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October 6, 2011

VIA FEDERAL EXPRESS

The Honorable Barbara A. Gunning
EPA Office of Administrative Law Judges
1099 14th Street, NW
Suite 350 Franklin Court
Washington, DC 20005

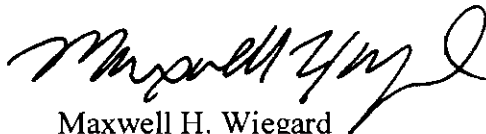
Re: IMO Chem-Solv, Inc., and Austin Holdings-VA, L.L.C.
EPA Docket No.: RCRA-03-2011-0068

Dear Judge Gunning:

Enclosed is Respondents' Response to Complainant's Motion to Strike Respondents' Initial Prehearing Exchange as well as a proposed Order granting the Respondents leave to withdraw Respondents' Exhibit 20 from the Respondents' Initial Prehearing Exchange and the record in this proceeding.

Very truly yours,

GENTRY LOCKE RAKES & MOORE, LLP



Maxwell H. Wiegard

MHW:cm

Enclosures

cc: Charles L. Williams, Esq.
Joyce A. Howell, Esq., Sr. Assistant Regional Counsel
Ms. Lydia Guy, Regional Hearing Clerk
Mr. Jamison G. Austin

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EPA REGION III PHILA. PA

alleging against the Respondents on March 31, 2011, in which the Complainant alleges that the Respondents violated Subtitle C of RCRA, 42 U.S.C. §§ 6921-6939e. The Respondents filed a timely Answer to the Complaint denying the substantive allegations set forth in the Complaint on May 2, 2011.

Under the terms of the Prehearing Order issued in this matter by the Honorable Barbara A. Gunning on May 31, 2011 (the “Prehearing Order”), the Complainant filed the its Initial Prehearing Exchange on July 21, 2011. Thereafter, in accordance with the terms of the Prehearing Order, the Respondents filed their Initial Prehearing Exchange on September 9, 2011. On September 23, 2011, the Complainant filed its Rebuttal Prehearing Exchange and simultaneously filed a Motion to Strike the Respondent’s Prehearing Exchange (the “Motion to Strike”).

In the Motion to Strike, the Complainant moves the Court for entry of an order partially striking Respondent’s Initial Prehearing Exchange with regards to certain documents identified as Respondents’ Exhibit 20 (Bates Nos. CS 220-CS 238). In support of the Motion to Strike, the Complainant argues that the November 20, 2010 letter bearing Bates Nos. CS 220 – CS 233 in Respondents’ Exhibit 20 constitutes privileged settlement communications under to Federal Rule of Evidence 408, and the documents bearing Bates Nos. CS 234 – CS 238 do not relate to any of the document titles listed Respondents’ Initial Prehearing Exchange Index.

II. DISCUSSION

Exhibit 20 to the Respondents’ Initial Prehearing Exchange is a letter dated October 20, 2010 from counsel for the Complainant to counsel for the Respondents. Contrary to the Complainant’s assertion that the documents bearing Bates Nos. CS 234 – CS 238 do not relate into any of the documents titles listed in Respondents’ Initial Prehearing Exchange Index, the

Respondents' counsel received such documents as attachments to the October 20, 2011 letter bearing Bates Nos. CS 220 – CS 233. Accordingly, in effort to produce a full, true and accurate copy of the October 20, 2011 letter, including all attachments, as Respondents' Exhibit 20 to their Initial Prehearing Exchange, the Respondents included the documents bearing Bates Nos. CS 220 – CS 233 in Exhibit 20.

After conferring with counsel for the Complainant concerning the Motion to Strike, the Respondents have elected to seek leave of Court to withdraw Exhibit 20 to their Initial Prehearing Exchange in its entirety. For the avoidance of doubt, the Respondents hereby move the Court for leave to withdraw the documents bearing Bates Nos. CS 220 – CS 238, which are collectively identified as Respondents' Exhibit 20 from the Respondents' Initial Prehearing Exchange and the record in this proceeding, and reserve their right under 40 C.F.R. § 22.19(e) to conduct further discovery on certain factual issues addressed in the November 20, 2010 letter identified as Respondents' Exhibit 20 to the Respondents' Initial Prehearing Exchange.

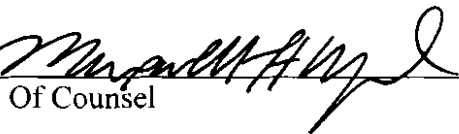
III. CONCLUSION

For the foregoing reasons, the Respondents respectfully request that this Court enter an Order granting the Respondents leave to withdraw Respondents' Exhibit 20 from the Respondents' Initial Prehearing Exchange and the record in this proceeding. A proposed form Order granting the Respondents leave to withdraw Respondents' Exhibit 20 from the Respondents' Initial Prehearing Exchange is attached hereto as **Exhibit A**.

Dated: October 6, 2011

Chem-Solv, Inc. and Austin Holdings-VA, L.L.C.

By


Of Counsel

Charles L. Williams (VSB No. 1145)
Maxwell H. Wiegard (VSB No. 68787)
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Telephone: 540-983-9300
Facsimile: 540-983-9400

**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III**

In the Matter of:)	
)	
)	
CHEM-SOLV, INC., formerly trading as)	
Chemicals and Solvents, Inc.)	
)	
and)	
)	
AUSTIN HOLDINGS-VA, L.L.C.	)	U.S. EPA Docket Number
	)	RCRA-03-2011-0068
)	
)	
	)	Proceeding Under Section 3008(a) of
Respondents.	)	the Resource Conservation and
	)	Recovery Act, as amended 42 U.S.C.
Chem-Solv, Inc.	)	Section 6928(a)
1111 Industrial Avenue, S.E.)	
1140 Industrial Avenue, S.E.)	
Roanoke, VA 24013,)	
)	
Facility.)	

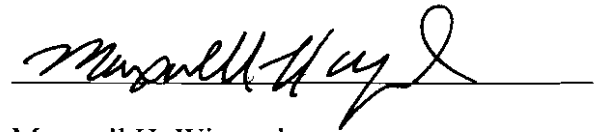
CERTIFICATE OF SERVICE

I certify that, I sent by FedEx, next day delivery, a copy of Respondents' Response to Complainant's Motion to Strike Respondents' Initial Prehearing Exchange to the addressees listed below. The original and one copy of the Respondents' Initial Prehearing Exchange to the Regional Hearing Clerk, U.S. EPA Region 3, 1650 Arch Street, Philadelphia, PA19103-2029.

Hon. Barbara A. Gunning, A.L.J.
EPA Office of Administrative Law Judges
1099 14th Street, N.W.
Suite 350 Franklin Court
Washington, D.C. 20005

Joyce A. Howell
Senior Assistant Regional Counsel
U.S. EPA – Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Date: October 6, 2011

A handwritten signature in black ink, appearing to read "Maxwell H. Wiegard", is written over a horizontal line.

Maxwell H. Wiegard
Gentry Locke Rakes & Moore, LLP
P.O. Box 40013
Roanoke, VA 24022-0013

Counsel for Respondents

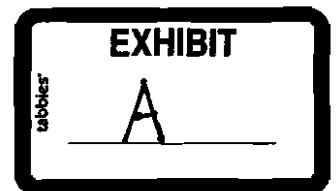
**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III**

In the Matter of:	)	ORDER GRANTING
	)	RESPONDENTS' MOTION FOR
	)	LEAVE TO WITHDRAW
	)	EXHIBIT 20 TO RESPONDENTS'
	)	INITIAL PREHEARING
	)	EXCHANGE
)	
CHEM-SOLV, INC., formerly trading as Chemicals and Solvents, Inc.)	
)	
and)	
)	
AUSTIN HOLDINGS-VA, L.L.C.	)	U.S. EPA Docket Number
	)	RCRA-03-2011-0068
)	
)	
	)	Proceeding Under Section 3008(a) of
Respondents.	)	the Resource Conservation and
	)	Recovery Act, as amended 42 U.S.C.
Chem-Solv, Inc. 1111 Industrial Avenue, S.E. 1140 Industrial Avenue, S.E. Roanoke, VA 24013,	)	Section 6928(a)
)	
)	
Facility.)	

ORDER

CAME THIS DAY Respondents Chem-Solv, Inc. and Austin Holdings-VA, L.L.C. (collectively the “Respondents”) and moved the Court for leave to withdraw Exhibit 20 to Respondents’ Initial Prehearing Exchange bearing Bates Nos. CS 220 – CS 238, pursuant to 40 C.F.R. §§ 22.4(c)(2), 22.4(c)(6), 22.4(c)(10), and 22.16(b) and the Court having considered the argument of counsel and for good cause shown, it is hereby:

ORDERED that the Respondents hereby are granted leave to withdraw Exhibit 20 to Respondents’ Initial Prehearing Exchange, including the documents bearing Bates Nos. CS 220 –



CS 238, from the Respondents' Initial Prehearing Exchange and from the record in this proceeding, subject to the Respondents' right under 40 C.F.R. § 22.19(e) to seek leave of Court to conduct further discovery on certain factual issues addressed in the November 20, 2011 letter identifies Respondents' Exhibit 20 to the Respondents' Initial Prehearing Exchange.

SO ORDERED.

Hon. Barbara A. Gunning, A.L.J.