon drums of listed and characteristic hazardous waste in tightly stacked rows. Seven drums were stored over 90-days without a hazardous waste permit. One drum was incorrectly dated. Weekly inspection records of the storage area were missing. The Contingency Plan was missing information, and there were no records of employee training for 2001-2004.

The proposed penalty consists only of a gravity-based penalty amount. EPA used the single day penalty matrix to derive a proposed penalty of $12,250 for the first day of violation. EPA used the multi-day penalty matrix to derive a proposed penalty of $300,183 for 179 days of violation (179 x $1,677). EPA used the mid-point of the range from both the single-day and multi-day penalty matrices. EPA did not have sufficient evidence to justify adjusting the penalty up or down from the mid-point of the respective penalty matrices. Multi-day penalties for days 181+ are discretionary, and EPA elected not to pursue multi-day penalties for longer than 180 days. EPA calculated 179 days of violation.

EPA did not have site-specific information to reliably calculate the economic benefit of non-compliance.

EPA reserves the right to either increase or decrease the proposed penalty based on information submitted prior to and during hearing. Further, EPA reserves the right to

request information relevant to economic benefit of non-compliance and/or increasing or decreasing the proposed penalty.

EPA summarizes below the facts it relied upon to characterize the violation as moderate for potential harm and major for extent of deviation. EPA reserves the right to present additional evidence which may be relevant to the proposed penalty.

VI. Short summary of relevant facts from information reviewed:

A. Local Features and Use

- The violations alleged in the complaint occurred at 2701 S. Coliseum Boulevard, Suite 1158, Fort Wayne. Indiana. Suite 1158 is part of an industrial complex known as the International Park Commerce and Industrial Business Center. ("International Park") located at 2701 S. Coliseum Boulevard..
- There were workers employed at Suite 1158 and other locations within International Park.
- There were storm water and other connections to the sewer system throughout the industrial complex.
- There are residential areas and two parks within the half mile vicinity of International Park and Suite 1158.
- The Maumee River lies approximately one mile north of International Park and Suite 1158.
- The Paul Trier Ditch which feeds into the Maumee River is approximately 500 yards south of International Park and Suite 1158.

B. Suite 1158 location, operation and notification

- Suite 1158 was located within what is referenced as International Park Building 5 from around 1992-1993. Elite Enterprizes, Inc. operated in Suite 1158.
- Elite Enterprizes, Inc. changed its name to Elite Enterprises, Inc. and moved to Building 13 within International Park in 1993. It retained the Suite number 1158 for operations within Building 13.
- Elite Enterprises expanded into Building 26 at International Park in 2002 or 2003. The reference to the space located in Building 13 was changed to Suite 1284 in 2003. The space within Building 26 is referred to as Suite 1158, Building #1 or Plant #1.
- On May 25, 1993, a Notification was submitted for operations at Suite 1158.
- Hazardous Waste Identification Number IND 985 102 607 was assigned to operations at Suite 1158 as a result of the May 25, 1993 Notification.
- Respondents operated at Suite 1158 within International Park from at least May 25, 1993.
- By April 2003 there were four paint booths (PB1-4) located at Suite 1158.
- In April 2003 Elite Enterprises Inc. moved painting work to Suite 1158.
- In February 2006 Elite Enterprises, Inc. discontinued operations at Suite 1158.

- Respondents conducted painting operations at Suite 1158 within International Park from approximately April 2003 to February 2006.

C. Waste generation and storage

- The May 25, 1993, Notification identified operations at Suite 1158 as generating hazardous wastes associated with hazardous waste codes D001 and F005. It also indicated that it was a small quantity generator.
- On June 18, 1998, Elite Enterprises, Inc. revised its generator status to large quantity generator at Suite 1158.
- At least 76,700 lbs of hazardous waste (D001, D007, D008, D035, F003, and F005) were generated at Suite 1158 and reported under ID number IND 985 102 607 and the name Elite Enterprises, Inc. for calendar year 2004.
- Respondents did not have a permit for the storage of hazardous waste at Suite 1158.

D. Off-site shipments and manifests

- On January 24, 2005, there were 37 drums of hazardous waste in storage at Suite 1284 and 1158.
- There were no hazardous waste manifests for shipments from either Suite 1284 or Suite 1158 from July 27, 2004 until June 27, 2005.
- All hazardous waste manifests submitted on October 25, 2005, for year 2003, 2004 and 2005 used EPA ID IND 985 102 607.

E. Amount and type of hazardous wastes on-site during June 22, 2005, inspection

- U.S. EPA inspected Suites 1158 and 1284 on June 22, 2005.
- U.S. EPA observed 18 drums of hazardous waste at Suite 1284 on June 22, 2005.
- U.S. EPA observed 16 drums of hazardous waste at Suite 1158 on June 22, 2005
- During the June 22, 2005 inspection, EPA observed that there were two hazardous waste streams generated at Suite 1158. The waste streams included spent solvents and catalyzed paint wastes;
- The hazardous wastes streams were characteristic hazardous waste and listed hazardous wastes
- The hazardous wastes streams were characteristic hazardous waste because they exceeded the regulatory limits for ignitability, chromium, lead and methyl ethyl ketone.
- The hazardous waste streams were listed as F003 and F005 containing certain spent non-halogenated solvents, including but not limited to toluene and xylene.

F. Hazardous waste storage observed during June 22, 2005 inspection

- At the time of the inspection there was one hazardous waste storage area at Suite 1158. The room contained sixteen 55-gallon drums of hazardous waste.
- The sixteen drums in the storage room were stored so close to each other that it was not possible to read all of the labels. It was also not possible to see underneath the drums.

G. Hazardous waste labeling and accumulation dates observed during June 22, 2005 inspection

- EPA observed that seven of the sixteen drums at Suite 1158 had accumulation start dates of July 1, August 10, September 23 and October 19, 2004, and February 24 and March 9 and 14, 2005. These drums were stored at the time of the inspection for 357, 316, 273, 247, 119, 106, and 101 days respectively.
- EPA observed that one of the sixteen drums had an accumulation start date of July 14, 2007.
- There is no record or manifest which clearly documents the date these wastes were shipped off-site.
- There were two hazardous waste streams which were disposed of off-site from Suites 1158 and 1254: waste paint solvent and catalyzed paint.
- The hazardous waste manifests which EPA has reviewed indicate that the waste paint solvent was shipped off-site via tanker trucks and the catalyzed paint was shipped off-site via drums.
- During the June 22, 2005 inspection, EPA observed drums which had been stored for over 90 days containing both waste paint solvent and catalyzed paint at each location
- On June 27, 2005, a tanker truck picked up 800 gallons of waste paint solvent at either Suite 1158 or Suite 1284. The manifest for that date used Generator ID No. IND985102607.
- On July 21, 2005, 16 drums of catalyzed paint were shipped off site from either Suite 1158 or Suite 1284. The manifest for that date used Generator ID No. IND985102607.

H. Waste handling, inspections and training activities

- On October 25, 2005, Respondent Elite submitted a combined response to separate information requests directed by EPA to both Elite Enterprises and Creative Coatings.
- According to its Operations Plan, Respondents Elite and Creative received manifests that were blank and completed them.
- According to its Operations Plan, Respondents Elite and Creative used empty product drums or purchased drums to store hazardous wastes it generated.
- According to its Operations Plan, drums of hazardous waste are moved to waste storage areas after they are filled in the waste accumulation area at Suite 1158.
- There were no records of weekly inspections of the hazardous waste storage areas at Suite 1158 from July 1, 2004 through December 20, 2004, March 7, 2005 through July 11, 2005, and July 25, 2005 through October 3, 2005.

- There was no record of hazardous waste training for employees of Suite 1158 from 2001 to 2004.

I. Contingency Plan, hazardous waste emergencies and emergency response.

- There was a Contingency Plan for Suite 1158 at the time of the June 22, 2005, inspection. That contingency plan was a combined contingency plan for both Creative Coatings, Inc. and Elite Enterprises, Inc. It identified Herman DeJong and Gregg David as the emergency coordinators.
- The Contingency Plan did not include: addresses of the emergency coordinator(s), 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 an evacuation plan describing signals that are to be used to begin evacuation and primary and secondary evacuation routes.
- A separate Contingency Plan was developed for Suite 1158 and dated December 2005.
- The December 2005 Contingency Plan identified Richard Lain and Chuck Adamson as emergency coordinators for Suite 1158.
- According to the Contingency Plans the duty of the emergency coordinator in the Contingency Plan is to respond to emergency incidents involving hazardous waste and to organize appropriate response. Plant personnel are limited to response activities within the normal work duties. All other duties involving emergency response are the duty of the emergency coordinator. Those duties include assessing the situation, organizing the response, contacting local fire and emergency response personnel, engaging outside spill response contractors, and authorizing plant wide evacuation.
- The Contingency Plans identify the waste paint products and spent solvents as ignitable and posing a potential fire hazard.
- According to both Contingency Plans, paint or cleaning solvent spills may threaten the environment via storm water run-off or soil contamination. They may increase employee exposure from spilled liquids.
- According to both Contingency Plans, fire may result in the release of toxic fumes from the paint or cleaning solvent wastes. Fire may spread and other nearby materials could be ignited or there may be heat-induced explosions. A major fire may spread off-site.
- According to both Contingency Plans, water or fire suppressants involved in fire suppression may result in contaminant run-off.
- According to both Contingency Plans, an imminent danger exists that an explosion involving hazardous waste could occur. The explosion could ignite other print inks, thinners or solvents stored or being used.

J. Routine required inspections

- According to the Operations Plan submitted as part of the October 25, 2005, response to EPA's request for information (October 2005 Operations Plan), at

Suite 1158 there is some potential for a major spill or release to the environment related to paint process residues or waste solvents. These wastes also present a health hazard, fire or explosion potential.

- According to the October 2005 Operations Plan, fire extinguishers should be checked to determine if fully charged and seals intact. This is to be done as part of weekly inspections of hazardous waste storage areas.
- According to documents submitted as part of the October 25, 2005, response to EPA's request for information (October 2005 Response) aisle space between drums should be sufficient to get to a drum and remove it or over pack it if it is leaking. Access should be sufficient to allow for inspection of the condition of the containers. This should be done as part of the weekly inspections of the hazardous waste storage areas.
- EPA observed inadequate aisle space at Suite 1158 during the June 22, 2005, inspection.

K. Material Safety Data Sheets and hazards posed by chemicals in wastes generated at Suite 1158

- On January 6, 2006, Respondents Elite Enterprises, Inc. and Creative Coatings, Inc. submitted a response to EPA's December 16, 2005, notice of violations for Suites 1158 and 1284. This was a consolidated response for both entities.
- Material Safety Data Sheets (MSDSs) were submitted to document knowledge of the wastes generated at Suite 1158 and their proper characterization. The MSDSs were submitted for higher volume products used at Suite 1158, including paints, coatings, activators and hardeners, solvents and thinners.
- MSDSs were provided for products received from PPG, Akzo Nobel, DuPont, Shell Chemicals and Sunoco.
- MSDSs were provided for the following products from PPG: 2K-Clearcoat, OFDCT800, Urethane Catalyst, 5 Gloss Dark Gray Monocoa and Gray SMC Primer.
- The PPG products had flash points from 48-90 degrees Fahrenheit.
- The PPG products contained chemicals that were harmful if swallowed; may be absorbed through the skin and cause moderate skin irritation; had vapors that were harmful if inhaled and could irritate the eyes, nose and throat.
- PPG product OFDCT800 contained chemicals that could cause irreversible eye damage; contained formaldehyde or chemicals capable of releasing formaldehyde; and contained chemicals that might be corrosive.
- Containers of Modified Acryclic Coatings from Akzo Nobel were to be tightly closed.
- MSDSs for DuPont were for IMRON 500 3.5 VOC, Black and IMRON 5000 Activator, and Ebony Black for Roush/Neon.
- IMRON 500 3.5 VOC could cause lung injury and allergic respiration reaction. Vapors and spray mists could be harmful if inhaled. It could be absorbed through the skin and can cause nose, throat, eye and skin irritation.

- IMRON 500 Activator vapors may cause a flash fire. The MSDS further cautioned that the container should be closed after each use; do not transfer to unlabeled containers; do not breath vapors or mist; and do not allow to contaminate groundwater
- The MSDS for Ebony Black for Roush/Neon cautioned that it may cause lung injury; vapor and spray mist may be harmful if inhaled; it may cause central nervous system effects such as headache, dizziness or nausea; it may cause skin irritation, it can be absorbed through the skin. It further cautioned not to allow it to contaminate groundwater
- Methyl Ethyl Ketone (MEK) from Shell Chemicals had a flash point of 25 degrees Fahrenheit. The MSDS cautioned that it could irritate the eyes; vapors could cause drowsiness and dizziness; and it could cause lung damage if swallowed. The MSDS further cautioned that it should be kept away from flammables and corrosives and the container should be closed when not in use.
- The Toluene from Sunoco had a flash point of 48 degrees Fahrenheit. The MSDS cautioned that it could be harmful or fatal if swallowed or inhaled; it may cause skin and eye irritation, it could cause central nervous system depression; and the container should be kept closed when not in use.

L. Potential Hazards summarized

- Potential contamination resulting from a container release could occur through inhalation or dermal contact by workers, visitors, other tenants, local residents and others present at or in the vicinity of International Park and Suite 1158.
- Liquid release of the hazardous wastes could potentially end up in the soil, ground water or surface waters transported through storm drains or other means.
- Vapor releases of highly volatile organics in the waste paint and spent solvent waste is potentially likely.
- The wastes could ignite and cause a fire.

PENALTY FACTS
SUITE 1158 – IND 985 102 607

Count II – Failure to comply with manifest requirements.

Regulations Violated: 329 IAC 3.1-1-7, 3.1-7-1, 40 CFR §§ 262.40(a), 262.42(a)(1) and (2)

Short description of violation: Respondents shipped hazardous waste off-site from May 13, 2003 to November 11, 2003 and at the time of the inspection on June 22, 2005, did not have a copy of three manifests signed by the destination facility. Two of those manifests had manifest numbers 51303 and 51203. The third was dated November 11, 2003. At the time of the inspection the Respondents did not have a copy of these manifests with the signature of the destination facility on them. During that time Respondents had neither conducted follow-up required by the regulations with the destination facility nor filed a Manifest Exception Report with IDEM. On October 25, 2005, Respondents submitted copies of the manifests signed by the destination facility.

Short summary of information reviewed:

EPA reviewed a number of documents and information available to it. Presented below is a summary list of most of the documents EPA relied on. It is not an exhaustive list. EPA's prehearing exchanges have identified additional documents and potential testimony that may be relevant to the calculation of the appropriate penalty. EPA reserves the right to present that additional information or potential testimony.

- Items identified above in Count I.
- Two manifests with numbers 51303 and 51203 and one manifest dated November 11, 2003.

Penalty calculated: $1,289

Short explanation of how penalty calculated: The penalty consists of a gravity-based penalty amount of $1,100. The facts, as summarized, below support that the violations can be characterized under the 2003 RCRA Civil Penalty Policy as presenting a minor potential for harm and a moderate extent of deviation. Respondents failed to maintain three copies of signed manifests for three years from the date of initial shipment, failed to conduct an inquiry to the status of the waste shipments manifested on those manifest, and failed to file Exception Reports after 45 days of not receiving signed manifest copies. Respondents' violation of the requirement undermined the ability of the U.S. EPA or the Indiana Department of Environmental Management (IDEM) from verifying the disposal of hazardous wastes generated at Suite 1158. Until the Compliance Evaluation Inspection conducted by U.S. EPA on June 22, 2005, Respondents were unaware that they were missing disposal facility signed copies of manifests. Respondents obtained copies of missing manifests after the inspection on June 22, 2005. These were signed at

the appropriate time by the destination facility. No other adjustments were made to the penalty amount.

Short summary of relevant facts from information reviewed:

- Facts identified in Count I.
- Manifests are central to the cradle-to-grave hazardous waste tracking system.
- Missing copy of manifests signed by the destination facility impedes the ability of EPA or the Indiana Department of Environmental Management (IDEM) from ensuring hazardous waste shipments arrives at designated facilities.
- Inquiring as to the missing manifests and reporting to IDEM are critical in resolving missing manifest issues.
- Respondent obtained and submitted a copy of the manifests signed by the destination facility.

ATTACHMENT A

PENALTY SUMMARY SHEET

Suite 1158 – IND 985 102 607

NATURE OF VIOLATION DATE OF VIOLATION	CITATION OF REGULATION OR LAW	HARM/ DEVIATION	GRAVITY BASED PENALTY	MULTI-DAY PENALTY	ECONOMIC BENEFIT	TOTAL PENALTY
COUNT 1: Storage Hazardous Waste without Hazardous Waste Permit or Interim Status	329 IAC 3.1-1-7, 3.1-7-1, 3.1-10-1, and 3.1-13-1; 40 CFR §§ 270.1(c), 262.34(a) and (b)	Moderate/Major	$12,250	$300,183 ($1,677 x 179 days)	$0	$312,433
COUNT 2: Failure to Maintain Manifest Records	329 IAC 3.1-1-7, 3.1-7-1, 40 CFR §§ 262.40(a), 262.42(a)(1) and (2)	Minor/ Moderate	$1,289	$0	$0	$1,289
			$13,539	$300,183	$0	TOTAL: $313,722

Complainan'ts Exhibit	Bates Number	Date	Author or Contact	Recipient	Subject
125	CX-0001096	12/6/2000	MAP		Map of International Park
126	CX-0001097	10/1/2008	MAP		Map of Internationla Park
127	CX-0001098 - CX-0001118	3/6/2001	Lease Amendment		Lease to Suite 1158 in Building 13 for unpaid rents.
128	CX-0001119	8/27/2007	Jan Jackson		Photograph of milky substance down storm drain near Suite 1284
129	CX-0001120 - CX-0001144	11/15/2005	Elite Enterprises v. ASC		ASC's Answer and Counterclaim against Elite
129	CX-0001145- CX-0001164	1/31/2006	Elite Enterprises v. ASC		Plaintiff's Answers to Interrogatories
129	CX-0001165- CX-001171	10/9/2006	Elite Enterprises v. ASC		Plaintiff's Answers to Defendant's Second Set of Interrogatories
129	CX-0001172- CX-001192	6/7/2006	Elite Enterprises v. ASC		30(b)(6) Deposition of Randall Geist
129	CX-0001193- CX-0001202	7/14/2006	Elite Enterprises v. ASC		Deposition of Michael Kreps
129	CX0001203-15	3/11/2004	Elite Enterprises v. ASC		Attachment 12 to Kreps Deposition - Lansing Craft Center Presentation
129	CX-0001216 - CX-0001217	12/5/2006	Elite Enterprises v. ASC		Joint Motion for Dismissal with Prejudice.
129	CX-0001218	12/6/2006	Elite Enterprises v. ASC		Order granting Motion to Dismiss with Prejudice.
130	CX-0001219 - CX-0001223	11/8/2004	Flex-N-Gate v. Elite Enterprises		Complaint against Elite for breach of contract for invoices from October 9, 2003 - November 13, 2003 in the amount of $399,347.76
130	CX-0001224	3/24/2006	Flex-N-Gate v. Elite Enterprises		Default Judgment against Elite
130	CX-0001225 - CX-0001226	5/12/2006	Flex-N-Gate v. Elite Enterprises		Verified Motion for Proceedings Supplemental
130	CX-0001227- CX-0001238	5/12/2006	Flex-N-Gate v. Elite Enterprises		Post-Judgment Interrogatories and Request for Production.
130	CX-0001239 - CX-0001241a	8/3/2009	Flex-N-Gate v. Elite Enterprises		Deposition of Randall Geist

Complainan'ts Exhibit	Bates Number	Date	Author or Contact	Recipient	Subject
131	CX-0001242 - CX-0001245	4/24/2008	Elite Enterprises and Creative v. Liberty		Complaint against Liberty Steel Products
131	CX-0001246 - CX-0001250	4/24/2004	Elite Enterprises and Creative Coatings, Inc. v. Liberty Steel Production		Supplier Agreement between Elite and Liberty included as part of the complaint.
131	CX-0001251 - CX-0001260	7/30/2009	Elite and Creative v. Liberty		Affidavit of Randall Geist
131	CX-0001261 - CX-0001297	4/16/2009	Elite and Creative v. Liberty		Deposition of Joseph Dubaj
131	CX-0001298 - CX-0001301	3/23/2009	Elite and Creative v. Liberty		Elite's Response to 2nd Request for admissions
131	CX-0001302 - CX-0001307 CX-0001323 - CX-0001329	2/27/2009	Elite and Creative v. Liberty		Deposition of Randall Geist
131	CX-0001308 - CX-0001313	9/23/2008	Elite and Creative v. Liberty		Elite's Response to 1st Request for Admissions
131	CX-0001314 - CX-0001316	8/28/2008	Elite and Creative v. Liberty		Plaintiff's Initial Disclosures
131	CX-0001317 - CX-0001322	9/23/2008	Elite and Creative v. Liberty		Creative Coatings' Response to 1st Request for Admissions
131	CX-0001330 - CX-0001332	5/22/2009	Elite and Creative v. Liberty		Elite's 1st Supplemental Initial Disclosure
131	CX-0001333 - CX-0001334	12/9/2009	Elite and Creative v. Liberty		Mediator's Final Report
131	CX-0001335	1/13/2010	Elite and Creative v. Liberty		Sitpulation of Dismissal with Prejudice
132	CX-0001336 - CX-0001339	8/25/2007	Justin Barman		Report of fire with photographs
132	CX-0001340 - CX-0001342	9/12/2007	Christine Bowers, Fire Marshall		Report and citations to violations.
133	CX-0001343 - CX-0001346	1/8/2009	USEPA		RCRA Delegations

Complainan'ts Exhibit	Bates Number	Date	Author or Contact	Recipient	Subject
133	CX-0001347 - CX-0001359		IDEM		Copy of relevant IDEM regulations that are authorized
134	CX-0001359a - CX-0001361	3/22/2006	Jan Jackson	Thomas Bergman	Dumping of motor oil - floor drain status.
134	CX-0001362	3/21/2006	Jan Jackson	Brian Wendell	Status of drum removal
135	CX-0001363 - CX-0001365	3/23/2006	David R. Steiner	Elite Enterprises	Notice of environmental problems found at site
136	CX-0001366 - CX-0001372	5/24/2006	Jan Jackson	Brian Wendell	Photos of conditions at Elite Plant #1 in May 2006
137	CX-0001373	6/12/2006	Massoud Tabrizi	Jan Jackson	Sludge tank removal by Greg David
138	CX-0001374 - CX-0001384	5/3/07 - 6/6/07	Jan Jackson	Incident Report	E-mails and photo related to discussion of ash damage to parts, roof leaks inside building and damaged roof drains
139	CX-0001385 - CX-0001386	12/31/2003	Elite Enterprises	IDEM	2003 Biennial Report
139	CX-0001387	12/31/2004	Elite Enterprises	IDEM	2004 Biennial Report
139	CX-0001388 - CX-0001394	12/10/2004	Elite Enterprises		2005 Biennial Report
139	CX-0001395 - CX-0001403	12/23/2005	Richard Lain, CFO, Elite	Michelle Weddle	Revised 2004 Biennial Report
139	CX-0001404 - CX-0001405		Elite Enterprises, Inc.		2005 Biennial Report
140	CX-0001406 - CX-0001409	4/20/2005	Jan Jackson	Incident Report	Flooding in common area near Elite
141	CX-0001410 - CX-0001411	3/21/2005	MANIFEST		
141	CX-0001412	6/27/2005	MANIFEST		
141	CX-0001413	7/21/2005	MANIFEST		
141	CX-0001414	10/6/2005	MANIFEST		
141	CX-0001415	10/31/2005	MANIFEST		
141	CX-0001416 - CX-0001418	4/16/2006	William Gabbard	Jan Jackson	Manifests from March 2006
142	CX-0001419 - CX-0001424	9/13/2005	Jan Jackson		E-mails with photographs showing source of leaks of oil
143	CX-0001425 - CX-0001429	11/16/2007	Jan Jackson		E-mails with photographs for CLC final walk-through
143	CX-0001430	11/13/2007	Midwest Air Filters, Inc.		
144	CX-0001431 - CX-0001482		Maureeen E. O'Neill		Photographs of Suites 1158 and 1284 - 2010
145	CX-0001483 - CX-0001490		Maureeen E. O'Neill		Photographs of Suites 1158 and 1284 - 2009+F8

Complainan'ts Exhibit	Bates Number	Date	Author or Contact	Recipient	Subject
146	CX-0001491	8/10/2009	EPA		Certified Mail receipts Elite and Creative - 1st mailing
146	CX-0001492 - CX-0001496	12/12/2009	EPA		Certified Mail receipts Elite - 2nd mailing Elite only.
147	CX-0001497 - CX-0001499		Manifests		Manifests from 2003 unsigned by the TSD