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November 1, 2012

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**DELIVERED BY FEDEX**

Regional Hearing Clerk (E-19J)  
U.S. EPA - Region 5  
77 West Jackson Boulevard  
Chicago, IL 60604

Dear Clerk:

Re: Complaint and Compliance Order  
Wismarq Corporation  
EPA ID No.: ILD000682138

Enclosed please find an original and two copies of the Answer of Wismarq Corporation in the above-captioned matter. Please file the original and a copy, conform the other copy and return it to me in the self-addressed, stamped envelope. Thank you.

Yours very truly,

Donald P. Gallo

Reinhart\9167906DPG:tms

Enc.

cc: James Morris, Esq.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

In the Matter of: )

Wismarq Corporation )  
Franklin Park, Illinois, )

Respondent. )

) Docket No. RCRA-05-2012-0015

) Proceeding to Assess a Civil Penalty  
) Under Section 3008(a) of the Resource  
) Conservation and Recovery Act,  
) 42 U.S.C. § 6928(a)

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REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY

WISMARQ CORPORATION'S ANSWER

Respondent Wismarq Corporation ("Wismarq"), by its attorneys, Reinhart Boerner  
Van Deuren s.c., answers the complaint of the Director of the Land and Chemicals Division,  
United States Environmental Protection Agency ("U.S. EPA"), as follows:

PRELIMINARY STATEMENT

ALLEGATION NO. 1:

This is an administrative action instituted under Section 3008(a) of the Solid Waste  
Disposal Act, as amended, also known as the Resource Conservation and Recovery Act, as  
amended (RCRA), 42 U.S.C. § 6928(a).

ANSWER:

Wismarq affirmatively asserts that the allegations contained in Paragraph 1 are legal  
conclusions to which no response is required. To the extent that these allegations can be  
construed to contain a factual allegation, Wismarq denies such allegations, putting the Director  
to her burden of proof.

ALLEGATION NO. 2:

The Complainant is the Director of the Land and Chemicals Division, United States Environmental Protection Agency (U.S. EPA), Region 5.

ANSWER:

Upon information and belief, Wismarq admits the allegations contained in Paragraph 2.

ALLEGATION NO. 3:

U.S. EPA provided notice of commencement of this action to the State of Illinois pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

ANSWER:

Wismarq lacks sufficient information and belief as to the truth or falsity of the allegations asserted in Paragraph 3, and therefore, denies same, putting the Director to her burden of proof.

ALLEGATION NO. 4:

Jurisdiction for this action is conferred upon U.S. EPA by Sections 2002(a)(1), 3006(b), and 3008 of RCRA; 42 U.S.C. §§ 6912(a)(1), 6926(b), and 6928.

ANSWER:

Wismarq affirmatively asserts that the allegations contained in Paragraph 4 are legal conclusions to which no response is required. To the extent that these allegations can be construed to contain a factual allegation, Wismarq denies such allegations, putting the Director to her burden of proof.

ALLEGATION NO. 5:

Respondent is Wismarq Corporation, a corporation doing business in Illinois and incorporated in the State of Wisconsin.

ANSWER:

Wismarq admits the allegations contained in Paragraph 5.

## STATUTORY AND REGULATORY BACKGROUND

### ALLEGATION NO. 6:

U.S. EPA has promulgated regulations, codified at 40 C.F.R. Parts 260 through 279, governing generators and transporters of hazardous waste and facilities that treat, store, and dispose of hazardous waste, pursuant to Sections 3002, 3003, and 3004 of RCRA, 42 U.S.C. §§ 6922, 6923, and 6924.

### ANSWER:

Wismarq affirmatively asserts that the allegations contained in Paragraph 6 are legal conclusions to which no response is required. To the extent that these allegations can be construed to contain a factual allegation, Wismarq denies such allegations, putting the Director to her burden of proof. Wismarq also affirmatively asserts that the sections of the Code of Federal Regulations and United States Code, cited in said paragraph speak for themselves.

### ALLEGATION NO. 7:

Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, the Administrator of U.S. EPA may authorize a state to administer the RCRA hazardous waste program in lieu of the federal program when the Administrator finds that the state program meets certain conditions. Any violation of regulations promulgated pursuant to Subtitle C (Sections 3001-3023 of RCRA, 42 U.S.C. §§ 6921-6939e) or any state provision authorized pursuant to Section 3006 of RCRA, constitutes a violation of RCRA, subject to the assessment of civil penalties and issuance of compliance orders as provided in Section 3008 of RCRA, 42 U.S.C. § 6928.

### ANSWER:

Wismarq affirmatively asserts that the allegations contained in Paragraph 7 are legal conclusions to which no response is required. To the extent that these allegations can be construed to contain a factual allegation, Wismarq denies such allegations, putting the Director

to her burden of proof. Wismarq also affirmatively asserts that the sections of the United States Code, cited in said paragraph speak for themselves.

ALLEGATION NO. 8:

Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the Administrator of U.S. EPA granted the State of Illinois final authorization to administer a state hazardous waste program in lieu of the federal government's base RCRA program effective January 31, 1986. 51 Fed. Reg. 3778 (January 31, 1986).

ANSWER:

Wismarq affirmatively asserts that the allegations contained in Paragraph 8 are legal conclusions to which no response is required. To the extent that these allegations can be construed to contain a factual allegation, Wismarq denies such allegations, putting the Director to her burden of proof. Wismarq also affirmatively asserts that the sections of the Code of Federal Regulations and United States Code, cited in said paragraph speak for themselves.

ALLEGATION NO. 9:

Under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), U.S. EPA may issue an order assessing a civil penalty for any past or current violation, requiring compliance immediately or within a specified period of time, or both.

ANSWER:

Wismarq affirmatively asserts that the allegations contained in Paragraph 9 are legal conclusions to which no response is required. To the extent that these allegations can be construed to contain a factual allegation, Wismarq denies such allegations, putting the Director to her burden of proof. Wismarq also affirmatively asserts that the sections of the United States Code, cited in said paragraph speak for themselves.

ALLEGATION NO. 10:

The Administrator of U.S. EPA may assess a civil penalty of up to \$25,000 per day for each violation of Subtitle C of RCRA according to Section 3008 of RCRA, 42 U.S.C. § 6928. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, required U.S. EPA to adjust its penalties for inflation on a periodic basis. Pursuant to the Civil Monetary Penalty Inflation Adjustment Rule, published at 40 C.F.R. Part 19, U.S. EPA may assess a civil penalty of up to \$32,500 per day for each violation of Subtitle C of RCRA that occurred from March 15, 2004, through January 12, 2009, and may assess a civil penalty of up to \$37,500 per day for each violation of Subtitle C of RCRA that occurred after January 12, 2009.

ANSWER:

Wismarq affirmatively asserts that the allegations contained in Paragraph 10 are legal conclusions to which no response is required. To the extent that these allegations can be construed to contain a factual allegation, Wismarq denies such allegations, putting the Director to her burden of proof. Wismarq also affirmatively asserts that the sections of the Code of Federal Regulations and United States Code, cited in said paragraph speak for themselves.

**GENERAL ALLEGATIONS**

ALLEGATION NO. 11:

Respondent was and is a "person" as defined by 35 IAC § 720.110, 40 C.F.R. § 260.10, and Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

ANSWER:

Wismarq affirmatively asserts that the allegations contained in Paragraph 11 are legal conclusions to which no response is required. To the extent that these allegations can be

construed to contain a factual allegation, Wismarq denies such allegations, putting the Director to her burden of proof.

ALLEGATION NO. 12:

Respondent is an "owner" or "operator," as those terms are defined under IAC § 720.110 and 40 C.F.R. § 260.10, of a facility, located at 9901 West Pacific Avenue, Franklin Park, Illinois, that manufactures bare printed circuit boards ("Facility").

ANSWER:

Wismarq affirmatively asserts that the allegations contained in Paragraph 12 are legal conclusions to which no response is required. To the extent that these allegations can be construed to contain a factual allegation, Wismarq denies such allegations, putting the Director to her burden of proof.

ALLEGATION NO. 13:

At all times relevant to this Complaint, the Facility consisted of land and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing or [sic] hazardous waste.

ANSWER:

Wismarq denies the allegations in Paragraph 13, and affirmatively asserts that the Facility is not used for treating, storing or disposing of hazardous waste.

ALLEGATION NO. 14:

Respondent's facility is a "facility," as that term is defined under 35 IAC § 720.110 and 40 C.F.R. § 260.10.

ANSWER:

Wismarq affirmatively asserts that the allegations contained in Paragraph 14 are legal conclusions to which no response is required. To the extent that these allegations can be construed to contain a factual allegation, Wismarq denies such allegations, putting the Director to her burden of proof.

ALLEGATION NO. 15:

At all times relevant to this Complaint, Respondent generated hazardous waste, including solvent and chromium hazardous waste.

ANSWER:

Wismarq admits the allegations contained in Paragraph 15.

ALLEGATION NO. 16:

At all times relevant to this Complaint, Respondent held the hazardous waste, a discarded material, for temporary periods in 55-gallon containers before the material was shipped from the Franklin Park Facility for disposal.

ANSWER:

Wismarq admits the allegations contained in Paragraph 16.

ALLEGATION NO. 17:

The 55-gallon drums used to contain the solvent and chromium waste at the Facility are "containers" within the definition of 35 IAC § 720.110 [40 CFR § 260.10].

ANSWER:

Wismarq affirmatively asserts that the allegations contained in Paragraph 17 are legal conclusions to which no response is required. To the extent that these allegations can be construed to contain a factual allegation, Wismarq denies such allegations, putting the Director to her burden of proof.



ALLEGATION NO. 18:

Respondent characterized its solvent waste with hazardous waste codes D001, F003, and F005.

ANSWER:

Wismarq admits the allegations contained in Paragraph 18.

ALLEGATION NO. 19:

Respondent characterized its chromium waste with hazardous waste code D007.

ANSWER:

Wismarq admits the allegations contained in Paragraph 19.

ALLEGATION NO. 20:

At all times relevant to this Complaint, Respondent's solvent waste was a "solid waste" as that term is defined under 35 IAC § 721.102 and 40 C.F.R. § 261.2.

ANSWER:

Wismarq affirmatively asserts that the allegations contained in Paragraph 20 are legal conclusions to which no response is required. To the extent that these allegations can be construed to contain a factual allegation, Wismarq denies such allegations, putting the Director to her burden of proof.

ALLEGATION NO. 21:

At all times relevant to this Complaint, Respondent's solvent waste was a "hazardous waste" as that term is defined under 35 LAC § 721.103 and 40 C.F.R. § 261.3.

ANSWER:

Wismarq affirmatively asserts that the allegations contained in Paragraph 21 are legal conclusions to which no response is required. To the extent that these allegations can be

construed to contain a factual allegation, Wismarq denies such allegations, putting the Director to her burden of proof.

ALLEGATION NO. 22:

At all times relevant to this Complaint, Respondent's holding of solvent waste in the 55-gallon containers constituted hazardous waste "storage," as that term is defined under 35 IAC § 720.110 and 40 C.F.R. § 260.10.

ANSWER:

Wismarq denies the allegations contained in Paragraph 22, and affirmatively asserts that Wismarq's holding of solvent waste in the 55-gallon containers does not constitute "storage," as that term is defined under 35 IAC § 720.110 and 40 C.F.R. § 260.10.

ALLEGATION NO. 23:

At all times relevant to this Complaint, Respondent's chromium waste was a "solid waste" as that term is defined under 35 IAC § 721.102 and 40 C.F.R. § 261.2.

ANSWER:

Wismarq affirmatively asserts that the allegations contained in Paragraph 23 are legal conclusions to which no response is required. To the extent that these allegations can be construed to contain a factual allegation, Wismarq denies such allegations, putting the Director to her burden of proof.

ALLEGATION NO. 24:

At all times relevant to this Complaint, Respondent's chromium waste was a "hazardous waste" as that term is defined under 35 IAC § 721.103 and 40 C.F.R. § 261.3.

ANSWER:

Wismarq affirmatively asserts that the allegations contained in Paragraph 24 are legal conclusions to which no response is required. To the extent that these allegations can be construed to contain a factual allegation, Wismarq denies such allegations, putting the Director to her burden of proof.

ALLEGATION NO. 25:

At all times relevant to this Complaint, Respondent's holding of chromium waste in the 55-gallon containers constituted hazardous waste "storage," as that term is defined under 35 IAC § 720.110 and 40 C.F.R. § 260.10.

ANSWER:

Wismarq denies the allegations contained in Paragraph 22, and affirmatively asserts that Wismarq's holding of chromium waste in the 55-gallon containers does not constitute "storage," as that term is defined under 35 IAC § 720.110 and 40 C.F.R. § 260.10.

ALLEGATION NO. 26:

Respondent is a "generator," as that term is defined under 35 IAC § 720.110 and 40 C.F.R. § 260.10.

ANSWER:

Wismarq affirmatively asserts that the allegations contained in Paragraph 26 are legal conclusions to which no response is required. To the extent that these allegations can be construed to contain a factual allegation, Wismarq denies such allegations, putting the Director to her burden of proof.

ALLEGATION NO. 27:

Respondent generated and managed hazardous waste at the Facility on or before August 18, 1980.

ANSWER:

Wismarq denies the allegations contained in Paragraph 27, and affirmatively asserts that it did not own or operate the Facility until Wismarq acquired it in 1996.

ALLEGATION NO. 28:

On December 10, 2010, the Illinois Environmental Protection Agency (IEPA) conducted a Compliance Evaluation Inspection of the Facility.

ANSWER:

Wismarq admits the allegations contained in Paragraph 28.

ALLEGATION NO. 29:

On April 25, 2011, U.S. EPA, issued a Notice of Violation to Respondent alleging certain violations of RCRA discovered during IEPA's inspection.

ANSWER:

Wismarq admits the allegations contained in Paragraph 29, but denies the violations asserted in said Notice.

ALLEGATION NO. 30:

On May 17, 2011, Respondent submitted to U.S. EPA a written response to the Notice of Violation.

ANSWER:

Wismarq admits the allegations contained in Paragraph 30.

ALLEGATION NO. 31:

On November 16, 2011, U.S. EPA issued a Notice of intent to file an Administrative Complaint.

ANSWER:

Wismarq admits the allegations contained in Paragraph 31.

ALLEGATION NO. 32:

On January 26, 2012, U.S. EPA met with Respondent to discuss the alleged violations.

ANSWER:

Wismarq admits the allegations contained in Paragraph 32.

ALLEGATION NO. 33:

At all times relevant to this Complaint, the State of Illinois had not issued a permit to Respondent to treat, store, or dispose of hazardous waste at the Facility.

ANSWER:

Wismarq admits the allegations contained in Paragraph 33, but affirmatively asserts that Wismarq was not required to obtain such a permit.

ALLEGATION NO. 34:

At all times relevant to this Complaint, Respondent did not have interim status for the treatment, storage, or disposal of hazardous waste at the Facility.

ANSWER:

Wismarq admits the allegations contained in Paragraph 34, but affirmatively asserts that Wismarq was not required to obtain such interim status.

ALLEGATION NO. 35:

On or about August 18, 1980, Respondent submitted a Hazardous Waste Notification to U.S. EPA for the Facility.

ANSWER:

Wismarq denies the allegations contained in Paragraph 35, and affirmatively asserts that it did not own or operate the Facility until Wismarq acquired it in 1996.

ALLEGATION NO. 36:

In its Hazardous Waste Notification, Respondent identified itself as a generator.

ANSWER:

Wismarq denies the allegations contained in Paragraph 36.

**COUNT 1: STORAGE OF HAZARDOUS WASTE WITHOUT A PERMIT OR INTERIM STATUS.**

ALLEGATION NO. 37:

Complainant incorporates paragraphs 1 through 36 of this Complaint as though set forth in this paragraph.

ANSWER:

Wismarq realleges and restates its answers to the foregoing paragraphs as if fully set forth herein.

ALLEGATION NO. 38:

Pursuant to 3005(a) of RCRA, 42 U.S.C. § 6925(a) and the regulations at 40 C.F.R. Part 270, the treatment, storage, or disposal of hazardous waste by any person who has not applied for or received a permit is prohibited.

ANSWER:

Wismarq affirmatively asserts that the allegations contained in Paragraph 38 are legal conclusions to which no response is required. To the extent that these allegations can be construed to contain a factual allegation, Wismarq denies such allegations, putting the Director

to her burden of proof. Wismarq also affirmatively asserts that the sections of the Code of Federal Regulations and United States Code, cited in said paragraph speak for themselves.

ALLEGATION NO. 39:

Pursuant to 35 IAC § 722.134(a) and 40 C.F.R. § 262.34(a), however, and subject to certain exceptions, a generator of hazardous waste may accumulate hazardous waste on-site for 90 days or less without having a permit or interim status, provided that the generator complies with all applicable conditions set forth in 35 IAC § 722.134(a)(1)-(a)(4) and 40 C.F.R. § 262.34(a)(1)-(a)(4), including, but not limited to, requirements for owners and operators in Subparts C and D of 35 IAC Part 724 and 35 IAC § 724.116.

ANSWER:

Wismarq affirmatively asserts that the allegations contained in Paragraph 39 are legal conclusions to which no response is required. To the extent that these allegations can be construed to contain a factual allegation, Wismarq denies such allegations, putting the Director to her burden of proof. Wismarq also affirmatively asserts that the sections of the Code of Federal Regulations and Illinois Administrative Code, cited in said paragraph speak for themselves.

ALLEGATION NO. 40:

At all times relevant to this Complaint, Respondent failed to satisfy the following conditions for maintaining its exemption from the requirement that it have an operating permit or interim status.

ANSWER:

Wismarq denies the allegations contained in Paragraph 40, and affirmative asserts that at all relevant times to this Complaint, Wismarq was in full compliance with all of the conditions

required for maintaining its exemption from having to obtain an operating permit or interim status.

ALLEGATION NO. 41:

**35 IAC § 722.134(a)(2) [40 C.F.R. 262.34(a)(2)]** In order for a generator of hazardous waste to maintain its exemption from the requirement to have an operating permit or interim status, it must clearly mark each container holding hazardous waste with the date upon accumulation.

ANSWER:

Wismarq affirmatively asserts that the allegations contained in Paragraph 41 are legal conclusions to which no response is required. To the extent that these allegations can be construed to contain a factual allegation, Wismarq denies such allegations, putting the Director to her burden of proof. Wismarq also affirmatively asserts that the sections of the Code of Federal Regulations and Illinois Administrative Code, cited in said paragraph speak for themselves.

ALLEGATION NO. 42:

At the time of the Inspection, Respondent was storing hazardous waste in 15, 55-gallon containers without an accumulation date, and without obtaining or applying for a permit.

ANSWER:

Wismarq denies the allegations contained in Paragraph 42, and affirmatively asserts that at the time of the inspection, Wismarq was storing all hazardous waste in 55-gallon containers with an accumulation date. Wismarq also affirmatively asserts that it was storing paint product in some containers, which is not a "hazardous waste" subject to the requirements of 35 IAC § 722.134(a)(2) [40 C.F.R. 262.34(a)(2)].



ALLEGATION NO. 43:

Accordingly, Respondent failed to satisfy this condition for maintaining its exemption from the requirement that it have an operating permit or interim status.

ANSWER:

Wismarq denies the allegations contained in Paragraph 43.

ALLEGATION NO. 44:

**35 IAC § 722.134(a)(4) | 40 C.F.R. § 262.34(a)(4)** In order for a generator of hazardous waste to maintain its exemption from the requirement to have an operating permit or interim status, facility personnel must successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of 35 IAC § 725.116 [40 C.F.R. § 265.16].

ANSWER:

Wismarq affirmatively asserts that the allegations contained in Paragraph 44 are legal conclusions to which no response is required. To the extent that these allegations can be construed to contain a factual allegation, Wismarq denies such allegations, putting the Director to her burden of proof. Wismarq also affirmatively asserts that the sections of the Code of Federal Regulations and Illinois Administrative Code, cited in said paragraph speak for themselves.

ALLEGATION NO. 45:

Regulations at 35 IAC § 725.116(a)(2) [40 C.F.R. § 265.16(a)(2)] require that the program of classroom instruction or on-the-job training be directed by a person trained in hazardous waste management procedures, and include instruction which teaches facility personnel hazardous waste management procedures, including contingency plan implementation, relevant to the positions in which they are employed.

ANSWER:

Wismarq affirmatively asserts that the allegations contained in Paragraph 45 are legal conclusions to which no response is required. To the extent that these allegations can be construed to contain a factual allegation, Wismarq denies such allegations, putting the Director to her burden of proof. Wismarq also affirmatively asserts that the sections of the Code of Federal Regulations and Illinois Administrative Code, cited in said paragraph speak for themselves.

ALLEGATION NO. 46:

Regulations at 35 IAC § 725.116(b) [40 C.F.R. § 265.16(b)] require that facility personnel successfully complete the program required in paragraph (a) of 35 IAC § 725.116 [40 C.F.R. § 265.16] within six months after the effective date of the regulations or six months after the date of employment or assignment to a facility, or to a new position at a facility, whichever is later. Regulations at 35 IAC § 725.116(c) [40 C.F.R. § 265.16(c)] require that facility personnel take part in an annual review of the initial training required in 35 IAC § 725.116(a) [40 C.F.R. § 265.16(a)].

ANSWER:

Wismarq affirmatively asserts that the allegations contained in Paragraph 46 are legal conclusions to which no response is required. To the extent that these allegations can be construed to contain a factual allegation, Wismarq denies such allegations, putting the Director to her burden of proof. Wismarq also affirmatively asserts that the sections of the Code of Federal Regulations and Illinois Administrative Code, cited in said paragraph speak for themselves.

ALLEGATION NO. 47:

At the time of the inspection, there was no RCRA training in place for the facility personnel and the facility did not conduct annual training.

ANSWER:

Wisnarq denies the allegations contained in Paragraph 47, and affirmatively asserts that at the time of the inspection, Wisnarq had RCRA training in place for all facility personnel and that the training was current, fulfilling the requirements of 35 IAC § 722.134(a)(4) [40 C.F.R. § 262.34(a)(4)]. Wisnarq also affirmatively asserts that the RCRA training it conducted was not documented, and therefore, there were few records of such training at the time of the inspection.

ALLEGATION NO. 48:

Accordingly, Respondent failed to satisfy this condition for maintaining its exemption from the requirement that it have an operating permit or interim status.

ANSWER:

Wisnarq denies the allegations contained in Paragraph 48.

ALLEGATION NO. 49:

**35 IAC § 722.134(a)(1)(i); 35 IAC § 725.274 [40 C.F.R. § 262.34(a)(1)(i); 40 C.F.R. § 265.174]** In order for a generator of hazardous waste to maintain its exemption from the requirement to have an operating permit or interim status, a hazardous waste storage facility must inspect areas where hazardous wastes are stored, at least weekly, looking for leaks and for deterioration caused by corrosion and other factors.

ANSWER:

Wisnarq affirmatively asserts that the allegations contained in Paragraph 49 are legal conclusions to which no response is required. To the extent that these allegations can be construed to contain a factual allegation, Wisnarq denies such allegations, putting the Director

to her burden of proof. Wismarq also affirmatively asserts that the sections of the Code of Federal Regulations and Illinois Administrative Code, cited in said paragraph speak for themselves.

ALLEGATION NO. 50:

At the time of the inspection, Respondent could not provide any weekly inspection records. In addition, based on the fact that several drums were not labeled or labeled incorrectly, Respondent did not conduct weekly inspections.

ANSWER:

Wismarq admits that at the time of the inspection, it did not produce any weekly inspection records, but denies the remaining allegations in Paragraph 50. Wismarq affirmatively asserts that it conducted weekly inspections, fulfilling the requirements of 35 IAC, § 722.134(a)(1)(i); 35 IAC § 725.274 [40 C.F.R. § 262.34(a)(1)(i); 40 C.F.R. § 265.174], and that the drums that were not labeled or labeled incorrectly, contained paint product, not hazardous waste subject to such requirements.

ALLEGATION NO. 51:

Accordingly, Respondent failed to satisfy this condition for maintaining its exemption from the requirement that it have an operating permit or interim status.

ANSWER:

Wismarq denies the allegations contained in Paragraph 51.

ALLEGATION NO. 52:

As a result of Respondent's failure to meet all of the applicable conditions for the generator exemption provided by 35 IAC § 722.134(a), Respondent became an operator of a hazardous waste treatment, storage, and disposal facility (TSDF) subject to the requirements of 35 IAC Part 724 [40 C.F.R. Part 264].

ANSWER:

Wismarq denies the allegations contained in Paragraph 52, and affirmatively asserts that at all relevant times to this Complaint, Wismarq was in full compliance with all of the conditions required for maintaining its exemption from having to obtain an operating permit or interim status, and therefore, Wismarq did not become an operator of a hazardous waste treatment, storage, and/or disposal facility (TSDF) subject to the requirements of 35 IAC Part 724 [40 C.F.R. Part 264].

ALLEGATION NO. 53:

At the time of the inspection, Respondent was storing hazardous waste without obtaining or applying for a permit.

ANSWER:

Wismarq denies the allegations contained in Paragraph 53.

ALLEGATION NO. 54:

Respondent's storage of hazardous waste without a permit or interim status violated Section 3005 of RCRA, 42 U.S.C. § 6925(a) and the requirements of 35 IAC §§ 703.121, 703.180, and 705.121 [40 C.F.R. §§ 270.1(c), 270.10(a) and (d), and 270.13].

ANSWER:

Wismarq denies the allegations contained in Paragraph 54.

**COUNT 2: FAILURE TO SUBMIT ANNUAL REPORTS**

ALLEGATION NO. 55:

Complainant incorporates paragraphs 1 through 54 of this CAFO as though set forth in this paragraph.

ANSWER:

Wismarq realleges and restates its answers to the foregoing paragraphs as if fully set forth herein.

ALLEGATION NO. 56:

Regulations at 35 Ill. Adm. Code § 722.141 [40 C.F.R. § 262.41] require that a generator that ships any hazardous waste off-site to a treatment, storage, or disposal facility within the United States must prepare and submit a single copy of an annual report to the Illinois Environmental Protection Agency (IEPA) by March 1 for the preceding calendar year.

ANSWER:

Wismarq affirmatively asserts that the allegations contained in Paragraph 56 are legal conclusions to which no response is required. To the extent that these allegations can be construed to contain a factual allegation, Wismarq denies such allegations, putting the Director to her burden of proof. Wismarq also affirmatively asserts that the sections of the Code of Federal Regulations and Illinois Administrative Code, cited in said paragraph speak for themselves.

ALLEGATION NO. 57:

Regulations at 35 Ill. Adm. Code § 722.140(b) [40 C.F.R. § 262.40(b)] require that a generator must keep a copy of each Annual Report for at least three years from the due date of each report.

ANSWER:

Wismarq affirmatively asserts that the allegations contained in Paragraph 57 are legal conclusions to which no response is required. To the extent that these allegations can be construed to contain a factual allegation, Wismarq denies such allegations, putting the Director to her burden of proof. Wismarq also affirmatively asserts that the sections of the Code of

Federal Regulations and Illinois Administrative Code, cited in said paragraph speak for themselves.

ALLEGATION NO. 58:

At the time of the inspection, Respondent had failed to submit Hazardous Waste Annual Reports for 2007, 2008, 2009 and 2010.

ANSWER:

Wismarq admits the allegations contained in Paragraph 58, but affirmatively asserts that at the time of the inspection, Wismarq had completed the Hazardous Waste Annual Reports for 2007, 2008, 2009 and 2010 and later submitted them as many as three times.

ALLEGATION NO. 59:

At the time of the inspection, Respondent had not kept a copy of the Annual Reports for 2007, 2008, 2009 and 2010 for a period of at least three years from the due date of each report.

ANSWER:

Wismarq denies the allegations contained in Paragraph 59, and affirmatively asserts that at the time of the inspection, Wismarq had completed the Hazardous Waste Annual Reports for 2007, 2008, 2009 and 2010 and kept the originals since their respective due dates to later be submitted.

ALLEGATION NO. 60:

On July 14, 2011, Illinois EPA notified EPA that Respondent had also failed to submit the Hazardous Waste Annual Report for 2010 by March 1, 2011.

ANSWER:

Wismarq admits the allegations contained in Paragraph 60.

ALLEGATION NO. 61:

Respondent's failure to keep copies of the 2007, 2008, and 2009 hazardous Waste Annual Reports, violated 35 Ill. Adm. Code § 722.140(b) [40 C.F.R. § 262.40(b)].

ANSWER:

Wismarq denies the allegations contained in Paragraph 61.

ALLEGATION NO. 62:

Respondent's failure to submit Hazardous Waste Annual reports to Illinois EPA for 2007, 2008, 2009, and 2010, violated 35 Ill. Adm. Code § 722.141 [40 C.F.R. § 262.41].

ANSWER:

Wismarq admits that it did not submit the annual reports timely, but denies the remaining allegations contained in Paragraph 62, and affirmatively asserts that all annual reports have been submitted to Illinois EPA, some of which were submitted multiple times.

**COUNT 3: FAILURE TO PERFORM A WASTE DETERMINATION**

ALLEGATION NO. 63:

Complainant incorporates paragraphs 1 through 62 of this CAFO as though set forth in this paragraph.

ANSWER:

Wismarq realleges and restates its answers to the foregoing paragraphs as if fully set forth herein.

ALLEGATION NO. 64:

Regulations at 35 Ill. Adm. Code § 722.111 [40 C.F.R. § 262.11)] require that a generator determines whether its waste is hazardous or not.



ANSWER:

Wismarq affirmatively asserts that the allegations contained in Paragraph 64 are legal conclusions to which no response is required. To the extent that these allegations can be construed to contain a factual allegation, Wismarq denies such allegations, putting the Director to her burden of proof. Wismarq also affirmatively asserts that the sections of the Code of Federal Regulations and Illinois Administrative Code, cited in said paragraph speak for themselves.

ALLEGATION NO. 65:

Regulations at 35 Ill. Adm. Code § 722.140(c) [40 C.F.R. § 262.41(c)] require that a generator keep records of any test results, waste analyses, or other determinations made in accordance with 35 Ill. Adm. Code § 722.111 [40 C.F.R. § 262.11]) for at least three years from the date that the waste was last sent to an on-site or off-site treatment or disposal facility.

ANSWER:

Wismarq affirmatively asserts that the allegations contained in Paragraph 65 are legal conclusions to which no response is required. To the extent that these allegations can be construed to contain a factual allegation, Wismarq denies such allegations, putting the Director to her burden of proof. Wismarq also affirmatively asserts that the sections of the Code of Federal Regulations and Illinois Administrative Code, cited in said paragraph speak for themselves.

ALLEGATION NO. 66:

At the time of the inspection, Respondent had not made a waste determination on the waste contained in a 55-gallon drum stored in the waste accumulation area.

ANSWER:

Wismarq denies the allegations contained in Paragraph 66, and affirmatively asserts that at the time of the inspection, Wismarq made waste determinations on all waste contained in 55-gallon drums stored in the waste accumulation area. Wismarq also affirmatively asserts that it was storing paint product in some containers, which is not a "hazardous waste" subject to the requirements of 35 Ill. Adm. Code § 722.111 [40 C.F.R. § 262.11)].

ALLEGATION NO. 67:

At the time of the inspection, Respondent had not kept records of any test results or waste determinations made on the chromium waste.

ANSWER:

Wismarq denies the allegations contained in Paragraph 67, and affirmatively asserts that at the time of the inspection, Wismarq kept records of test results and waste determinations on all waste contained in 55-gallon drums stored in the waste accumulation area. Wismarq also affirmatively asserts that it was storing paint product in some containers, which is not a "hazardous waste" subject to the requirements of 35 Ill. Adm. Code § 722.140(c) [40 C.F.R. § 262.41(c)].

ALLEGATION NO. 68:

Respondent's failure to make a waste determination of the waste stored in the waste accumulation area violated 35 Ill. Adm. Code § 722.111 [40 C.F.R. § 262.11)].

ANSWER:

Wismarq denies the allegations contained in Paragraph 68.

ALLEGATION NO. 69:

Respondent's failure to keep records of any tests results or waste determinations of its chromium waste violated 35 Ill. Adm. Code § 722.140(c) [40 C.F.R. § 262.41(c)].

ANSWER:

Wismarq denies the allegations contained in Paragraph 69.

**CIVIL PENALTY**

ALLEGATION NO. 70:

The Complainant proposes that the Administrator assess a civil penalty of \$128,737 for the violations alleged in this Complaint, as further explained in Attachment A, "Penalty Summary Sheet."

ANSWER:

Wismarq admits that the Director is proposing such penalties, but denies that the penalties should be assessed against Wismarq for the reasons set forth in Wismarq's answers to the Complaint. The "Penalty Summary Sheet" speaks for itself, but Wismarq affirmatively asserts that Count 2 is mislabeled as "Count 3" and Count 3 is mislabeled as "Count 2."

ALLEGATION NO. 71:

Complainant determined the proposed civil penalty according to RCRA Section 3008, 42 U.S.C. § 6928. In assessing a civil penalty, the Administrator of U.S. EPA must consider the seriousness of the violation and any good faith efforts to comply with applicable requirements, pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3). Complainant has considered the facts and circumstances of this case with specific reference to U.S. EPA's 2003 RCRA Civil Penalty Policy. A copy of the penalty policy is available upon request. This policy provides a consistent method of applying the statutory penalty factors to this case.

ANSWER:

Wismarq lacks sufficient information and belief as to the truth or falsity of the allegations asserted in Paragraph 71 regarding the Director's determinations and considerations, and therefore, denies same, putting the Director to her burden of proof. Wismarq affirmatively

asserts that the remaining allegations contained in said paragraph are legal conclusions to which no response is required. To the extent that these allegations can be construed to contain a factual allegation, Wismarq denies such allegations, putting the Director to her burden of proof.

Wismarq also affirmatively asserts that the sections of the United States Code and Civil Penalty Policy, cited in said paragraph speak for themselves.

**COMPLIANCE ORDER**

**ALLEGATION NO. 73 (sic):**

Based on the foregoing, Respondent is hereby ordered, pursuant to the authority of Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and § 22.37(b) of the Consolidated Rules, to comply with the following requirements immediately upon the effective date of this Order.

**ANSWER:**

Wismarq affirmatively asserts that the allegations contained in Paragraph 73 contain an Order to which no response is required.

**ALLEGATION NO. 74:**

Respondent shall not treat, store, or dispose of hazardous waste without a RCRA permit, except as provided for in paragraph 75 of this Order.

**ANSWER:**

Wismarq affirmatively asserts that the allegations contained in Paragraph 74 contain an Order to which no response is required.

**ALLEGATION NO. 75:**

Respondent shall achieve and maintain compliance with all requirements and prohibitions governing the storage of hazardous waste applicable to generators, codified at or incorporated by 35 IAC Part 722 [40 C.F.R. Part 262] by the effective date of this Order.

ANSWER:

Wismarq affirmatively asserts that the allegations contained in Paragraph 75 contain an Order to which no response is required.

ALLEGATION NO. 76:

Respondent shall notify U.S. EPA in writing within fifteen (15) days of the effective date of this Order, either certifying compliance with the Order or explaining why it is not in compliance and proposing a date to achieve compliance.

ANSWER:

Wismarq affirmatively asserts that the allegations contained in Paragraph 76 contain an Order to which no response is required.

ALLEGATION NO. 77:

Respondent shall submit all reports, submissions, and notifications required by this Order to the United States Environmental Protection Agency, Region 5, Land and Chemicals Division, RCRA Branch, Attention: Spiros Bourgikos (LR-8J), 77 West Jackson Boulevard, Chicago, Illinois 60604.

ANSWER:

Wismarq affirmatively asserts that the allegations contained in Paragraph 77 contain an Order to which no response is required.

**REQUEST FOR HEARING**

Wismarq hereby requests a hearing before an Administrative Law Judge conducted in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (the "Consolidated Rules"). Wismarq denies that a copy of the Consolidated Rules were served on Wismarq, as stated in the Complaint.

**WHEREFORE**, Wismarq respectfully requests the Court to grant the following relief:


- A. Dismissing the Complaint against Wismarq on the merits with prejudice;
- B. Awarding Wismarq its attorneys' fees, costs and disbursements in defending this

action; and

- C. Awarding such other relief as this Court deems just and equitable.

Dated this 18<sup>th</sup> day of November, 2012.

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