

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

2012 APR 27 AM 11:14

IN THE MATTER OF:)

Collis, Inc.)

ANSWER AND DEFENSES TO
COMPLAINT/COMPLIANCE
ORDER AND REQUEST
FOR HEARING

EPA ID Number IAD047303771)

Respondent)

Docket No. RCRA-07-2012-0014

Proceeding under Section 3008(a) and (g) of
the Resource Conservation and Recovery Act
as amended, 42 U.S.C. § 6928(a) and (g).)

NOW COMES Collis, Inc. ("Respondent"), by and through its undersigned counsel, and hereby files its Answer and Defenses to the Complaint in the above-captioned action, paragraph by paragraph, and states as follows:

I. PRELIMINARY STATEMENT

1. This Complaint, Compliance Order, and Notice of Opportunity for Hearing ("Complaint") is issued pursuant to Section 3008(a) and (g) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 ("RCRA" or "the Act"), and the Hazardous and Solid Waste Amendments of 1984 ("HSWA"), 42 U.S.C. § 6928(a) and (g), and in accordance with the United States Environmental Protection Agency's ("EPA") 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 of Practice"), Title 40 Code of Federal Regulations ("C.F.R.") Part 22.

ANSWER: The allegations in this paragraph are legal conclusions and require no answer.

2. The Complainant is the Chief of the Waste Enforcement and Materials Management Branch ("WEMM") of the EPA, Region 7, who has been duly delegated the authority to bring this action. The Respondent is Collis, Inc., a company incorporated under the laws of Delaware and authorized to conduct business in the state of Iowa.

ANSWER: Respondent admits only that it is a company incorporated under the laws of Delaware and authorized to conduct business in the state of Iowa. Respondent lacks knowledge and information to either admit or deny the allegations regarding Complainant's authority. The remaining allegations in this paragraph are legal conclusions and require no answer.

3. The authority to execute this Complaint is provided to the Regional Administrators by EPA Delegation No. 8-9-A, dated March 20, 1985. The Regional Administrator has delegated this authority to the Chief of the WEMM Branch, Region 7, by EPA Delegation No. R7-8-9-A, dated June 15, 2005.

ANSWER: The allegations in this paragraph are legal conclusions and require no answer.

4. Section 3008(g) of RCRA, U.S.C. § 6928(g), authorizes a civil penalty of not more than \$25,000 per day for violations of Subchapter III of RCRA (Hazardous Waste Management). This figure has been adjusted upward for inflation pursuant to the Civil Monetary Penalties Inflation Adjustment Rule, 40 C.F.R. Part 19, so that penalties of up to \$32,500 per day are authorized for violations of Subchapter III of RCRA that occur between March 15, 2004 and January 12, 2009, and penalties of up to \$37,500 per day are authorized for violations that occur after January 12, 2009. Based upon the facts alleged in this Complaint and upon those factors which the Complainant must consider pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), as discussed in the RCRA Civil Penalty Policy issued by EPA in June 2003, and attached hereto. The Complainant proposes that Respondent be assessed a civil penalty pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), for the violations of RCRA alleged in the Complaint. These factors include the seriousness of the violations, the threat of harm to public health or the environment, any good faith efforts of Respondent to comply with the applicable requirements, as well as other matters as justice may require. The proposed penalty may be adjusted if Respondent establishes bona fide issues relevant to the statutory factors for the assessment of the proposed penalty.

ANSWER: The allegations in this paragraph are legal conclusions and require no answer; however, Respondent is requesting a Hearing to contest the allegations in this Complaint and the proposed penalty as it is unwarranted.

II. COMPLAINT
ALLEGATIONS COMMON TO ALL COUNTS

5. Respondent is a Delaware corporation authorized to conduct business in the state of Iowa and is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

ANSWER: Respondent admits it is a Delaware corporation authorized to conduct business in the state of Iowa. The remaining allegations in this paragraph are legal conclusions and require no answer.

6. Respondent operates a facility located at 2005 South 19th Street, Clinton, Iowa (Facility), which specializes in the fabrication and powder-coating of metal racks and shelving brackets for refrigerators. Respondent began operations in 1902 and currently employs approximately 240 employees.

ANSWER: The legal conclusions in this paragraph require no answer. Any remaining factual allegations are admitted.

7. In 1980, Respondent notified the EPA as a generator of D007, P030, and P121 hazardous wastes, and was assigned the Facility identification number IAD047303771.

ANSWER: The legal conclusions in this paragraph require no answer. Any remaining factual allegations are admitted.

8. On September 7 and 10, 2007, and again on June 2, 2010, representatives of the EPA, Region 7, inspected Respondent's Facility. The inspections were conducted under authority of Section 3007 of RCRA.

ANSWER: The legal conclusions in this paragraph require no answer. Any remaining factual allegations are admitted, including that an EPA contractor conducted the 2010 inspection.

9. At the time of the 2007 inspection, Respondent was identified as a large quantity generator, generating greater than 1,000 kilograms of hazardous waste per month. Respondent generates filter cake which is hazardous for chromium (D007). Respondent is also a used oil generator and a small quantity handler of universal waste. Based on information obtained during the 2007 inspection, Respondent was issued a Notice of Violation (NOV) on September 10, 2007, for violations of RCRA.

ANSWER: The legal conclusions in this paragraph require no answer. As to any remaining factual allegations, Respondent only admits that it was issued a NOV on

September 10, 2007, and that document and Respondent's response(s) thereto speak for themselves.

10. Based on information obtained during the 2010 inspection, Respondent was issued a Notice of Preliminary Findings on June 2, 2010, followed by a Notice of Violation on September 15, 2010. The documents indicated that Respondent violated multiple regulations applicable to handling of hazardous waste, universal waste, and used oil.

ANSWER: The legal conclusions in this paragraph require no answer. As to any remaining factual allegations, Respondent admits only that it was issued a Notice of Preliminary Findings on June 2, 2010, followed by a Notice of Violation on September 15, 2010. The remaining allegations in paragraph 10 require no response as the referenced documents, as well as Respondent's response(s) thereto, speak for themselves.

III. VIOLATIONS

Count I

Failure to Conduct Hazardous Waste Determinations

11. The allegations stated in Paragraphs 5 through 10 above are realleged and incorporated as if fully set forth herein.

ANSWER: Respondent incorporates by reference its Answers to Paragraphs 1 through 10 above as though fully stated herein.

12. Respondent is subject to 40 C.F.R. § 262.11, which provides that a person who generates a solid waste must determine if that waste is hazardous.

ANSWER: These allegations are legal conclusions that require no answer, and the cited regulation speaks for itself.

13. At the time of the 2010 inspection, Respondent had in storage acidic and alkaline liquids in twenty-six tote containers located next to the filter building (the "filter building container storage area") at the Facility.

ANSWER: These allegations are legal conclusions and require no answer. However, Respondent states that, at the time of the inspection, it did have eighteen totes containing process acid and eight totes contain process caustic located next to the filter building. To the extent EPA is alleging the “filter building container storage area” is a hazardous waste storage area regulated pursuant to RCRA, Respondent denies the allegation as untrue because the eighteen totes containing process acid and eight totes contain process caustic were not solid waste or hazardous waste and thus not subject to hazardous waste regulations.

14. The acidic and alkaline liquids stored in the filter building container storage area were generated from metal finishing processes at the Facility.

ANSWER: These allegations are legal conclusions and require no answer. However, Respondent states that the acidic and caustic process chemicals originate from the on-site metal finishing operations and are used for required pH adjustment in the Facility’s permitted wastewater treatment process and for other process uses.

15. The acidic and alkaline liquids stored in the filter building container storage area at the time of the 2010 inspection were solid waste.

ANSWER: These allegations are legal conclusions and require no answer. However, Respondent denies this allegation since the referenced liquids were not discarded materials but were acidic and caustic process chemicals used for pH adjustment in the Facility’s permitted wastewater treatment process and other process uses.

16. At the time of the 2010 inspection, Respondent had not conducted a hazardous waste determination on the acid and alkaline liquids stored in the twenty-six tote containers in storage in the filter building container storage area.

ANSWER: These allegations are legal conclusions and require no answer. However, Respondent states that the referenced liquids were acidic and caustic process chemicals, not solid waste, and, therefore, a hazardous waste determination is irrelevant and inapplicable. In further

answer, the process source of the contents was sufficient to characterize the contents, and the pH of many of the liquids at issue would not render such "hazardous" in any event.

17. Respondent's failure to make a hazardous waste determination on the contained waste in storage in the filter building container storage area is a violation of 40 C.F.R. § 262.11.

ANSWER: These allegations are legal conclusions and require no answer. However, Respondent states that the referenced liquids were acidic and caustic process chemicals, not solid waste, and, therefore, a hazardous waste determination is irrelevant and inapplicable.

18. Pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), and based upon the allegations contained above, it is proposed that Respondent be assessed a civil penalty of \$25,823 for the violations set forth in this Count 1.

ANSWER: The allegations in this paragraph require no answer; however, Respondent is requesting a Hearing to contest the allegations in this Complaint and the proposed penalty as it is unwarranted.

Count 2
Operation of a Hazardous Waste Facility
Without a RCRA Permit or Interim Status

19. The allegations stated in Paragraphs 5 through 18 above are realleged and incorporated as if fully set forth herein.

ANSWER: Respondent incorporates by reference its Answers to Paragraphs 1 through 18 above as though fully stated herein.

20. Section 3005 of RCRA, 42 U.S.C. § 6925, requires that any owner or operator of a facility who treats, stores, or disposes of hazardous waste must have a permit or interim status. However, the regulations at 40 C.F.R. § 262.34 state that a generator may accumulate hazardous waste for up to ninety (90) days without a permit or without interim status, provided conditions listed in 40 C.F.R. § 262.34 are met.

ANSWER: These allegations are legal conclusions and require no answer. Respondent further neither admits nor denies the remaining allegations in paragraph 20 as the cited statute and regulations speak for themselves.

21. At the time of the 2007 inspection, Respondent had in storage D007 filter sludge in a roll-off box located northeast of the main facility building.

ANSWER: These allegations are legal conclusions and require no answer.

22. At the time of the 2010 inspection, Respondent had in storage twenty-eight containers in the filter building container storage area at the Facility. Two of the twenty-eight containers were empty, and the remaining twenty-six contained either acidic or alkaline liquid.

ANSWER: These allegations are legal conclusions and require no answer. However, Respondent admits only that, at the time of the 2010 inspection, it did have eighteen totes containing process acid and eight totes contain process caustic located next to the filter building.

23. The filter building container storage area is located outside the filter building at the Facility, and the containers stored there at the time of the 2010 inspection were stored uncovered.

ANSWER: These allegations contain legal conclusions and require no answer. As to any remaining allegations, Respondent admits only that the area Complainant refers to as the “filter building container storage area” is located outside the filter building at the Facility and that this area is uncovered. However, to the extent EPA is alleging the “filter building container storage area” is a hazardous waste storage area regulated pursuant to RCRA, Respondent denies the allegation as untrue.

24. At the time of the 2010 inspection, at least twenty-one of the containers stored in the filter building container storage area were labeled “hazardous waste.”

ANSWER: These allegations are legal conclusions and require no answer. However, as to any remaining allegations, Respondent admits only that, at the time of the 2010 inspection, it did have containers inadvertently labeled as “hazardous waste” as a means to replace the original labels on the totes to identify the process chemicals for proper future use and not to formally declare the materials as “hazardous waste” under RCRA.

25. At the time of the 2010 inspection, written information on the hazardous waste labels attached to containers stored in the filter building container storage area included, variously: “Zinc ???,” “Acid,” “Clarifier Acid,” “Stage 1 Cleaner,” “Cleaner,” and “Spent Acid.” The hazardous waste labels for

multiple containers had writing that was illegible or lacked any written information.

ANSWER: To the extent this allegation contains a legal conclusion, no response is required. Any remaining allegations are admitted only to the extent such accurately represents written information on some of the labels at the time of the 2010 inspection. In further answer, Respondent admits only that, at the time of the 2010 inspection, it did have containers inadvertently labeled as “hazardous waste” as a means to replace the original labels on the totes to identify the process chemicals for proper future use and not to formally declare the materials as “hazardous waste” under RCRA.

26. Multiple containers stored in the filter building container storage area lacked a written accumulation start date.

ANSWER: To the extent this allegation contains a legal conclusion, no response is required. Any remaining allegations are admitted only to the extent such accurately represents what some of the labels may not have included at the time of the 2010 inspection. In further answer, Respondent admits only that, at the time of the 2010 inspection, it did have containers inadvertently labeled as “hazardous waste” as a means to replace the original labels on the totes to identify the process chemicals for proper future use and not to formally declare the materials as “hazardous waste” under RCRA; therefore accumulation start dates are inapplicable and irrelevant.

27. Multiple containers stored in the filter building container area were dated with dates ranging from March 27, 2008 to August 18, 2009.

ANSWER: To the extent this allegation contains a legal conclusion, no response is required. Any remaining allegations are admitted only to the extent such accurately represents the written information some of the labels may have included at the time of the 2010 inspection.

28. The acidic and alkaline liquids stored in the containers in the filter building container storage area were solid waste.

ANSWER: These allegations are legal conclusions and require no answer. However, Respondent states that it did have acidic and caustic process chemicals in containers next to the filter building but denies that the acidic and caustic process chemicals in such containers were discarded as solid waste. In further answer, Respondent admits only that, at the time of the 2010 inspection, it did have containers inadvertently labeled as “hazardous waste” as a means to replace the original labels on the totes to identify the process chemicals for proper future use and not to formally declare the materials as “hazardous waste” under RCRA.

29. The acidic and alkaline liquids stored in the containers in the filter building container storage area were placed into storage in 2008 and 2009.

ANSWER: To the extent this allegation contains a legal conclusion, no response is required. Any remaining allegations are admitted only to the extent such accurately represents the written information some of the labels may have included at the time of the 2010 inspection.

30. The material in at least seven of the containers stored in the filter building container storage area was hazardous for corrosivity, with a pH of 2.0 or less or 12.5 or greater.

ANSWER: These allegations are legal conclusions and require no answer. However, Respondent states the containers contained acidic and caustic process chemicals, not solid waste, and therefore whether any of the material was RCRA “hazardous” for corrosivity is inapplicable and irrelevant.

31. At the time of the 2007 and 2010 inspections, Respondent did not have a RCRA Permit or Interim Status to operate as a storage facility.

ANSWER: These allegations are legal conclusions and require no answer. However, Respondent denies this allegation since the referenced liquids were not discarded materials but were acidic and caustic process chemicals used for pH adjustment in the Facility’s permitted wastewater treatment process and other process uses, and therefore no RCRA storage permit was required.

Failure to Comply with Generator Requirements

32. At the time of the 2007 and 2010 inspections, Respondent was not complying with the following conditions in 40 C.F.R. § 262.34:

ANSWER: These allegations are legal conclusions and require no answer.

Accumulation Start Date

33. The regulation at 40 C.F.R. § 262.34(a)(2), requires a generator to clearly mark the date upon which the period of accumulation begins for each container of hazardous waste.

ANSWER: These allegations are legal conclusions and require no answer. Respondent neither admits nor denies the further allegations in paragraph 33 as the cited regulations speak for themselves.

34. At the time of the 2007 inspection, Respondent had failed to adequately mark the accumulation start date on the filter sludge hazardous waste roll-off box.

ANSWER: These allegations are legal conclusions and require no answer.

35. Respondent failed to adequately mark the accumulation start date on the hazardous waste roll-off box in accordance with 40 C.F.R. § 262.34(a)(2).

ANSWER: These allegations are legal conclusions and require no answer.

*Labeling and Marking
Hazardous Waste Containers*

36. The regulation at 40 C.F.R. § 262.34(a)(3) requires a generator to clearly label or mark each container of hazardous waste with the words "Hazardous Waste."

ANSWER: These allegations are legal conclusions and require no answer. Respondent neither admits nor denies the further allegations in paragraph 36 as the cited regulations speak for themselves.

37. At the time of the 2007 inspection, Respondent had failed to adequately label or mark the words "Hazardous Waste" on the filter sludge hazardous waste roll-off box.

ANSWER: These allegations are legal conclusions and require no answer.

38. Respondent failed to label or clearly mark the words "Hazardous Waste" on each container of hazardous waste stored at its facility in accordance with 40 C.F.R. § 262.34(a)(3).

ANSWER: These allegations are legal conclusions and require no answer.

Adequate Aisle Space

39. The regulation at 40 C.F.R. § 262.34(a)(4), referencing 40 C.F.R. § 265.35, requires a generator to maintain adequate aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency, unless aisle space is not needed for any of these purposes.

ANSWER: These allegations are legal conclusions and require no answer. Respondent neither admits nor denies the further allegations in paragraph 39 as the cited regulations speak for themselves.

40. At the time of the 2010 inspection, Respondent failed to maintain adequate aisle space in the filter building container storage area at the Facility in accordance with 40 C.F.R. §§ 262.34(a)(4) and 265.35.

ANSWER: These allegations are legal conclusions and require no answer.

Weekly Inspections

41. The regulations at 40 C.F.R. § 262.34(a)(1)(i), referencing 40 C.F.R. § 265.174, require that an owner or operator must inspect areas where hazardous waste containers are stored, at least weekly. The generator must look for leaking containers and for deterioration of containers caused by corrosion or other factors.

ANSWER: These allegations are legal conclusions and require no answer. Respondent neither admits nor denies the further allegations in paragraph 41 as the cited regulations speak for themselves.

42. At the time of the June 2010 inspection, Respondent was not performing weekly inspections in the filter building container storage area in accordance with 40 C.F.R. §§ 262.34(a)(1)(i) and 265.174.

ANSWER: These allegations are legal conclusions and require no answer.

Labeling Satellite Accumulation Containers

43. The regulation at 40 C.F.R. § 262.34(c)(1)(ii) states that a generator may accumulate as much as 55-gallons of hazardous waste in satellite accumulation areas provided the generator marks the

containers either with the words "Hazardous Waste" or with other words that identify the contents of the container.

ANSWER: These allegations are legal conclusions and require no answer. Respondent neither admits nor denies the further allegations in paragraph 43 as the cited regulations speak for themselves.

44. At the time of the June 2010 inspection, Respondent had failed to label a satellite accumulation container beneath the Facility filter press with the words "Hazardous Waste" or with other words identifying the contents of the container in accordance with 40 C.F.R. § 262.34(c)(1)(ii).

ANSWER: These allegations are legal conclusions and require no answer.

Hazardous Waste Job Descriptions

45. The regulations at 40 C.F.R. § 262.34(a)(4), referencing 40 C.F.R. § 265.16(d)(2), require that a generator maintain a written job description for each position at the facility related to hazardous waste management including the requisite skill, education, or other qualifications.

ANSWER: These allegations are legal conclusions and require no answer. Respondent neither admits nor denies the further allegations in paragraph 45 as the cited regulations speak for themselves.

46. At the time of the June 2010 inspection, the job descriptions for facility personnel engaged in hazardous waste management lacked a description of duties related to hazardous waste management, as required by 40 C.F.R. §§ 262.34(a)(4) and 265.16(d)(2).

ANSWER: These allegations are legal conclusions and require no answer.

Training Descriptions

47. The regulations at 40 C.F.R. § 262.34(a)(4), referencing 40 C.F.R. § 265.16(d)(3), require that a generator maintain a written description of the type and amount of both introductory and continuing training that will be given to each person whose position at the facility is related to hazardous waste management.

ANSWER: These allegations are legal conclusions and require no answer. Respondent neither admits nor denies the further allegations in paragraph 47 as the cited regulations speak for themselves.

48. At the time of the September 2007 inspection, Respondent had failed to maintain descriptions of introductory and continuing training for positions at the Facility related to hazardous waste management in accordance with 40 C.F.R. §§ 262.34(a)(4) and 265.16(d)(3).

ANSWER: These allegations are legal conclusions and require no answer.

Contingency Plan

49. The regulations at 40 C.F.R. § 262.34(a)(4), referencing 40 C.F.R. § 265.51, require that an owner or operator of a hazardous waste facility have a contingency plan for the Facility.

ANSWER: These allegations are legal conclusions and require no answer. Respondent neither admits nor denies the further allegations in paragraph 49 as the cited regulations speak for themselves.

50. The regulations at 40 C.F.R. § 262.34(a)(4), referencing 40 C.F.R. § 265.52(a), require that a hazardous waste facility's contingency plan describe the actions facility personnel must take to comply with 40 C.F.R. §§ 265.51 and 265.56 in response to fires or explosions.

ANSWER: These allegations are legal conclusions and require no answer. Respondent neither admits nor denies the further allegations in paragraph 50 as the cited regulations speak for themselves.

51. The regulations at 40 C.F.R. § 262.34(a)(4), referencing 40 C.F.R. § 265.52(c), require that the contingency plan provide a description of arrangements with local authorities to coordinate emergency services.

ANSWER: These allegations are legal conclusions and require no answer. Respondent neither admits nor denies the further allegations in paragraph 51 as the cited regulations speak for themselves.

52. The regulations at 40 C.F.R. § 262.34(a)(4), referencing 40 C.F.R. § 265.52(d), require that the contingency plan list names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator.

ANSWER: These allegations are legal conclusions and require no answer. Respondent neither admits nor denies the further allegations in paragraph 52 as the cited regulations speak for themselves.

53. The regulations at 40 C.F.R. § 262.34(a)(4), referencing 40 C.F.R. § 265.52(e), require that the contingency plan include a list of emergency response equipment.

ANSWER: These allegations are legal conclusions and require no answer. Respondent neither admits nor denies the further allegations in paragraph 53 as the cited regulations speak for themselves.

54. At the time of the September 2007 inspection, the inspector documented that Respondent had failed to develop a hazardous waste management contingency plan, in accordance with 40 C.F.R. §§ 262.34(a)(4) and 265.51(a).

ANSWER: These allegations are legal conclusions and require no answer. Respondent neither admits nor denies the remaining allegations in paragraph 54 as the inspector's documentation speaks for itself; however, Respondent denies that it did not have a contingency plan for the facility.

55. At the time of the June 2010 inspection, Respondent had failed to maintain a contingency plan with descriptions of actions necessary to respond to hazardous waste releases in accordance with 40 C.F.R. §§ 262.34(a)(4) and 265.52(a).

ANSWER: These allegations are legal conclusions and require no answer.

56. At the time of the June 2010 inspection, Respondent had failed to provide a description in the contingency plan of arrangements with local authorities in accordance with 40 C.F.R. §§ 262.34(a)(4) and 265.52(c).

ANSWER: These allegations are legal conclusions and require no answer.

57. At the time of the June 2010 inspection, Respondent had failed to include home addresses and telephone numbers of the emergency coordinators in its contingency plan, in accordance with 40 C.F.R. §§ 262.34(a)(4) and 265.52(d).

ANSWER: These allegations are legal conclusions and require no answer.

58. At the time of the June 2010 inspection, Respondent had failed to include a list of emergency response equipment in the contingency plan in accordance with 40 C.F.R. §§ 262.34(a)(4) and 265.52(e).

ANSWER: These allegations are legal conclusions and require no answer.

Alarm/Communications Device Access

59. The regulations at 40 C.F.R. § 262.34(a)(4), referencing 40 C.F.R. § 265.34(a), require that whenever hazardous waste is being handled at a hazardous waste facility, all personnel involved in the operation must have immediate access to an internal alarm or emergency communication device.

ANSWER: These allegations are legal conclusions and require no answer. Respondent neither admits nor denies the further allegations in paragraph 59 as the cited regulations speak for themselves.

60. At the time of the September 2007 inspection, Respondent failed to have access to an alarm or communications device at the filter sludge hazardous waste roll-off box storage area in accordance with 40 C.F.R. §§ 262.34(a)(4) and 265.34(a).

ANSWER: These allegations are legal conclusions and require no answer. As to any remaining allegations, Respondent denies any failure to maintain an adequate alarm system.

Failure to Maintain Spill Kit

61. The regulations at 40 C.F.R. § 262.34(a)(4), referencing 40 C.F.R. § 265.32(c), require that a facility that handles hazardous waste must be equipped with spill control equipment.

ANSWER: These allegations are legal conclusions and require no answer. Respondent neither admits nor denies the further allegations in paragraph 61 as the cited regulations speak for themselves.

62. At the time of the June 2010 inspection, Respondent had failed to maintain a spill kit at the facility's filter building container storage area in accordance with 40 C.F.R. §§ 262.34(a)(4) and 265.32(c).

ANSWER: These allegations are legal conclusions and require no answer.

Illegal Storage of Hazardous Waste

63. At the time of the 2007 inspection, Respondent had hazardous waste in storage at its facility.

ANSWER: These allegations are legal conclusions and require no answer.

64. At the time of the 2010 inspection, Respondent had hazardous waste in storage in the filter

building container storage area at its facility.

ANSWER: These allegations are legal conclusions and require no answer.

65. At the time of the 2007 inspection, Respondent was operating a treatment, storage, or disposal facility without a permit or interim status in violation of Section 3005 of RCRA, 42 U.S.C. § 6925.

ANSWER: These allegations are legal conclusions and require no answer.

66. At the time of the 2010 inspection, Respondent was operating a treatment, storage, or disposal facility without a permit or interim status in violation of Section 3005 of RCRA, 42 U.S.C. § 6925.

ANSWER: These allegations are legal conclusions and require no answer.

67. Pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), and based upon the allegations contained above, it is proposed that Respondent be assessed a civil penalty of \$314,841 for the violations set forth in this Count 2.

ANSWER: The allegations in this paragraph require no answer; however, Respondent is requesting a Hearing to contest the allegations in this Complaint and the proposed penalty as it is unwarranted.

Count 3
Failure to Comply with Used Oil Requirements

68. The allegations stated in Paragraphs 5 through 67 above are realleged and incorporated as if fully set forth herein.

ANSWER: Respondent incorporates by reference its Answers to Paragraphs 1 through 67 above as though fully stated herein.

69. At the time of the 2007 and 2010 inspections, Respondent had failed to label multiple containers of used oil, as described below.

ANSWER: These allegations are legal conclusions and require no answer.

Labeling Used Oil Containers

70. The regulation at 40 C.F.R. § 279.22(c)(1) requires that containers and aboveground tanks used to store used oil at generator facilities must be labeled or marked clearly with the words "Used Oil."

ANSWER: These allegations are legal conclusions and require no answer. Respondent neither admits nor denies the further allegations in paragraph 70 as the cited regulations speak for themselves.

71. At the time of the 2007 inspection, one or more containers of used oil at the Facility were not labeled with the words "Used Oil."

ANSWER: These allegations are legal conclusions and require no answer. Any remaining allegations are admitted.

72. At the time of the 2010 inspection, one or more containers of used oil at the Facility were not labeled with the words "Used Oil."

ANSWER: These allegations are legal conclusions and require no answer. Any remaining allegations are admitted.

73. Respondent's failure to properly label containers of used oil with the words "Used Oil" is a violation of 40 C.F.R. § 279.22(c)(1).

ANSWER: These allegations are legal conclusions and require no answer.

74. Pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), and based upon the allegations contained above, it is proposed that Respondent be assessed a civil penalty of \$1,000 for the violations set forth in this Count 3.

ANSWER: The allegations in this paragraph require no answer; however, Respondent is requesting a Hearing to contest the allegations in this Complaint and the proposed penalty as it is unwarranted.

Count 4
Failure to Comply with Universal Waste Requirements

75. The allegations stated in Paragraphs 5 through 74 above are realleged and incorporated as if fully set forth herein.

ANSWER: Respondent incorporates by reference its Answers to Paragraphs 1 through 74 above as though fully stated herein.

76. At the time of the 2007 and 2010 inspections, Respondent had failed to comply with multiple

universal waste requirements, described below.

ANSWER: These allegations are legal conclusions and require no answer.

Labeling Universal Waste Containers

77. The regulation at 40 C.F.R. § 273.14(e) requires that a small quantity handler of universal waste must mark the universal waste to identify the type of universal waste. For waste lamps, a small quantity handler must label each lamp or a container or package in which such lamps are contained with one of the following phrases: “Universal Waste — Lamp(s),” or “Waste Lamp(s),” or “Used Lamp(s).”

ANSWER: These allegations are legal conclusions and require no answer. Respondent neither admits nor denies the further allegations in paragraph 77 as the cited regulations speak for themselves.

78. At the time of the 2007 inspection, waste lamps at the Facility were not marked with the phrases “Universal Waste — Lamp(s),” or “Waste Lamp(s),” or “Used Lamp(s),” either on the containers or on the individual lamps.

ANSWER: These allegations are legal conclusions and require no answer. Any remaining allegations are admitted.

79. At the time of the 2010 inspection, waste lamps at the Facility were not marked with the phrases “Universal Waste — Lamp(s),” or “Waste Lamp(s),” or “Used Lamp(s),” either on the containers or on the individual lamps.

ANSWER: These allegations are legal conclusions and require no answer. Any remaining allegations are admitted.

80. Respondent’s failure to properly label waste lamps is a violation of 40 C.F.R. § 273.14(e).

ANSWER: These allegations are legal conclusions and require no answer.

Demonstration of Accumulation Period of Universal Waste

81. The regulation at 40 C.F.R. § 273.15(c) requires that a small quantity handler of universal waste who accumulates universal waste must be able to demonstrate the length of time that the universal waste has been accumulated from the date it becomes a waste or is received.

ANSWER: These allegations are legal conclusions and require no answer. Respondent neither admits nor denies the further allegations in paragraph 81 as the cited regulations speak for themselves.

82. At the time of the 2010 inspection, Respondent was unable to demonstrate the length of time that a container of waste lamps had accumulated at the facility.

ANSWER: To the extent this allegation contains a legal conclusion, no response is required. However, Respondent admits only that a container of waste lamps was not labeled with an accumulation start date due to an independent contractor's omission beyond the reasonable control of Respondent.

83. Respondent's failure to demonstrate the length of time the universal waste had accumulated at the facility is a violation of 40 C.F.R. § 273.15(c).

ANSWER: These allegations are legal conclusions and require no answer.

Closed Containers of Universal Waste

84. The regulation at 40 C.F.R. § 273.13(d)(1) requires that a small quantity handler of universal waste must contain any lamp in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. Such containers and packages must remain closed and must lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions.

ANSWER: These allegations are legal conclusions and require no answer. Respondent neither admits nor denies the further allegations in paragraph 84 as the cited regulations speak for themselves.

85. At the time of the 2007 inspection, one or more containers of waste lamps were not closed.

ANSWER: These allegations are legal conclusions and require no answer. Any remaining allegations are admitted.

86. Respondent's failure to close one or more containers of waste lamps is a violation of 40 C.F.R. § 273.13(d)(1).

ANSWER: These allegations are legal conclusions and require no answer.

87. Pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), and based upon the allegations contained above, it is proposed that Respondent be assessed a civil penalty of \$1,002 for the violations set forth in this Count 4.

ANSWER: The allegations in this paragraph require no answer; however, Respondent is requesting a Hearing to contest the allegations in this Complaint and the proposed penalty as it is unwarranted.

IV. PROPOSED CIVIL PENALTY

88. Based upon the facts alleged in this Complaint and upon those factors which Complainant must consider pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), as discussed in the RCRA Civil Penalty Policy issued by EPA in June 2003, the Complainant proposes that Respondent be assessed a civil penalty of \$342,742 pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), for the violations of RCRA alleged in this Complaint. These factors include the seriousness of the violations, the threat of harm to public health or the environment, any good faith efforts of Respondent to comply with the applicable requirements, as well as other matters as justice may require. The proposed penalty is summarized in the attached Penalty Computation Worksheet and may be adjusted if Respondent establishes bona fide issues relevant to the statutory factors for the assessment of the proposed penalty.

ANSWER: The allegations in this paragraph require no answer; however, Respondent is requesting a Hearing to contest the allegations in this Complaint and the proposed penalty as it is unwarranted. Respondent further reserves the right to assert various defenses to dismiss this Complaint and the civil penalty demand, including that such claims are time-barred.

89. Unless Respondent files an Answer to this Complaint in accordance with 40 C.F.R. § 22.15, payment shall be made within 30 days of receipt of this Complaint by certified or cashier's check payable to "Treasurer of the United States" and remitted to:

U.S. Environmental Protection Agency Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000.

A copy of said check shall be sent simultaneously by certified mail, return receipt requested, to:

Kevin Snowden
AWMD/WEMM
U.S. EPA Region 7
901 North 5th Street

Kansas City, Kansas 66101

ANSWER: The allegations in this paragraph require no answer; however, Respondent is requesting a Hearing to contest the allegations in this Complaint and the proposed penalty as it is unwarranted.

90. The check must reference the EPA Docket Number of this Complaint and Respondent by name.

ANSWER: The allegations in this paragraph require no answer; however, Respondent is requesting a Hearing to contest the allegations in this Complaint and the proposed penalty as it is unwarranted.

V. COMPLIANCE ORDER

91. IT IS HEREBY ORDERED that within thirty (30) days of receipt of this Complaint, Respondent shall submit to EPA for review and approval a Compliance Plan describing all actions taken and/or planned by Respondent to ensure compliance with the following provisions of RCRA, and of Title 40 of the Code of Federal Regulations that are the subject of this Complaint:

Respondent shall take the following actions within the time periods specified, according to the terms and conditions specified below:

- a. Within 30 days of the effective date of this Order provide, to the EPA representative referenced below, an updated copy of the facility contingency plan that includes the capabilities of the emergency equipment, in accordance with 40 C.F.R. § 262.34(a)(4).
- b. Within 30 days of the effective date of this Order provide, to the EPA representative referenced below, job descriptions for positions at the facility that include hazardous waste management duties, in accordance with 40 C.F.R. § 262.34(a)(4).
- c. Within 30 days of the effective date of this Order provide, to the EPA representative referenced below, documentation demonstrating that Respondent has performed hazardous waste determinations on all solid waste streams being generated by Respondent at Respondent's facility at 2005 South 19th Street, Clinton, Iowa, on the date of the Final Order, in accordance with 40 C.F.R. § 262.11. Such documentation shall include a description of each solid waste stream generated at the facility (clearly delineating the source of the waste stream, including the previous use of the material if the waste stream is a spent material); whether each solid waste is a hazardous waste or non-hazardous waste; a list of all hazardous waste codes that apply to each hazardous waste generated at the facility; and all information (including but not limited to analytical results, Material Safety Data Sheet documentation, and process knowledge information) which form the basis of Respondent's hazardous waste determinations for each solid waste stream.
- d. Within 30 days of the effective date of this Order provide, to the EPA representative

referenced below, documentation and supporting narrative demonstrating that, for any hazardous waste stored on site, including that generated by the removal of spent acid and caustic cleaners from Respondent's metal finishing process, such waste is stored in accordance with the permitting requirements of RCRA Section 3005 or that it is exempt from the permitting requirements by meeting the requirements of 40 C.F.R. § 262.34 or other applicable exemption.

- e. Within 30 days of the effective date of this Order provide, to the EPA representative referenced below, hazardous waste manifests for off-site shipments of any hazardous waste generated at the Facility, for the period from June 2010 to the most recent manifest as of the effective date of this Order. Once quarterly for a period of one year, Respondent shall provide, to the EPA representative referenced below, hazardous waste manifests for off-site shipments of any hazardous waste generated at the Facility. If no hazardous wastes were manifested within the previous quarter, Respondent shall provide notification to the EPA representative stating such. If any hazardous waste generated by Respondent at the Facility is disposed or treated in lieu of being shipped off-site, Respondent will provide documentation and supporting narrative with its quarterly submittal pursuant to this subparagraph demonstrating that such disposal or treatment is in accordance with RCRA.
- f. Within 30 days of the effective date of this Order provide, to the EPA representative referenced below, documentation of compliance with the wastewater treatment unit exemption for owners and operators of hazardous waste treatment, storage, and disposal facilities, as described in 40 C.F.R. § 264.1(g)(6), or a statement that such exemption is not relevant to the processes at the Facility.
- g. Within 30 days of the effective date of this Order provide, to the EPA representative referenced below, photographic documentation of compliance with the requirement that used oil stored at a generator's facility be labeled or marked clearly with the words "Used Oil," as described in 40 C.F.R. § 279.22(c)(1).
- h. Within 30 days of the effective date of this Order provide, to the EPA representative referenced below, documentation of compliance with the requirements to close containers of universal waste lamps, to label the containers of waste lamps or the individual lamps, and to track the accumulation period of universal waste stored at the facility, as described in 40 C.F.R. §§ 273.13(d)(1), 273.14(e), and 273.15(c).
- i. Within 30 days of the effective date of this Order provide, to the EPA representative referenced below, photographic and narrative documentation that a spill kit is being maintained at the Facility's storage area(s) for hazardous wastes, including those wastes generated by spent acids and spent caustics from Respondent's processes, in accordance with 40 C.F.R. §§ 262.34(a)(4) and 265.32(c), or an explanation why this requirement is not applicable to the Facility.
- j. Within 180 days of the effective date of this Order, provide documentation of all weekly inspections of all hazardous waste storage areas at the facility performed in accordance with the requirements of 40 C.F.R. §§ 262.34(a)(1)(i) and 265.174, for the period from the effective date of this Order through the date upon which the documentation is provided.
- k. Submittal of Closure Plan for the Filter Building Container Storage Area: Within forty-five (45) days of the effective date of this Order, submit to EPA a closure plan for the illegal hazardous waste storage area adjacent to the facility filter building (filter building container storage area) in accordance with 40 C.F.R. Part 265 Subpart G. The closure plan

should be designed to determine the extent, if any, of hazardous waste releases from the illegal hazardous waste storage area. Respondent shall submit and EPA will review the plan in accordance with the procedures set forth in 40 C.F.R. § 265.112(d). Upon EPA approval, Respondent shall fully implement the closure plan in accordance with the schedule contained therein.

1. Within fifty (50) days of the effective date of this Order, Respondent shall submit evidence to EPA that Respondent has established and shall maintain financial assurance for closure, as required by 40 C.F.R. Part 265 Subpart H.
- m. EPA and/or its authorized representatives shall have access to the Facility at all reasonable times for the purpose of reviewing the progress of Respondent in carrying out the provisions of this Order and for purposes including, but not limited to, inspecting and copying records, collecting samples, and verifying data. Nothing in this Order shall restrict EPA's rights under Section 3007 of RCRA, 42 U.S.C. § 6927, or other statutory authority.
- n. EPA may move to modify or revoke this Order based upon information discovered during the course of implementation of the Order.
- o. The provisions of this Order shall remain in full force and effect until all actions required by this Order have been completed and EPA has notified the Respondent, in writing, that the actions required by this Order have been completed. Respondent shall notify EPA in writing at such time as it believes that all such actions have been completed. The EPA shall have sole discretion in determining whether or not all such actions have in fact been completed. Failure to complete all activities required hereunder as directed by EPA shall be deemed a violation of this Order. The EPA's provision of written notice to Respondent pursuant to this Paragraph shall not be construed as a waiver of any of EPA's rights to take further enforcement action under RCRA or any other laws.
- p. Respondent shall provide the deliverables referenced in subparagraphs a-o above to the following contact:

Kevin Snowden
AWMD/WEMM
EPA Region 7
901 North 5th Street
Kansas City, Kansas 66101
Telephone: 913-551-7022
Email: snowden.kevin@egp.gov

ANSWER: The allegations in this paragraph require no answer; however, Respondent is requesting a Hearing to contest the allegations in this Complaint, the appropriateness of the Compliance Order, and the proposed penalty.

92. In accordance with Section 3008(b) of RCRA, 42 U.S.C. § 6928(b), and 40 C.F.R. § 22.37(b), the Compliance Order section of this Complaint shall become final unless Respondent requests a public hearing in writing to contest the appropriateness of the Compliance Order in

accordance with the requirements of 40 C.F.R. § 22.15 no later than thirty (30) days after service of this Complaint.

ANSWER: Respondent requests a Formal Hearing to contest the appropriateness of the Compliance Order.

VI. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

93. Respondent may request a hearing to contest any material fact contained in the Complaint, or to contest the appropriateness of the proposed penalty and/or Compliance Order, by filing an answer in accordance with the requirements of 40 C.F.R. § 22.15 of the Consolidated Rules of Practice, a copy of which is enclosed hereto. The answer and request for hearing must be filed with the Regional Hearing Clerk at:

Regional Hearing Clerk
U.S. EPA Region 7
901 North 5th Street
Kansas City, Kansas 66101.

A copy of the answer and request for hearing and copies of any subsequent documents should also be sent to Mr. Chris R. Dudding, Office of Regional Counsel, at the same address.

ANSWER: The allegations in this paragraph require no answer; however, Respondent is requesting a Hearing to contest the allegations in this Complaint, the proposed penalty and the appropriateness of the proposed Compliance Order.

94. Respondent's failure to file a written answer and request a hearing within thirty (30) days of service of this Complaint will constitute a binding admission of all allegations contained in the Complaint and a waiver of Respondent's right to a hearing. A Default Order may thereafter be issued by the Regional Judicial Officer, and the civil penalty proposed herein shall become due and payable without further proceedings.

ANSWER: The allegations in this paragraph require no answer; however, Respondent is requesting a Hearing to contest the allegations in this Complaint, the proposed penalty and the appropriateness of the proposed Compliance Order.

95. Respondent's failure to request a public hearing in writing to contest the appropriateness of the Compliance Order within thirty (30) days after service of this Complaint shall automatically cause the Compliance Order section of this Complaint to become final.

ANSWER: The allegations in this paragraph require no answer; however, Respondent is requesting a Hearing to contest the allegations in this Complaint, the proposed penalty and the appropriateness of the proposed Compliance Order.

VII. SETTLEMENT CONFERENCE

96. Whether or not Respondent requests a hearing, an informal conference may be requested in order to discuss the facts of this case in an attempt to arrive at settlement. To request a settlement conference, please contact Mr. Chris Dudding, Office of Regional Counsel, U.S. EPA Region 7, 901 North 5th Street, Kansas City, Kansas 66101, (913) 551-7524.

ANSWER: Without any admission of fault or responsibility, Respondent has been engaged with EPA in good faith discussions regarding amicable resolution of these matters for many months; however, no settlement was agreed. If Complainant requests an additional informal conference, including EPA Region 7 management, Respondent would participate. All such settlement communications are inadmissible pursuant to FRE 408.

97. Please note that a request for an informal settlement conference does not extend the thirty (30) day period during which a written answer and request for a hearing must be submitted. The informal conference procedure may be pursued simultaneously with the adjudicatory hearing procedure.

ANSWER: The allegations in this paragraph require no answer.

98. EPA encourages all parties against whom a civil penalty is proposed to pursue the possibility of settlement as a result of an informal conference. However, no penalty reduction will be made simply because such a conference is held. Any settlement which may be reached as a result of such a conference shall be embodied in a written Consent Agreement and Final Order issued by the Regional Judicial Officer, U.S. EPA Region 7.

ANSWER: The allegations in this paragraph require no answer.

99. If Respondent has neither filed an answer nor requested a hearing within thirty (30) days of service of this Complaint, Respondent may be found in default. Default by the Respondent constitutes, for the purposes of this proceeding, admission of all allegations made in the Complaint and a waiver of Respondent's right to contest such factual allegations. A Default Order may thereafter be issued by the Presiding Officer and the civil penalties proposed shall be ordered without further proceedings and Respondent will be notified that the penalties have become due and payable.

ANSWER: The allegations in this paragraph require no answer; however, Respondent is requesting a Hearing to contest the allegations in this Complaint, the proposed penalty and the appropriateness of the proposed Compliance Order.

VIII. EFFECTIVE DATE

100. This Complaint, Compliance Order, and Notice of Opportunity for Hearing shall become effective on the date signed by the Chief of the Waste Enforcement and Materials Management Branch, EPA Region 7.

ANSWER: The allegations in this paragraph require no answer. Based upon Respondent's above Answer and Defenses with request for a Formal Hearing, this Complaint, Compliance Order and proposed civil penalty are contested and not effective. Respondent further reserves the right to amend this Answer and Defenses based upon discovery and new evidence.

101. The Compliance Order section of this Complaint shall only be terminated upon receipt of written notice from EPA that all requirements herein have been satisfied.

ANSWER: The allegations in this paragraph require no answer.

WHEREFORE, Respondent, Collis, Inc., contests the allegations in this Complaint and requests that such be dismissed with prejudice and Respondent requests entry of an Order of no cause for action following a Formal Hearing to resolve these matters, together with an award of Respondent's costs and attorneys' fees in defending this Complaint, and such further and other relief as may be just under the circumstances.

Respectfully submitted,

BARNES & THORNBURG LLP
Attorneys for Respondent Collis, Inc.

Date: April 26, 2012

By: Charles M. Denton (w/PT)

Charles M. Denton P-33269

Tammy L. Helminski P-69431

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and

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(317) 231-7387

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY STATES
REGION 7
901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

ENVIRONMENTAL PROTECTION
 AGENCY-REGION 7
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 IN THE MATTER OF:)
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 Collis, Inc.)
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)
 EPA ID Number IAD047303771)
)
 Respondent)
)
 Proceeding under Section 3008(a) and (g) of)
 the Resource Conservation and Recovery Act)
 as amended, 42 U.S.C. § 6928(a) and (g).)
 _____)

Docket No. RCRA-07-2012-0014

PROOF OF SERVICE

Documents Served: ***Respondent's Answer and Defenses to Complaint/Compliance Order and Request for Hearing***

Person served: ***Regional Hearing Clerk
U.S. EPA Region 7
901 North 5th Street
Kansas City, Kansas 66101***

***Chris R. Dudding
Office of the Regional Counsel
U.S. EPA Region 7
901 North 5th Street
Kansas City, Kansas 66101***

The undersigned certifies that a copy of the document listed above was served upon the parties listed above at the referenced addresses by overnight mail, Federal Express, with postage prepaid, on the date indicated below.

Date of Service: April 26, 2012

I declare that the statement above is true to the best of my information, knowledge and belief.

Kathy A. Galdys

 Kathy A. Galdys
 Barnes & Thornburg LLP