

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1**

In the Matter of	:	
	:	Docket No: RCRA-01-2013-0072
United Abrasives, Inc.	:	
185 Boston Post Road	:	
North Windham, CT 06256	:	
	:	
Respondent	:	
	:	
Proceeding under Section 3008(a)	:	
Resource Conservation and Recovery	:	
Act, 42 U.S.C. § 6928(a)	:	MARCH 14, 2014

ANSWER, DEFENSES AND REQUEST FOR HEARING

Pursuant to 40 C.F.R. § 22.15, Respondent United Abrasives, Inc. (“United Abrasives”) hereby replies to the Complaint and Notice of Opportunity for Hearing in the above-captioned case (the “Complaint”). In reply to the Complaint, United Abrasives states the following:

I. STATEMENT OF AUTHORITY

1. Admit.
2. Admit.

II. NATURE OF ACTION

3. Admit
4. United Abrasives has no knowledge of this allegation.

III. STATUTORY AND REGULATORY FRAMEWORK

5. Admit.
6. Admit.
7. Deny. EPA granted the State of Connecticut interim authorization under Section 3006 of RCRA on June 29, 1983, not on June 10, 1983.

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8. Admit.
9. Admit.
10. Admit.
11. Admit.
12. Admit.
13. Admit.

IV. GENERAL ALLEGATIONS

14. Deny. United Abrasives manufactures grinding and cutting wheels (bonded abrasives), as well as shop rolls and sanding belts (coated abrasives), but the cup wheels, sanding sheets, fiber discs, and pressure-sensitive adhesive discs are sourced from outside vendors. Flap discs were manufactured on site at the time of the inspection in 2012, but this process has since moved out of state.
15. Admit.
16. Deny with regard to the size of the manufacturing building, which is actually 400,000 square feet.
17. (a) Admit; (b) Admit; (c) Deny that there are 20 heating oil burners (there are 15); (d) Admit; (e) Deny that materials are molded in the Mix Room (molding occurs in the press rooms); (f) Admit; (g) Deny that resins are mixed in the QA/QC Lab for manufacturing processes (the resins are mixed only for testing purposes); (h) Admit; (i) Admit.
18. Admit.
19. Admit.
20. Admit.

21. Admit.
22. Admit.
23. Deny, in part, as explained more specifically below.

V. VIOLATIONS

Count 1 – Failure to Notify of Hazardous Waste Activity and Obtain and Proper EPA Identification Number

24. United Abrasives realleges and incorporates by reference Paragraphs 1-23.
25. United Abrasives admits that this is a true statement of the law that applies to large quantity generators (LQGs), and also admits that United Abrasives is a conditionally exempt small quantity generator (CESQG) and, therefore, this statement of law does not apply to United Abrasives.
26. United Abrasives admits that this is a true statement of the law that applies to LQGs, and also admits that United Abrasives is a CESQG and, therefore, this statement of law does not apply to United Abrasives.
27. United Abrasives admits that this is a true statement of the law that applies to LQGs, and also admits that United Abrasives is a CESQG and, therefore, this statement of law does not apply to United Abrasives.
28. Admit as to the observations in the Forgerini Area. Deny as to the allegation that the fuel oil in the Tool Crib is “waste” – it is transferred back into the heating system as fuel and ultimately consumed as such. Admit as to the observation in the QA/QC Lab, but note that this is a satellite storage area and has since been relabeled to indicate it as such.
29. Deny. Based on the October 2012 waste shipment, the total volume was

approximately 1200 kg, not 1750 kg.

30. Admit, but United Abrasives is a CESQG and, therefore, this requirement does not apply to United Abrasives.
31. Admit, but United Abrasives is a CESQG and, therefore, the use of these ID numbers is appropriate. With regard to the number used by Safety Kleen, CVS024248900, the following is an excerpt from the Connecticut Department of Energy and Environmental Protection CESQG Guidance Manual on the use of ID numbers: "If your company has been assigned an EPA ID Number, fill in that number in the EPA ID Field. If you do not have an EPA ID Number, you could use any of the following: 'CTCESQG', 'CTCESQG99999', or 'CVS024248900'." With regard to the number used by EQ, CTCRW9999999, EQ informed United Abrasives that DEEP said it was appropriate to use for CESQGs.
32. Deny.

Count 2 – Failure to Maintain Adequate Hazardous Training Documentation and Failure to Provide Adequate Training for Each Employee Managing Hazardous Waste

33. United Abrasives realleges and incorporates by reference Paragraphs 1-32.
34. United Abrasives admits that this is a true statement of the law that applies to LQGs, and also admits that United Abrasives is a CESQG and, therefore, this statement of law does not apply to United Abrasives.
35. United Abrasives admits that this is a true statement of the law that applies to LQGs, and also admits that United Abrasives is a CESQG and, therefore, this statement of law does not apply to United Abrasives.
36. United Abrasives admits that this is a true statement of the law that applies to

- LQGs, and also admits that United Abrasives is a CESQG and, therefore, this statement of law does not apply to United Abrasives.
37. United Abrasives admits that this is a true statement of the law that applies to LQGs, and also admits that United Abrasives is a CESQG and, therefore, this statement of law does not apply to United Abrasives.
38. United Abrasives admits that this is a true statement of the law that applies to LQGs, and also admits that United Abrasives is a CESQG and, therefore, this statement of law does not apply to United Abrasives.
39. United Abrasives admits that this is a true statement of the law that applies to LQGs, and also admits that United Abrasives is a CESQG and, therefore, this statement of law does not apply to United Abrasives.
40. United Abrasives has no knowledge of this allegation, but United Abrasives is a CESQG and, therefore, this training requirement does not apply to United Abrasives.
41. Admit, but United Abrasives is a CESQG and, therefore, this requirement does not apply to United Abrasives.
42. Admit that those persons have signed manifests, but deny that any training is required, as United Abrasives is a CESQG and, therefore, this requirement does not apply to United Abrasives. Regardless, a number of employees received on-site waste training in November 2012: U.S. DOT Hazardous Material Shipper Training and RCRA Hazardous Waste Management Training.
43. Deny.

Count Three – Failure to Develop a Hazardous Waste Inspection Program and to Conduct

and Document Weekly Inspections of Hazardous Waste Containers

- 44. United Abrasives realleges and incorporates by reference Paragraphs 1-43.
- 45. United Abrasives admits that this is a true statement of the law that applies to LQGs, and also admits that United Abrasives is a CESQG and, therefore, this statement of law does not apply to United Abrasives.
- 46. United Abrasives admits that this is a true statement of the law that applies to LQGs, and also admits that United Abrasives is a CESQG and, therefore, this statement of law does not apply to United Abrasives.
- 47. Admit, but United Abrasives is a CESQG and, therefore, this requirement does not apply to United Abrasives.
- 48. Deny.

Count Four – Failure to Maintain an Adequate Contingency Plan

- 49. United Abrasives realleges and incorporates by reference Paragraphs 1-48.
- 50. United Abrasives admits that this is a true statement of the law that applies to LQGs, and also admits that United Abrasives is a CESQG and, therefore, this statement of law does not apply to United Abrasives.
- 51. United Abrasives admits that this is a true statement of the law that applies to LQGs, and also admits that United Abrasives is a CESQG and, therefore, this statement of law does not apply to United Abrasives.
- 52. United Abrasives admits most of this paragraph to be a true statement of the law that applies to LQGs, and also admits that United Abrasives is a CESQG and, therefore, this statement of law does not apply to United Abrasives. United Abrasives denies that pursuant to 40 C.F.R. § 265.52(b) a LQG's "facility plan

must describe the actions facility personnel must take” as the proper citation for this requirement is 40 C.F.R. § 265.52(a).

53. Deny. United Abrasives had a newer plan than that produced at the time of the Inspection, and has since revised it. Regardless, United Abrasives is a CESQG and, therefore, this requirement does not apply to United Abrasives.

54. Deny.

Count Five – Failure to Properly Determine if a Waste is a Hazardous Waste

55. United Abrasives realleges and incorporates by reference Paragraphs 1-54.

56. Admit.

57. Admit.

58. Admit.

59. (A) Deny, at the time of inspection the referenced aerosol cans were still in use and, therefore, not yet waste; (B) Deny that United Abrasives uses materials containing heavy metals in the manufacturing process; (C) Deny that oil is generated during any manufacturing process – it is only generated when machines are taken out of service and this went to Clean Harbors under “Oil Recycling Services.”

60. Deny.

Count 6 – Failure to Provide Adequate Secondary Containment for Containers of Hazardous Waste

61. United Abrasives realleges and incorporates by reference Paragraphs 1-60.

62. United Abrasives admits that this is a true statement of the law that applies to LQGs, and also admits that United Abrasives is a CESQG and, therefore, this

statement of law does not apply to United Abrasives.

63. United Abrasives admits that this is a true statement of the law that applies to LQGs, and also admits that United Abrasives is a CESQG and, therefore, this statement of law does not apply to United Abrasives.

64. Admit, but United Abrasives is a CESQG and, therefore, this requirement does not apply to United Abrasives. In addition, the corrosive, alkaline liquid material (organosilane ester) was profiled to be a non-hazardous waste.

65. Deny.

Count 7 – Failure to Label or Mark Containers Holding Hazardous Waste with the Words “Hazardous Waste,” and With Other Words That Identify the Contents of the Containers

66. United Abrasives realleges and incorporates by reference Paragraphs 1-65.

67. United Abrasives admits that this is a true statement of the law that applies to LQGs, and also admits that United Abrasives is a CESQG and, therefore, this statement of law does not apply to United Abrasives.

68. United Abrasives admits that this is a true statement of the law that applies to LQGs, and also admits that United Abrasives is a CESQG and, therefore, this statement of law does not apply to United Abrasives.

69. United Abrasives admits that this is a true statement of the law that applies to LQGs, and also admits that United Abrasives is a CESQG and, therefore, this statement of law does not apply to United Abrasives.

70. Admit, but United Abrasives is a CESQG and, therefore, this requirement does not apply to United Abrasives. In addition, the corrosive, alkaline liquid material (organosilane ester) was profiled to be a non-hazardous waste. Furthermore, the

fuel oil in the Tool Crib is not a “waste” – it is transferred back into the heating system as fuel and ultimately consumed as such.

71. Deny.

Count 8 – Failure to Properly Mark or Label Hazardous Waste Containers with the Beginning Accumulation Date

72. United Abrasives realleges and incorporates by reference Paragraphs 1-71.

73. United Abrasives admits that this is a true statement of the law that applies to LQGs, and also admits that United Abrasives is a CESQG and, therefore, this statement of law does not apply to United Abrasives.

74. United Abrasives admits that this is a true statement of the law that applies to LQGs, and also admits that United Abrasives is a CESQG and, therefore, this statement of law does not apply to United Abrasives.

75. Admit, but United Abrasives is a CESQG and, therefore, this requirement does not apply to United Abrasives. In addition, the corrosive, alkaline liquid material (organosilane ester) was profiled to be a non-hazardous waste.

76. Deny.

Count 9 – Failure to Store Containers of Ignitable Hazardous Waste in a Manner That Prevents Accidental Ignition or Reaction of the Waste

77. United Abrasives realleges and incorporates by reference Paragraphs 1-76.

78. United Abrasives admits that this is a true statement of the law that applies to LQGs, and also admits that United Abrasives is a CESQG and, therefore, this statement of law does not apply to United Abrasives.

79. United Abrasives admits that this is a true statement of the law that applies to LQGs, and also admits that United Abrasives is a CESQG and, therefore, this

statement of law does not apply to United Abrasives.

80. Admit, but United Abrasives is a CESQG and, therefore, this requirement does not apply to United Abrasives. Additionally, the Solvent Storage Room has grounding capabilities (the drums are typically grounded), and the entire facility is non-smoking (with the exception of one "Smoking Room"), a fact known to employees, therefore "No Smoking" signs are not necessary.

81. Deny.

Count 10 – Failure to Properly Manage Universal Waste

82. United Abrasives realleges and incorporates by reference Paragraphs 1-81.

83. Admit.

84. Admit.

85. Admit.

86. Admit.

87. Admit.

88. Admit

89. Admit.

90. Admit.

91. Deny. Lights, ballasts, etc., are generally taken by Safety Kleen. The local Department of Public Works allows electronic wastes in small volumes, so United Abrasives will accumulate such an amount and then bring it to the transfer station.

92. Admit with regard to the allegations in Paragraphs 89 and 90, but deny with regard to the allegations in Paragraph 91.

Count 11 – Failure to send land disposal restrictions notifications with off-site shipments of

hazardous wastes

93. United Abrasives realleges and incorporates by reference Paragraphs 1-92.
94. United Abrasives admits that this is a true statement of the law that applies to LQGs, and also admits that United Abrasives is a CESQG and, therefore, this statement of law does not apply to United Abrasives.
95. United Abrasives admits that this is a true statement of the law that applies to LQGs, and also admits that United Abrasives is a CESQG and, therefore, this statement of law does not apply to United Abrasives.
96. Deny as to the LDR notifications/certifications, which were filed with the Safety Kleen invoices.
97. Deny.

Count 12 – Failure to correctly use a manifest

98. United Abrasives realleges and incorporates by reference Paragraphs 1-97.
99. United Abrasives admits that this is a true statement of the law that applies to LQGs, and also admits that United Abrasives is a CESQG and, therefore, this statement of law does not apply to United Abrasives.
100. United Abrasives admits that this is a true statement of the law that applies to LQGs, and also admits that United Abrasives is a CESQG and, therefore, this statement of law does not apply to United Abrasives.
101. Deny. United Abrasives is a CESQG and, therefore, the use of that ID number by Safety Kleen is appropriate. The following is an excerpt from the Connecticut Department of Energy and Environmental Protection CESQG Guidance Manual on the use of ID numbers: “If your company has been assigned an EPA ID

Number, fill in that number in the EPA ID Field. If you do not have an EPA ID Number, you could use any of the following: 'CTCESQG', 'CTCESQG99999', or 'CVS024248900'."

102. Admit, but United Abrasives is a CESQG and, therefore, this requirement does not apply to United Abrasives.
103. Admit, but United Abrasives is a CESQG and, therefore, this requirement does not apply to United Abrasives.
104. Admit, but United Abrasives is a CESQG and, therefore, this requirement does not apply to United Abrasives.
105. Deny.

VI. PROPOSED PENALTY

106. Deny that the Complainant has taken into account the particular facts and circumstances of this case with specific reference to the Penalty Policy. Specifically, the Complainant is obligated to consider, and has not considered, mitigating factors, including:
 - a. United Abrasives' good faith efforts to comply with concerns raised during EPA's August 2012 inspection included:
 - i. United Abrasives hired Fuss & O'Neill to perform hazardous waste training of personnel whose responsibilities may involve management of hazardous waste generated at the facility. This type of training is not otherwise required of a CESQG.
 - ii. United Abrasives collected additional samples in support of original waste determinations.

- iii. United Abrasives labeled waste containers with labels indicating the contents to be hazardous wastes in addition to labels indicating their contents.
 - iv. United Abrasives rearranged the storage of the waste within the Forgerini area to provide additional containment and clearer staging of the wastes. Additional housekeeping measures were implemented to ensure an orderly work area.
 - v. United Abrasives implemented a weekly inspection program to check waste management areas and confirm containers are closed and in good condition.
 - vi. United Abrasives hired Fuss & O'Neill to assist them with waste management practices, training, and compliance with CESQG requirements.
 - vii. United Abrasives eliminated the use of Safety Kleen hydrocarbon solvent and replaced it with an aqueous-based cleaner which has eliminated one of the hazardous waste streams.
 - viii. United Abrasives is now using a device that punches used aerosol cans and empties any residue into a 55 gallon drum, as an additional safety precaution.
- b. United Abrasives' degree of willfulness and/or negligence was non-existent for the following reasons:
- i. United Abrasives worked with Allied Chemical prior to the inspection regarding its environmental compliance, specifically

with regard to its waste disposal practices.

- ii. CESQGs are not typically on the “radar screen” for notification of compliance initiatives or best management practices by regulatory agencies. As a result, United Abrasives was not made aware of the requirements for generators of hazardous waste, including thresholds for CESQGs. United Abrasives would have easily managed its waste as a CESQG had it been provided that information.
- c. The following are examples of United Abrasives’ cooperation during the three-day August 2012 inspection, and the subsequent five-day inspection by the EPA National Enforcement Investigations Center:
 - i. United Abrasives was cordial and complied with all requests made by EPA during the August 2012 inspection. EPA was given access to all areas of the facility and waste determinations were provided to EPA for the waste streams anticipated to be sampled.
 - ii. United Abrasives fully complied with all requests and gave access to all areas of the facility during the January 2013 investigation by the EPA National Enforcement Investigations Center. Additionally, United Abrasives retained Fuss & O’Neill to assist and oversee the investigation. The outcome of the investigation was that no wastes collected or analyzed during the investigation were hazardous, confirming the original waste determinations.

107. Deny that the Complainant’s calculation of the proposed penalty explained in

Attachment 1 to the Complaint is accurate. This is due to a failure on the part of the Complainant to properly assess the potential for harm and the extent of deviation from the requirement. United Abrasives proposes the following assessment be substituted:

a. Count One

- i. As a CESQG in Connecticut, United Abrasives is not required to obtain an EPA identification number for an episodic generation exceedance. See Conditionally Exempt Small Quantity Generator Handbook For Hazardous Waste Handlers, p.8 (CT DEEP, 2009).
- ii. If not eliminated altogether, this count should be considered a minor/minor violation for the following reasons:

1. Hazardous waste streams generated at United Abrasives were shipped to permitted treatment, storage disposal facilities in accordance with applicable regulatory requirements. Lacking a notification did not change the fundamental goal of RCRA proper disposition of hazardous waste.
2. Failing to submit a notice, to a state that does not require one from episodic generation, is not a significant deviation from any requirement.

b. Count Two

- i. If not eliminated altogether, due to the fact that United Abrasives is a CESQG, this count should be considered a minor/minor violation

for the following reasons:

1. United Abrasives has received training from Fuss & O'Neill, as noted above, and will soon be undertaking additional Hazard Communication training.
2. Failing to carry out the training required for Small Quantity Generators during rare times of episodic generation exceedances is not a significant deviation from any requirement.

c. Count Three

- i. If not eliminated altogether, due to the fact that United Abrasives is a CESQG, this count should be considered a minor/minor violation for the following reasons:

1. The storage area is located in an area of routine operations that is readily visible to many employees. Issues or concerns associated with the area would have been quickly identified and addressed as a result of routine, informal observations.
2. No releases are known to have occurred in this area nor had EPA identified that the management or storage of these containers had actually resulted in a release.
3. The materials were stored within the center of a secure building with no opportunity for external issues such as vandalism or weather related incidents.

4. Failing to officially inspect a well-protected area that is regularly observed is not a significant deviation from any requirement.

d. Count Four

- i. If not eliminated altogether, due to the fact that United Abrasives is a CESQG, this count should be considered a minor/minor violation for the following reasons:

1. Many of the elements required by a Contingency Plan are contained in United Abrasives' in its Stormwater Pollution Prevention and Emergency Action Plans including the names of contacts, procedures to follow in the event of a spill or leak, emergency response equipment, and an evacuation plan for the facility.
2. The Fire Department toured the United Abrasives site prior to the inspection by EPA in August 2012, in an effort to coordinate with emergency authorities.
3. Failing to officially inspect a well-protected area that is regularly observed is not a significant deviation from any requirement.
4. Failing to maintain a Contingency Plan when the information such a plan would contain can be found in existing Stormwater Pollution Prevention and Emergency Action Plans is not a significant deviation from any

requirement.

e. Count Five

i. This count should be considered a minor/minor violation for the following reasons:

1. As indicated above, United Abrasives has shipped hazardous waste to an appropriately permitted treatment, storage, disposal facility. Non-hazardous waste generated at the site has been disposed in accordance with applicable regulations. As such, these wastes have been properly handled, stored and disposed with no known risk to human health or the environment.
2. United Abrasive's waste vendors, EQ and Safety Kleen, prepared appropriate waste profiles for ultimate disposal based on information provided by United Abrasives and material supplies. As such, determinations exist in the form of waste profiles.
3. Failing to document waste determinations, while making them properly and handling the waste appropriately, is not a significant deviation from any requirement.

f. Count Six

i. If not eliminated altogether, due to the fact that United Abrasives is a CESQG, this count should be considered a minor/minor violation for the following reasons:

1. The Forgerini area is located within the center of the Shipping Warehouse building, sufficiently located away from doorways or opening to the outside. This floor of this area is concrete and sufficiently impervious to prevent a release to the environment. In the event of a spill, any waste would be easily removed by response personnel.
2. Many of the containers were stored on containment pallets that would provide "tertiary" containment.
3. The drum of oil in the tool crib was not waste oil but unused fuel and as such not subject to the hazardous waste regulations.
4. This containment is adequately protective of human health and the environment, and is not a significant deviation from any requirement.

g. Count Seven

- i. If not eliminated altogether, due to the fact that United Abrasives is a CESQG, this count should be considered a minor/minor violation for the following reasons:

1. Containers were labeled with information identifying their contents.
2. United Abrasives was aware of what materials were in fact waste and what the contents of the containers based on the labels provided; in other words, there were no unknown

waste streams and no risk of confusion.

3. Given that the containers were identifiable to the employees of United Abrasives, this is not a significant deviation from any requirement.

h. Count Eight

- i. If not eliminated altogether, due to the fact that United Abrasives is a CESQG, this count should be considered a minor/minor violation for the following reasons:

1. United Abrasives was aware of the general period of time in which waste was accumulated.
2. Given this awareness, this is not a significant deviation from any requirement.

i. Count Nine

- i. This count should be considered a minor/minor violation for the following reasons:

1. United Abrasives is a non-smoking workplace (with the exception of one "Smoking Room"), therefore it is not necessary to have "No Smoking" signs posted near containers of ignitable hazardous waste.
2. Containers are stored in areas where there is little potential for an ignition source.
3. Given this above facts, this is not a significant deviation from any requirement.

j. Count Ten

i. This count should be considered a minor/minor violation for the following reasons:

1. The waste is appropriately disposed of, including that waste sent to the Department of Public Works, as explained above, thus minimizing any risk to the environment or human health;
2. Given this above facts, this is not a significant deviation from any requirement.

k. Count Eleven

i. If not eliminated altogether, due to the fact that United Abrasives is a CESQG, this count should be considered a minor/minor violation for the following reasons:

1. United Abrasives' shipments of waste did accompany appropriate LDRs. UA had misfiled copies of the LDRs at the time of the inspection, but they did, and do, exist.
2. Given this fact, there has been no significant deviation from any requirement, and no likelihood of harm.

1. Count Twelve

i. If not eliminated altogether, due to the fact that United Abrasives is a CESQG, this count should be considered a minor/minor violation for the following reasons:

1. United Abrasives used established and reputable waste

vendors, EQ and Safety Kleen, for their waste shipments.

Both facilities have provided records that these waste streams were properly managed and disposed following shipment from the United Abrasives facility.

2. Given this fact, there has been no significant deviation from any requirement, and no likelihood of harm.

108. This paragraph requires no response.

VII. COMPLIANCE ORDER

109. United Abrasives does not agree to be bound by the proposed Compliance Order (the "Order"), as United Abrasives is a CESQG and, therefore, the majority of the requirements outlined in the Order do not apply to United Abrasives. However, United Abrasives acknowledges that it has performed some acts described in the Order, as a way of demonstrating its good faith. The following is an outline of its actions, using the lettered paragraphs in the Order as a guide:

- a. As a CESQG, United Abrasives is not required to submit notification to DEEP, pursuant to the Conditionally Exempt Small Quantity Generator Handbook For Hazardous Waste Handlers (CT DEEP, 2009).
- b. As a CESQG, United Abrasives is not required to develop and implement a training program; regardless, it has done so.
- c. As a CESQG, United Abrasives is not required to develop and follow and written plan for inspections; regardless, it has begun to develop and follow such a plan.
- d. As a CESQG, United Abrasives is not required to develop and implement

a contingency plan; but, as noted above, it has developed and implemented Stormwater Pollution Prevention and Emergency Action Plans.

- e. United Abrasives has made hazardous waste determinations with respect to all solid wastes.
- f. As a CESQG, United Abrasives is not required to ensure that its container storage areas have a containment system designed and operated in accordance with 40 C.F.R. § 264.175(b); regardless, it has done so.
- g. As a CESQG, United Abrasives is not required to label or mark all hazardous waste containers clearly as such and with words identifying the specific contents; regardless, it has done so.
- h. As a CESQG, United Abrasives is not required to mark all hazardous waste containers clearly with the accumulation start date.
- i. As a CESQG, United Abrasives is not required to take precautions to prevent accidental ignition or reaction of ignitable or reactive hazardous waste at the facility; regardless, United Abrasives is a non-smoking workplace (with the exception of one "Smoking Room"), and containers are stored in areas where there is little potential for an ignition source. Additionally, the Solvent Storage Room has grounding capabilities (the drums are typically grounded).
- j. United Abrasives is managing its Universal Waste in a way that prevents releases of any such waste, or any component of such waste, to the environment.
- k. As a CESQG, United Abrasives is not required to send LDRs with off-site

shipments of hazardous wastes; regardless, it has done so.

1. As a CESQG, United Abrasives is not required to correctly use and maintain copies of manifests; regardless, it has done so.

110. This paragraph requires no response, but United Abrasives reiterates the fact that it is not bound by the Order, as it is a CESQG.

111. This paragraph requires no response, but United Abrasives reiterates the fact that it is not bound by the Order, as it is a CESQG.

112. This paragraph requires no response, but United Abrasives reiterates the fact that it is not bound by the Order, as it is a CESQG.

VIII. OPPORTUNITY TO REQUEST A HEARING AND FILE ANSWER

113. **United Abrasives requests a hearing in this matter.**

114. This paragraph requires no response.

115. This paragraph requires no response.

116. This paragraph requires no response.

IX. SETTLEMENT CONFERENCE

117. This paragraph requires no response, but United Abrasives believes that a settlement conference would be productive in this case and requests one at this time.

118. This paragraph requires no response.

X. EFFECTIVE DATE

119. This paragraph requires no response.

AFFIRMATIVE DEFENSE

Pursuant to 40 CFR 22.15(b), United Abrasives alleges the following, as an affirmative defense:

1. United Abrasives is a CESQG and, as such, has much fewer obligations than a small quantity generator or a large quantity generator. See 40 C.F.R. § 261.5.
2. Specifically, of the violations alleged in the Complaint, United Abrasives was only required to perform the obligations indicted in Count 5 (determine if a waste is a Hazardous Waste) and Count 10 (properly manage Universal Waste).
3. United Abrasives made appropriate waste determinations prior to the August 2012 EPA inspection, which were later reexamined and documented. The reexamination confirmed that the initial waste determinations were accurate.
4. As United Abrasives is not required to fulfill the obligations described in Counts 1-4, 6-9, and 11-12, and United Abrasives had fulfilled the obligations alleged to have been violated in Count 5, the only Count that needs further consideration is Count 10.
5. United Abrasives has admitted to the allegations of Count 10, but asserts that no impairment to the environment resulted from its failure to use appropriate containment for a short period of time – a highly skilled task force from the EPA National Enforcement Investigations Center examined the United Abrasives facility for five days in January 2013 and found no evidence of any environmental issues.

UNITED ABRASIVES, INC.

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CERTIFICATE OF SERVICE

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