

*Law Office of*  
**FREDERICK  
EISENBUD**

**THE ENVIRONMENTAL LAW FIRM<sup>SM</sup>**

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REGIONAL HEARING  
CLERK

2013 DEC -6 P 12:03

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II

LILIA FACTOR, ESQ.

ROBIN ROMEO  
OFFICE MANAGER

December 5, 2013

**VIA FEDERAL EXPRESS NEXT DAY SERVICE**

Karen Maples, Regional Hearing Clerk (original plus one)  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, New York 10008-1866

Re: In Matter of T.C. Dunham Paint Company, Inc.  
Docket # RCRA-02-2013-7105  
Respondent's Answer to the Complaint

Dear Ms. Maples:

Enclosed for filing please find an original plus one copy of Respondent T.C. Dunham Paint Company, Inc.'s Answer to the Complaint. The Answer requests a hearing. The Complaint was served by certified mail, returned receipt requested, and I am informed that Respondent signed for said Complaint on November 8, 2013. Accordingly, the Answer is timely filed.

We are also enclosing an Affidavit of Service showing delivery upon you by Federal Express, Overnight Delivery, of the original plus one, and one copy each by regular mail upon Dore LaPosta, Director, Division of Enforcement and Compliance Assistance, and Carl R. Howard, Assistant Regional Counsel, Office of Regional Counsel. We are serving Mr. Howard because we are requesting an Informal Settlement Conference.

Very truly yours,



Frederick Eisenbud, Esq. (FE1519)  
Law Office of Frederick Eisenbud  
Attorneys for Respondent

## AFFIDAVIT OF SERVICE

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2  
Docket No. RCRA-02-2013-7105

**ROBIN ROMEO**, being duly sworn, deposes and says that deponent is not a party to this action, is over 18 years of age and resides in Huntington, New York.

That on the 5<sup>th</sup> day of December, 2013, deponent served the within *Respondent's Answer to Complaint* upon:

Karen Maples, Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, NY 10008-1866

by depositing same in the care of *FEDERAL EXPRESS* to be delivered before 10:30am on December 6, 2013 to the last known address as indicated above; and

that on the 5<sup>th</sup> day of December, 2013, deponent served the within *Respondent's Answer to Complaint* upon:

Dore LaPosta, Director  
U.S. Environmental Protection  
Agency, Region 2  
Division of Enforcement and  
Compliance Assistance  
290 Broadway  
New York, NY 10008-1866

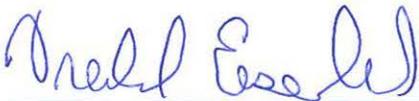
Carl R. Howard, Esq. Assistant  
Regional Counsel  
Office of Regional Counsel  
U.S. Environmental Protection  
Agency, Region 2  
290 Broadway, Room 1623  
New York, NY 10007-1866

by mailing a true copy of same in a properly sealed envelope with postage prepaid therein and depositing same in an official depository under the exclusive care of the United States Postal Service within the State of New York, addressed to the last known addresses of the addressee as indicated above.



ROBIN ROMEO

Sworn to before me this  
5th day of December, 2013:



NOTARY PUBLIC

FREDERICK EISENBUD  
Notary Public, State of New York  
No. 4697719  
Qualified in Suffolk County 2017  
Commission Expires August 31 2017

**UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY: REGION 2**

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2013 DEC -6 P 12:03  
REGIONAL HEARING  
CLERK

-----X

**In the matter of:**

**T.C. DUNHAM PAINT COMPANY, INC.,**

**Respondent.**

**Proceeding Under Section 3008 of the Solid**

**Waste Disposal Act, as amended.**

**ANSWER AND  
REQUEST FOR  
HEARING**

**(Docket # RCRA-  
02-2013-7105)**

-----X

Respondent T.C. DUNHAM PAINT COMPANY, INC. (“Respondent”), by its attorneys, the Law Office of Frederick Eisenbud, answers the Complaint in the above captioned matter as follows:

1. Admits each and every allegation contained within paragraphs 1, 3, 6, 7, 15, 20, 22, 23, 24, of the Complaint;
2. Denies knowledge or information sufficient to answer the allegations contained in paragraphs 2, 11, 12, 13, 14, 16, 17, 18, 19, of the Complaint.
3. Denies the allegations within paragraph 4 of the complaint but admit that the Facility is within the vicinity of the Saw Mill River, the distance from which is to be determined.
4. Denies the allegation in paragraph 5 of the Complaint that Respondent was organized in 1989, but otherwise admit the allegations in paragraph 5.
5. Admits the allegation in paragraph 8 of the Complaint, but states that the notification was not provided because Respondent did not generate hazardous waste at its facility.
6. Admits the allegation in paragraph 9 of the Complaint, but states that the assumption of the EPA identification number was done by a contractor for the purpose of disposing of waste from the site following a fire in May, 2012.

7. Denies knowledge or information sufficient to answer the allegation in paragraph 10 of the Complaint with regard to spent mercury lamps, but otherwise denies that the materials described in paragraph 10 of the Complaint are hazardous waste and states that Respondent, at all times, intended to reuse the materials in its paint manufacturing business and never considered the material to be waste.
8. Denies the accuracy of the characterization of the Information Request Letter of August 31, 2012 found in paragraph 21 of the Complaint, refers the Administrative Law Judge (“ALJ”) to the IRL for the contents thereof, and denies knowledge or information sufficient to know why EPA needed the information.
9. Denies the accuracy of the conclusions set out in paragraph 27, 28, 29 and 30 of the Complaint and refers the Administrative Law Judge to the November 13, 2012 Response for the exact information provided.

#### **ANSWER TO COUNT 1**

10. Repeats and realleges Respondent’s answers to paragraphs 1 – 28, which are incorporated by reference in paragraph 29 of the Complaint.
11. Denies the accuracy of the characterization of the regulations referenced in paragraphs 30, 31 and 32 of the Complaint, and refers the ALJ to the referenced regulations for the exact text thereof.
12. Denies each and every allegation contained within paragraphs 33, 34, 35, and 36 of the Complaint.

#### **ANSWER TO COUNT 2**

13. Repeats and realleges Respondent’s answers to paragraphs 1 – 28, which are incorporated by reference in paragraph 37 of the Complaint.

14. Denies the accuracy of the characterization of the regulations referenced in paragraph 38 of the Complaint and refers the ALJ to the referenced regulations for the exact text thereof.
15. Denies each and every allegation contained within paragraphs 39 and 40 of the Complaint.

### **ANSWER TO COUNT 3**

16. Repeats and realleges Respondent's answers to paragraphs 1 – 28, which are incorporated by reference in paragraph 41 of the Complaint.
17. Denies the accuracy of the characterization of the regulations referenced in paragraph 42 of the Complaint and refers the ALJ to the referenced regulations for the exact content thereof.
18. Denies each and every allegation contained within paragraphs 43 and 44 of the Complaint.

### **RESPONSE TO PROPOSED CIVIL PENALTY**

19. Assuming, *arguendo*, that the Agency is able to establish that Respondent violated Counts 1 and/or 2 and/or 3, the proposed penalty of \$257,360 is excessive and inappropriate under all the facts and circumstances of this case.

### **RESPONSE TO COMPLIANCE ORDER**

20. Without acknowledging that Respondent generated any hazardous waste on or before the effective date of the Compliance Order, or that Respondent will generate any such waste thereafter, Respondent agrees to comply with the Compliance Order.

### **REQUEST FOR HEARING**

21. Pursuant to 40 C.F.R. §22.15(c), Respondent requests a hearing to determine the issues raised by this Answer, including but not limited to whether the material found in drums at the facility was properly classified as a hazardous waste and whether Respondent should be held liable for the use by a contractor of an EPA identification number previously assigned to the site. Further, a hearing is requested to determine whether the proposed penalty is appropriate, in

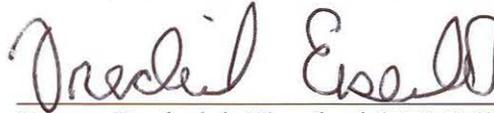
light of mitigating factors, including, but not limited to, Respondent's agreement with the prior owner of the property, the New York State Department of Transportation, to assume responsibility for investigating and remediating contamination caused by a former gasoline station tenant and a former auto-body shop tenant, even though Respondent had no legal obligation to undertake said investigation and remediation and did not cause or contribute towards said contamination.

### **REQUEST FOR INFORMAL SETTLEMENT CONFERENCE**

22. Pursuant to 40 CFR §22.18(b), and notwithstanding Respondent's request for a hearing, Respondent requests the opportunity for an Informal Settlement Conference prior to any formal hearing on the Complaint.

Dated: Commack, New York  
December 5, 2013

LAW OFFICE OF FREDERICK EISENBUD  
*Attorneys for Respondent T.C. Dunham Paint Company, Inc.*



By: Frederick Eisenbud (FE1519)  
6165 Jericho Turnpike  
Commack, New York 11725-2803  
(631) 493-9800  
[fe@li-envirolaw.com](mailto:fe@li-envirolaw.com)

To:

Karen Maples, Regional Hearing Clerk (original plus one)  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, New York 10008-1866

Dore LaPosta, Director (one copy)  
U.S. Environmental Protection Agency, Region 2  
Division of Enforcement and Compliance Assistance

290 Broadway  
New York, New York 10008-1866

Carl R. Howard, Esq. (one copy – re request for informal conference)  
Assistant Regional Counsel  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, Room 1623  
New York, New York 10007-1866