



(1) admit or answer the following requests for admission within forty-five days, as provided for in the First Case Management Order (“First CMO”) entered in the above-captioned action;

(2) answer fully, in writing and under oath, each of the following interrogatories, and serve such answers on the undersigned counsel for the United States within forty-five days, as provided for in the First CMO; and (3) produce the documents requested below, or in lieu thereof serve authentic copies of such documents on the undersigned counsel for the United States within forty-five days, as provided for in the First CMO.

**CRITICAL INSTRUCTION TO CLARKE CONTAINER**

This discovery request is directed to Clarke Container. According to documents both in the public record and in the custody of U.S. EPA, Clarke Container first was incorporated in 1986. However, it is the United States’ understanding, and allegation, that Clarke Container did not start from “scratch” in 1986. Rather, Clarke Container was the incorporated name of a business, or several businesses, that had been started some years before. Numerous witnesses have stated that Clarke Container used the Skinner Site well before 1986. **Because the United States alleges that Clarke Container is the successor to the liability of this or these previously unincorporated entities, the respondent to this request is obligated to provide answers to the questions set forth below -- to the extent of its knowledge -- for *and any possible predecessor business to Clarke Container, including any sole proprietorships that might have done business as Clarke Container.*** While the United States understands that Clarke Container may deny successor liability, the United States is entitled to seek discovery on this issue, and expects Clarke Container to provide information on all possible predecessor businesses. **Note that the definition of “Clarke Container” is very broad: it includes “each merged, consolidated, and acquired predecessor or successor (including sole proprietorships), parent, subsidiary, division, and affiliate, each past and present officer,**

**director, employee, agent, servant, and representative of each such entity or individual, and each past and present attorney of each such entity or individual.”**

Additionally, because Clarke Container apparently continues to be incorporated to this day, Clarke Container must answer the questions set forth below for the entire period of its incorporation. Indeed, the “Applicable Time Frame” for this request is from January 1, 1955, to the present. Thus, to the extent that Clarke Container had successor businesses -- or fictitious names -- after the original incorporation, Clarke Container is obligated to answer the requests set forth below for those successor businesses as well.

To the extent that Clarke Container has any questions about the scope of these requests, counsel for Clarke Container is encouraged to contact counsel for the United States, who will be happy to clarify.

#### INSTRUCTIONS

- A. As to the Interrogatories and Document Requests, the United States incorporates by reference the instructions set forth in the United States’ First Set of Interrogatories and First Request for Production of Documents to Clarke Container, Inc.
- B. Clarke Container shall specifically admit or deny each Request for Admission.
- C. The answer to any Request for Admission shall fairly meet the substance of the requested admission.
- D. When good faith requires that Clarke Container qualify its answer or deny only a part of the matter for which an admission is requested, Clarke Container must specify the portions of the Request to which it admits and then deny or qualify its answer as to the remainder. Wherever a denial or partial denial is made, Clarke Container shall state each and every fact that forms the basis for the denial or partial denial, and shall identify all documents that support or tend to refute its denial or partial denial.
- E. Clarke Container shall not give lack of information or knowledge as a reason for failure to admit or deny, unless Clarke Container indicates that it has made a reasonable inquiry and indicates that the information known or readily obtainable by Clarke Container is insufficient to enable it to admit or deny the matter for which an admission is requested.
- F. Clarke Container may not object to a Request for Admission for solely on the ground that the matter inquired into presents a genuine issue for trial.

G. Where Clarke Container interposes an objection to any of the following Requests for Admission, the objection shall state with specificity all bases and grounds for the objection.

H. If, in responding to any of these Requests for Admissions, Clarke Container encounters any ambiguity in construing either the Request, a definition, or an instruction, state with specificity the matter deemed ambiguous and identify the construction chosen or used in responding to the Request.

I. These Requests include Requests for Admission of the authenticity of various documents. Following some of these Requests, the United States has placed the batestamped identification number. These batestamps are provided for the convenience of Clarke Container, and do not constitute any portion of the Request for Admission that precedes them. An inaccurate citation shall not constitute sufficient good faith cause for denial. Additionally, these Requests do not seek admissions regarding the batestamp, but pertain solely to the document to which the batestamp is affixed.

#### DEFINITIONS

A. The United States incorporates by reference the definitions set forth in the United States' First Set of Interrogatories and First Request for Production of Documents to Clarke Container

#### RULES OF CONSTRUCTION

A. "And Or." The words "and" and "or" shall be construed conjunctively or disjunctively as necessary to make the discovery request inclusive rather than exclusive.

B. Singular/Plural. The plural of a word shall include the singular and the singular of a word shall include the plural.

C. Verb Tense. The past tense of a verb shall include the present tense and the present tense of a verb shall include the past tense.

#### REQUESTS FOR ADMISSIONS

1. Admit that Clarke Container is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

2. Admit that the Skinner Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

3. Admit that there has been a “release,” within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22) of “hazardous substances,” within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), into the environment at the Skinner Site.
4. Admit that the continued threat of a release of hazardous substances into the environment exists at and/or near the Skinner Site.
5. Admit that the United States has taken actions in response to the release and/or threat of release of hazardous substances at the Skinner Site.
6. Admit that the United States’ actions concerning the Skinner Site constitute “response” actions, within the meaning of Section 101(23)-(25) of CERCLA, 42 U.S.C. § 9601(23)-(25).
7. Admit that the United States has incurred response costs as a result of the release or threatened release of hazardous substances at the Skinner Site.
8. Admit that the United States continues to incur response costs as a result of the release or threatened release of hazardous substances at the Skinner Site.
9. Admit that cyanide is a “hazardous substance” within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).
10. Admit that the copy of the “Skinner Log” that the United States produced in discovery in this action (batestamped 000016-000087) is authentic within the meaning of Federal Rule of Evidence Article IX and does not need to be authenticated for use in this litigation.
11. Admit that the copy of the “Skinner Log” that the United States produced in discovery in this action (batestamped 000016-000087) is a business record within the meaning of Rule 803(6) of the Federal Rules of Evidence.

12. Admit that the copy of the “Skinner Log” that the United States produced in discovery in this litigation (batestamped 000016-000087) is admissible into evidence for use in this litigation.

13. Admit that each copy of each document that Clarke Container produced to the United States pursuant to Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), and pursuant to the United States’ discovery requests in this action is authentic within the meaning of Federal Rule of Evidence Article IX and does not need to be authenticated for use in this litigation.

#### INTERROGATORIES

1. Identify all customers of Clarke Container from the time of its incorporation until August 30, 1990. To the extent that Clarke Container had none, so state.

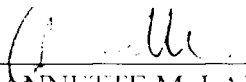
#### REQUESTS FOR PRODUCTION OF DOCUMENTS

1. Each document that is identified, referred to or used in any way in responding to the United States’ Second Set of Interrogatories to Clarke Container.

2. Each document that identifies any customer of Clarke Container from the time of its incorporation until August 30, 1990.

Respectfully submit:

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 19<sup>th</sup> day of June, 2002, I caused a true copy of the foregoing **UNITED STATES' FIRST REQUEST FOR ADMISSIONS, SECOND SET OF INTERROGATORIES AND SECOND REQUEST FOR PRODUCTION OF DOCUMENTS TO CLARKE CONTAINER, INC.** to be served by first-class mail, postage prepaid upon the following counsel of record:

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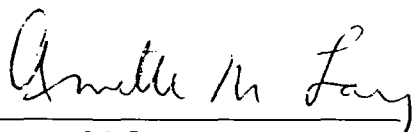
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