

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY



BEFORE THE ADMINISTRATOR

IN THE MATTER OF)
)
ELITE ENTERPRISES, INC.)
)
U.S. EPA ID NO. IND 985 102 607) DOCKET NO. RCRA-05-2009-0013
)
CREATIVE LIQUID COATINGS, INC.)
(Formerly doing business as)
Creative Coatings, Inc.))
)
AND)
)
RANDALL GEIST,)
)
RESPONDENTS)

ORDER ON COMPLAINANT'S FIRST MOTION TO SUPPLEMENT PREHEARING
EXCHANGE AND COMPLAINANT'S CORRECTED MOTION TO CONSOLIDATE
RELATED MATTERS

This proceeding arises under the authority of Section 3008(a) of the Solid Waste Disposal Act, as amended, commonly referred to as the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984 (collectively referred to as RCRA) ("RCRA"), 42 U.S.C. § 6928(a). The parties are reminded that this proceeding is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (the "Rules of Practice"), 40 C.F.R. §§ 22.1-22.32.

On March 12, 2010, Complainant filed Complainant's Motion to Consolidate Related Matters. On March 17th, Complainant filed a Corrected Motion to Consolidate Related Matters ("Motion to Consolidate"). On March 19, 2010, Complainant filed a First Motion to Supplement Prehearing Exchange ("Motion to Supplement"). This Order will address both the Motion to Consolidate and the Motion to

Supplement.^{1/} Respondents had 15 days from the date of service for each of these motions to file a response. Any response to the Motion to Consolidate was due by April 1, 2010. Any response to the Motion to Supplement was due by April 3, 2010. To date, no Respondent has filed a response to either motion.

I. Motion to Supplement Prehearing Exchange

Complainant seeks leave to file additional exhibits pursuant to Section 22.19(f) of the Rules of Practice, which requires that a party promptly supplement or correct any information contained in its prehearing exchange when it learns that the information is incomplete, inaccurate or outdated. 40 C.F.R. § 22.19(f). Complainant avers that each of the fourteen proposed supplementary documents is relevant and material to liability, Respondents' defenses, witness examination, and the proposed penalties. Memo. Supp. Complainant's First Mot. Suppl. Prehearing Exchange at 8-9. In addition, Complainant offers a narrative justification for each proposed supplementary document.

Complainant argues that granting the Motion to Supplement will not prejudice the Respondents because Respondents are "aware of and have many, if not all, of these documents in their possession." *Id.* at 10. Under section 22.16(b) of the Rules of Practice, "[a]ny party who fails to respond within the designated period waives any objection to the granting of the motion." 40 C.F.R. § 22.16(b). Respondents have not, either individually or jointly, filed any response to the Motion to Supplement. Accordingly, they are deemed to have waived all objection and the Motion to Supplement is hereby **GRANTED**.

II. Motion to Consolidate Related Matters

In its Motion to Consolidate, Complainant requests that the above-captioned matter be consolidated with *In re Creative Liquid Coatings, Inc., et al.*, Docket No. RCRA-05-2009-0012. Section 22.12(a) of the Rules of Practice lays out the standard for consolidation. Under Section 22.12(a), consolidation is appropriate where there exist common parties or common questions of law or fact, consolidation would expedite or simplify consideration of the issues, and no adverse effect would result to any party. 40 C.F.R. § 22.12(a). Respondents have not submitted any objection to

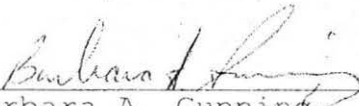
^{1/} I note that Complainant has also filed a Motion to Compel Discovery, dated March 31, 2010. However, because the time period has not yet ended for Respondents to object, this Motion remains pending and is unaffected by this Order.

the Motion to Consolidate. As noted above, failure to file a timely objection is deemed a waiver of the right to object. 40 C.F.R. § 22.16(b).

In support of its Motion to Consolidate, Complainant avers that the parties in both cases are identical, the allegations are nearly so, and the Respondents' defenses are the same in each proceeding, such that consolidation would simplify the issues and expedite the proceedings. Complainant also argues that consolidation would not adversely affect the rights of the Respondents that have answered in both cases. Memo. Supp. Complainant's Corrected Mot. Consol. Related Matters at 5-6.

Based on Complainant's arguments and the lack of objection from Respondents, the Motion to Consolidate is hereby **GRANTED**.

So ordered.



Barbara A. Gunning
Administrative Law Judge

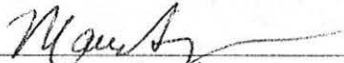
Dated: April 14, 2010
Washington, DC

In the Matter of *Elite Enterprises, Inc.*, (U.S. EPA ID No. IND 985 102 607); *Creative Liquid Coatings, Inc.*, (Formerly doing business as *Creative Coatings, Inc.*) and *Randall Geist*, Respondents.

Docket No. RCRA-05-2009-0013

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Order on Complainant's First Motion to Supplement Prehearing Exchange and Complainant's Corrected Motion to Consolidate Related Matters**, dated April 14, 2010, was sent this day in the following manner to the addressees listed below.



Mary Angeles
Legal Staff Assistant

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Dated: April 15, 2010
Washington, D.C.