

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

In the Matter of: :
: :
CHEMSOLV, INC., formerly trading as :
Chemicals and Solvents, Inc. :

and : :

AUSTIN HOLDINGS-VA, L.L.C. : :

Respondents, : :

Chemsolv, Inc. :
1111 Industrial Avenue, S.E :
1140 Industrial Avenue, S.E :
Roanoke, Virginia 24013 :

Facility. :
:

COMPLAINANT'S INTIAL
PREHEARING EXCHANGE

EPA Docket No. RCRA-03-2011-0068

Proceeding under Section 3008(a)
of the Resource Conservation and
Recovery Act, as amended, 42 U.S.C.
Section 6928(a)

Pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance and Corrective Action Orders and the Revocation, Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. § 22.19, and the May 31, 2011 Prehearing Order issued by the Honorable Barbara A. Gunning, Complainant, the Director of the Land and Chemicals Division of the United States Environmental Protection Agency - Region III, by the undersigned attorney, files Complainant's Initial Prehearing Exchange in the above-captioned matter. Complainant respectfully reserves its right to supplement this Initial Prehearing Exchange in accordance with 40 C.F.R. § 22.19(f)

and/or to file a motion(s) to amend its Initial Prehearing Exchange in accordance with 40 C.F.R. § 22.16.

A. Witnesses

Complainant reserves the right to call any and/or all of the following witnesses at a hearing of the above-captioned matter. In addition, should each Respondent's Prehearing Exchange or other discovery reveal the need for further witnesses, Complainant respectfully reserves the right to supplement the list of witnesses upon adequate notice to this tribunal and to Respondents and to call such witnesses at the hearing of this matter.

1. **Kenneth J. Cox** Mr. Cox is the Team Leader for RCRA C Enforcement in the Office of Land Enforcement, Land and Chemicals Division, U.S. EPA Region 3. As Team Leader for RCRA C Enforcement, Mr. Cox's duties include investigations of facilities for possible violations conducts compliance evaluation inspections of facilities regulated by RCRA C. Mr. Cox inspected the Chemsolv Facility on May 15, 2007 and may be expected to testify concerning his observations. Mr. Cox may be expected to testify about EPA's investigation into the violations of RCRA and the authorized Virginia Hazardous Waste Management Program ("VHWMP ") set forth in the Complaint and give testimony in support of the allegations in the Complaint. Mr. Cox may be further expected to provide testimony in support of the proposed civil penalty. Mr. Cox may also be expected to testify as to how the particular facts and circumstances of this case with specific reference to the aforementioned statutory factors and EPA's June 2003 RCRA Civil Penalty Policy ("RCRA Penalty Policy") was developed.
2. **George H. Houghton** Mr. Houghton is retired from his position with U.S. EPA. Prior to retiring, Mr. Houghton was employed as an inspector in the Enforcement and Compliance Assistance Branch in the Office of Enforcement, Compliance and Environmental Justice, U.S. EPA Region 3. Mr. Houghton conducted a sampling inspection of the facility on May 23, 2007. Mr. Houghton may be expected to testify regarding his observations of the Facility and the sampling activities that he conducted at the Facility. Mr. Houghton may be expected to testify about EPA's investigation into the violations of RCRA and the VHWMP set forth in the Complaint and give testimony in support of the allegations in the Complaint.
3. **Kimberly Thomson.** Ms. Thompson is employed as an Environmental Specialist II with the Virginia Department of Environmental Quality ("VADEQ"). Ms. Thompson's duties include evaluating facilities for compliance with federal and state rules, regulations and laws pertaining to RCRA Subtitle C and D and the VHWMP. The Chemsolv facility

is one such facility for which Ms. Thompson is responsible to monitor. Ms. Thompson is expected to testify concerning her observations made at the facility during numerous site visits, and information about the facility obtained as part of her monitoring duty of the Chemsolv Facility. Ms. Thompson is further expected to testify in support of the allegations contained in the Complaint and in support of the proposed civil penalty.

4. **Elizabeth A. Lohman** Ms. Lohman is employed as an Environmental Program Planner with the VADEQ. Ms. Lohman is expected to testify concerning her observations made at the facility during numerous site visits, and information about the facility obtained as part of her monitoring duty of the Chemsolv Facility. Ms. Thompson is further expected to testify in support of the allegations contained in the Complaint and in support of the proposed civil penalty.
5. **Peggy Zawodny** Ms. Zawodny is employed as an Environmental Scientist in the Laboratory Branch of the Environmental Assessment and Innovation Division, U.S. EPA Region 3. Ms. Zawodny is expected to testify regarding the analytical results for the samples taken at the Chemsolv Facility on May 23, 2007, specifically concerning the applicable analytical method(s) supporting the allegations of the hazardous wastes chloroform, tetrachloroethene, and trichloroethene contained in Complaint. Ms. Zawodny is further expected to testify concerning the applicable analytical method(s) supporting the allegation of total volatile organic concentration of greater than 500 parts per million by weight.
6. **Jose Reyna**. Jose Reyna is employed as a Physical Scientist in the Enforcement and Compliance Assistance Branch in the Office of Enforcement, Compliance and Environmental Justice, U.S. EPA Region 3. Mr. Reyna, together with Mr. Houghton conducted a sampling inspection of the facility on May 23, 2007. Mr. Reyna will testify regarding his observations of the Facility and the sampling activities that he conducted. Mr. Reyna may be expected to testify about EPA's investigation into the violations of RCRA and the VHWMP set forth in the Complaint and give testimony in support of the allegations in the Complaint.

B. Documents and Exhibits

See **Attachment A** hereto, entitled "Complainant's Prehearing Exhibits", for a complete list of the exhibits that Complainant may introduce at hearing. Copies of those exhibits are provided in the accompanying 3-ring binders. Each exhibit is labeled as prescribed by the Court's Prehearing Order, and the pages of each exhibit are date-stamped in sequential numerical order for ease of identification and reference.

C. (1). Place of Hearing

In accordance with 40 C.F.R. Sections 22.19(d) and 22.21(d), EPA requests that the hearing be held in Roanoke, Virginia because:

- A. Roanoke is the place (and is in the county) where Respondents conduct business;
- B. Roanoke is the place where the alleged violations occurred; and
- C. Roanoke is where the majority of the witnesses work and/or reside.

C. (2). Estimate of time to present case

Complainant estimates that the time needed to present its direct case, should all or the majority of its named witnesses be called to testify, would be approximately four (4) days.

Complainant reserves the right to amend its estimation for the presentation of its case should it learn of additional relevant information, which could complicate and lengthen Complainant's presentation.

D. Factual Information Relevant to the Penalty

It is respectfully submitted that Complainant's proposed testimony and exhibits will meet Complainant's burden to establish Respondents' liability and as well as demonstrate the seriousness of such violations and whether Respondent made any good faith efforts to comply with applicable requirements. The additional facts below are supplied to illustrate Respondent Chemsolv's industry knowledge, Respondents' history of noncompliance and the substantial government resources expended with regard to this Facility.

(1) Chemsolv was identified as one of the top 100 Chemical distributors *in ICIS Chemical Business*, and industry trade journal (October 1-17, 2010 issue). This same listing reported Chemsolv had \$59 million in sales in 2009.

(2) Chemsolv has been the subject of federal and state environmental enforcement actions. Chemsolv has been the subject of local fire code enforcement action.

- i. July 29, 2005 VADEQ Warning Letter to Chemicals and Solvents
- ii. November 9, 2005 VADEQ Warning Letter
- iii. January 5, 2006 VADEQ Notice of Violation to Chemsolv
- iv. July 27, 2006 VADEQ Notice of Violation to Chemsolv
- v. August 16, 2007 VADEQ Notice of Violation to Chemsolv
- vi. February 19, 2008 Fire Code inspection form and violations list
- vii. May 30, 2008 VADEQ request for formal enforcement
- viii. EPA Administrative Order CAA-03-2008-0329
- ix. EPA Consent Agreement and Final Order EPCRA 03-2011-0138/CAA 03-2011-0138.

(3) There have been chemical releases at the Chemsolv facility requiring a response from local and state emergency responders. These releases are identified in Complainant's exhibits, listed below:

- i. News report dated January 20, 2003.
- ii. Huggins, Faulkner and Flynn (consultants) report of on Chemsolv Fire and Spill on January 19, 2003.
- iii. March 3, 2005 Email re: Hazardous materials incident causing injury to Chemsolv employee
- iv. November 15, 2005 Faulkner and Flynn summary of October 31, 2005 n-butylamine release
- v. Chemsolv incident report release of ferric chloride July 27, 2007
- vi. March 12, 2008 Hazardous Materials Incident Report
- vii. October 31, 2008 Chemsolv incident report for sulfuric acid spill

E. Paperwork Reduction Act Application

Congress enacted the Paperwork Reduction Act ("PRA"), 44 U.S.C. §§ 3501 - 3520, to reduce the regulatory reporting requirement on the public. In general, if an agency requires the public to collect and report information, the PRA requires the agency to: 1) first obtain review of the requirement by the Office of Management and Budget ("OMB"), evidenced by an eight digit control number and, 2) display the control number upon any document associated with the request. The Public Protection provision of the PRA, 44 U.S.C. § 3512, insulates the public from penalties resulting from a failure to respond to a federal collection of information which does not bear a valid OMB control number.

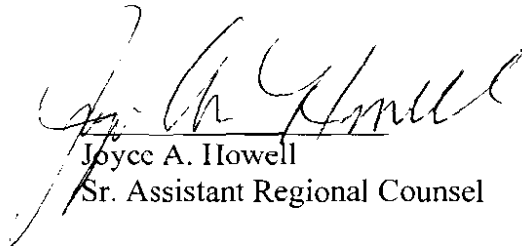
The Public Protection provision of the PRA does not apply to the facts obtained through investigation and information request letters authorized under RCRA. The PRA, at 44 U.S.C. § 3502(3), defines "collection of information" to mean "... the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties of the public, of facts or opinions by or for an agency" 44 U.S.C. § 3502(3). The definition specifically excludes collections of information during the conduct of an administrative action or investigation involving an agency against specific individuals or entities. 44 U.S.C. § 3518(c)(10)(B)(ii).

The Public Protection provision of the PRA, 44 U.S.C. § 3512, does not apply to this case. The current OMB approvals applicable for those portions of 40 C.F.R. Part 260-270 cited in the Complaint are found at 40 C.F.R. § 9.1.

Respectfully submitted,

Date:

July 21, 2018


Joyce A. Howell
Sr. Assistant Regional Counsel

**ATTACHMENT A
COMPLAINANT'S PREHEARING EXHIBITS**

Complainant's Exhibit 1	Delegation 8-9A 5/94 [EPA 001]
Complainant's Exhibit 2	Delegation 8-9-A 9/1/1998 [EPA 002-002A]
Complainant's Exhibit 3	49 <i>Fed. Reg.</i> 47391 (December 4, 1984) [EPA 003-004]
Complainant's Exhibit 4	65 <i>Fed. Reg.</i> 46606 (July 31, 2000) [EPA 004A-010]
Complainant's Exhibit 5	68 <i>Fed. Reg.</i> 36925 (June 20, 2003) [EPA 011-013]
Complainant's Exhibit 6	71 <i>Fed. Reg.</i> 27216 (May 10, 2006) [EPA 014-015]
Complainant's Exhibit 7	73 <i>Fed. Reg.</i> 44168 (July 30, 2008) [EPA 016-018]
Complainant's Exhibit 8	VA HWMP [EPA 019-228]
Complainant's Exhibit 9	Notice to the Commonwealth of Virginia [EPA 229]
Complainant's Exhibit 10	Corporate annual report for Chemsolv [EPA 230-233]
Complainant's Exhibit 11	Entity Status for Austin Holdings [EPA 234]
Complainant's Exhibit 12	Property Records Tax parcel 4340104 [EPA 235]
Complainant's Exhibit 13	Property records 4170102 [EPA 236-239]
Complainant's Exhibit 14	Property Record 4240103 [EPA 240]
Complainant's Exhibit 15	Sample Results 8/8/2007 [EPA 241-283]
Complainant's Exhibit 16	Sample Results 9/5/2007 [EPA 284-294]
Complainant's Exhibit 17	May 15, 2007 EPA inspection report Photos 5.15.07 [EPA 295-330]
Complainant's Exhibit 18	May 23, 2007 EPA inspection report Photos 5.23.07 [EPA 331-371]
Complainant's Exhibit 19	May 15, 2007 VADEQ report Photos 5.15.01; Photos 5.18.07; Photos 5.23.07 [EPA 372-641]
Complainant's Exhibit 20	November 16, 2007 IRL [EPA 641A-649]
Complainant's Exhibit 21	Chemsofv IRL response, December 10, 2007 [EPA 650-1064]
Complainant's Exhibit 22	February 4, 2008 IRL [EPA 1065- 1074]
Complainant's Exhibit 23	Chemsofv IRL response, February 6, 2008 [EPA 1075-1139]
Complainant's Exhibit 24	April 1, 2008 IRL [EPA 1140-1144]
Complainant's Exhibit 25	Chemsofv IRL response, April 4, 2008 [EPA 1145-1164]
Complainant's Exhibit 26A Complainant's Exhibit 26B	Notification of hazardous waste activity [EPA 1165-1169] Form 8700-12 [EPA 1170-1175]
Complainant's Exhibit 27	RCRA Penalty Guide [EPA 1176-1198]
Complainant's Exhibit 28	Memorandum : "Amendments to EPA's Civil Penalty Policies to Implement the 2008 Civil Monetary Penalty Inflation Adjustment Rule" December 29, 2008 [EPA 1199- 1208]
Complainant's Exhibit 29	Houghton Inspection Notebook [EPA 1209-1229]
Complainant's Exhibit 30	EPA Administrative Order CAA-03-2008-0329 [EPA 1230- 1251]
Complainant's Exhibit 31	VADEQ Power Point [EPA 1252-1290]
Complainant's Exhibit 32	VADEQ photos taken 3.27.2008 [EPA 1291-1450]
Complainant's Exhibit 33	Manifest list with hand written sketch of tank arrangement [EPA 1451-1452]

Complainant's Exhibit 34	News report dated January 20, 2003 [EPA 1453]
Complainant's Exhibit 35	February 12, 2003 Huggins, Faulkner and Flynn (consultants) report of on Chemsolv Fire and Spill on January 19, 2003 [EPA 1454-1475]
Complainant's Exhibit 36	March 3, 2005 Email re: Hazardous materials incident causing injury to Chemsolv employee [EPA 1476]
Complainant's Exhibit 37	July 26, 2005 VADEQ field notes [EPA 1477-1479]
Complainant's Exhibit 38	July 27, 2005 Email re Chemsolv generator status [EPA 1480]
Complainant's Exhibit 39	July 29, 2005 VADEQ Warning Letter to Chemicals and Solvents [EPA 1481-1507]
Complainant's Exhibit 40	November 9, 2005 VADEQ Warning Letter (without attachments) [EPA 1508-1511]
Complainant's Exhibit 41	November 15, 2005 Faulkner and Flynn summary of October 31, 2005 n-butylamine release [EPA 1512-1516]
Complainant's Exhibit 42	December 16, 2005 Chemsolv response to VADEQ November 9, 2005 Warning Letter (Attachments B-D not included) [EPA 1517-1542]
Complainant's Exhibit 43	January 5, 2006 VADEQ Notice of Violation to Chemsolv [EPA 1543-1575]
Complainant's Exhibit 44	January 9, 2006 VADEQ letter to Chemsolv [EPA 1576-1577]
Complainant's Exhibit 45	March 22, 2006 VADEQ field notes [EPA 1578-1579]
Complainant's Exhibit 46	July 27, 2006 VADEQ Notice of Violation to Chemsolv [EPA 1580-1582]
Complainant's Exhibit 47	May 24, 2007 email from Elizabeth Lohman VADEQ to Ken Cox, EPA [EPA 1583]
Complainant's Exhibit 48	Chemsolv incident report release of ferric chloride July 27, 2007 [EPA 1584-1590]
Complainant's Exhibit 49	August 16, 2007 VADEQ Notice of Violation to Chemsolv [EPA 1591-1602]
Complainant's Exhibit 50	Photos of drainage at Chemsolv facility [EPA 1603-1607]
Complainant's Exhibit 51	February 19, 2008 Fire Code inspection form and violations list [EPA 1608-1612]
Complainant's Exhibit 52	March 12, 2008 Hazardous Materials Incident Report [EPA 1613-1614]
Complainant's Exhibit 53	April 18, 2008 request for information and guidance for fluorescent bulb management [EPA 1615-1616]
Complainant's Exhibit 54	May 30, 2008 VADEQ request for formal enforcement [EPA 1617-1620]
Complainant's Exhibit 55	May 5, 2008 Chemsolv response to VADEQ information request [EPA 1621-1624]
Complainant's Exhibit 56	October 31, 2008 Chemsolv incident report for sulfuric acid spill [EPA 1625-1626]
Complainant's Exhibit 57	Laboratory Certification ID#MD004 [EPA 1627-1630]

THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III

In the Matter of

CHEMSOLV, INC., formerly trading as
Chemicals and Solvents, Inc.

and

AUSTIN HOLDINGS-VA, L.L.C.

Respondents.

Chemsolv, Inc.
1111 Industrial Avenue, S.E.
1140 Industrial Avenue, S.E.
Roanoke, Virginia 24013

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EPA Docket No. RCRA-03-2011-0068

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CERTIFICATE OF SERVICE

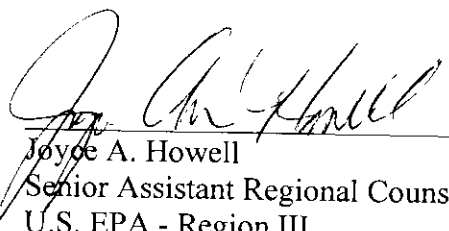
I certify that I sent by UPS, next day delivery, a copy of Complainant's Initial Prehearing Exchange to the addressees listed below. The original and one copy of the Complainant's Initial Prehearing Exchange were hand-delivered to the Regional Hearing Clerk, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103-2029.

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

Charles L. Williams, Esq.
Max Wiegard, Esq.
Gentry, Locke, Rakes & Moore
800 Sun Trust Plaza
10 Franklin Road
Roanoke, VA 24011

Dated

July 2, 2011



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