

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

In the Matter of:

Chem-Solv, Inc.

Respondent.

Chem-Solv, Inc.
1111 – 1140 Industry Avenue, SE
Roanoke, VA 24037,

Facility.

EPA Docket No. RCRA-03-2016-0006

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

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I. PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Director, Land and Chemicals Division, U.S. Environmental Protection Agency, Region III (“EPA,” “Agency” or “Complainant”) and Chem-Solv, Inc. (“Respondent”) pursuant to Sections 3008(a) and (g) of the Solid Waste Disposal Act, commonly known as the Resource Conservation and Recovery Act of 1976, as amended by *inter alia*, the Hazardous and Solid Waste Amendments of 1984 (collectively referred to hereinafter as “RCRA”), 42 U.S.C. §§ 6928(a) and (g), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, and the Revocation/Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. Part 22, including, specifically, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).
2. This Consent Agreement (“CA”) and the accompanying Final Order (“FO”) (hereinafter jointly referred to as this “CAFO”) address alleged violations by Respondent of RCRA and the federally authorized Virginia Hazardous Waste Management Regulations (“VHWMR”), codified at 9 VAC 20-60-12 *et. seq.*

3. The Commonwealth of Virginia has received federal authorization to administer a Hazardous Waste Management Program (the “Virginia Hazardous Waste Management Program”) in lieu of the federal hazardous waste management program authorized under RCRA Subtitle C, 42 U.S.C. §§6921 – 6939(g). Effective December 18, 1984, the VHWMR was authorized by the EPA pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), and 40 C.F.R. Part 271, Subpart A and thereby became requirements of RCRA Subtitle C and enforceable by EPA pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a). *See 65 Fed. Reg.* 46606 (July 31, 2000)), June 20, 2003 (*see 68 Fed. Reg.* 36925 (June 20, 2003)), July 10, 2006 (*see 71 Fed. Reg.* 27216 (May 10, 2006)) and July 30, 2008 (*see 73 Fed. Reg.* 44168 (July 30, 2008)). The VHWMR incorporate, with certain exceptions, specific provisions of Title 40 of the 1999 Code of Federal Regulations by reference.
4. Pursuant to Section 22.13(b) of the Consolidated Rules of Practice, 40 C.F.R. § 22.13(b), this CAFO simultaneously commences and concludes an administrative proceeding against Respondent, brought under Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a), to resolve alleged violations of RCRA at Respondent’s facility located at 1111 – 1140 Industry Avenue South East, Roanoke, Virginia, 24013.
5. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CA.
6. For purposes of this proceeding only, Respondent neither admits nor denies the specific factual allegations and conclusions of law set forth in this CA, except as provided in Paragraph 5, above.
7. For the purposes of this proceeding only, Respondent agrees not to contest EPA’s jurisdiction with respect to the execution and issuance of this CAFO, or the enforcement of the CAFO.
8. For purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this CA and any right to appeal the accompanying FO.
9. Respondent consents to the issuance of this CAFO and agrees to comply with its terms.
10. Each party shall bear its own costs and attorney’s fees in connection with this proceeding.

Notice of Action to the Commonwealth of Virginia

11. EPA has given the Commonwealth of Virginia, through the Virginia Department of Environmental Quality (“VADEQ”), prior notice of the initiation of this action in accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

12. Upon making a determination that any person has violated or is in violation of any requirement of RCRA Subtitle C, and upon satisfying the notification requirements of RCRA Section 3008(a)(2), 42 U.S.C. Section 6928(a)(2), RCRA Section 3008(a)(1), 42 U.S.C. Section 6928(a)(1), authorizes the Administrator of EPA to issue an order assessing a civil penalty for any past or current violation, requiring compliance immediately or within a specified time period, or both.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3), Complainant alleges the following findings of fact and conclusions of law:

13. Respondent is, and was at the time of the violations alleged herein, a corporation of the Commonwealth of Virginia.
14. Respondent is, and at the time of the violations alleged herein, a “person” as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903, 9 VAC 20-60-260.A.
15. Respondent is, and at all times relevant to this Consent Agreement was, the “owner” and “operator” of a “facility,” described in paragraph 16, below, as the terms “facility”, “owner” and “operator” are defined in 40 C.F.R. § 260.10, as incorporated by reference in 9 VAC 20-60-260.A.
16. The facility referred to in Paragraph 15, above, including all of its associated equipment and structures (hereinafter the “Facility”), is a chemical repackaging and blending facility located at 1111 – 1140 Industry Avenue South East, Roanoke, Virginia, 24013.
17. Respondent is assigned EPA ID No. VAD 9807210888.
18. Respondent is and, at all times relevant to this CAFO has been, a “generator” of, and has engaged in the “storage” in “containers” at the Facility of, materials described below that are “solid wastes” and “hazardous wastes” as those terms are defined in 40 C.F.R. § 260.10, as incorporated by reference in 9 VAC 20-60-260.A.
19. On November 19 - 20, 2014, representatives of EPA and the VADEQ conducted an EPA Sampling Inspection at Respondent’s Facility.
20. On December 17, 2014, EPA issued an Information Request letter to Respondent pursuant to Section 3007(a) of RCRA, 42 U.S.C. Section 6927(a). Respondent replied to this information request by letter dated April 15, 2015.
21. Respondent generated waste Acetic Acid at the Facility. Waste Acetic Acid is a hazardous waste within the meaning of 9 VAC 20-60-261.A, which incorporates by reference 40 C.F.R. §§ 261.22, because it exhibits the characteristic of corrosivity.

22. From at least December 13, 2013 through November 19, 2014, the hazardous waste described in Paragraph 21, above, was in “storage” in containers at the Facility.

COUNT I

(Operating Without Qualifying for a Permit Exemption or Obtaining Interim Status or a Permit)

23. The preceding paragraphs are incorporated by reference.
24. 9 VAC 20-60-270.A, which incorporates by reference 40 C.F.R. § 270.1(b), and Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e), provide, in pertinent part, that a person may not own or operate a facility for the treatment, storage or disposal of hazardous waste unless such person has first obtained a permit for such facility or has qualified for interim status for the facility.
25. Respondent does not have, and never had, a hazardous waste treatment or storage permit or interim status pursuant to 9 VAC 20-60-270.A, which incorporates by reference 40 C.F.R. § 270.1(b), or Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), for the treatment or storage of hazardous waste at the Facility.
26. 9 VAC 20-60-262.A, which incorporates by reference 40 C.F.R. § 262.34(a), provides with exceptions not applicable here, that generators of hazardous waste who accumulate hazardous waste in containers, tanks, drip pads, or containment buildings on-site for less than 90 days are exempt from the requirement to obtain a permit for such accumulation, so long as the hazardous waste is stored in accordance with a number of conditions.
27. From at least December 13, 2013 until November 19, 2014, in excess of 90 days, Respondent accumulated the hazardous waste described in Paragraph 21 and 22 at the Facility without a permit or interim status.
28. Respondent failed to qualify for the “less than 90-day” generator accumulation exemption of 9 VAC 20-60-262.A, which incorporates by reference the requirements of 40 C.F.R. § 262.34(a)(1)(i) by failing to satisfy the conditions for such exemptions referred to in Paragraph 26, above, and as described in Paragraph 27, above.
29. Respondent was required by 9 VAC 20-60-270.A, which incorporates by reference 40 C.F.R. § 270.1(b), and Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), to obtain a permit for the hazardous waste storage activities described in this count.
30. Respondent violated 9 VAC 20-60-270.A, which incorporates by reference 40 C.F.R. § 270.1(b), and Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), by operating a hazardous waste storage facility without a permit, interim status or a valid exemption to the permit requirement.

III. CIVIL PENALTIES

31. Respondent agrees to pay a civil penalty in the amount of **\$250,000** in settlement of the alleged violations set forth in this CAFO, which Respondent agrees to pay in accordance with the terms set forth below. Such civil penalty amount shall become due and payable immediately upon Respondent's receipt of a true and correct copy of the executed and filed CAFO. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with such civil penalty as described in this CAFO, Respondent must pay the civil penalty no later than thirty (30) calendar days after the date on which a copy of the executed and filed CAFO is mailed or hand-delivered to Respondent.
32. The civil penalty of **TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000.00)**, set forth in Paragraph 31, above, may be paid in six (6) installments in accordance with the following schedule:
- a. **1st Payment:** The first payment in the amount of **FORTY-TWO THOUSAND FIVE HUNDRED DOLLARS (\$42,500.00)**, shall be paid within thirty (30) days of the date on which this CAFO is mailed or hand-delivered to Respondent;
 - b. **2nd Payment:** The second payment in the amount of **FORTY-ONE THOUSAND FIVE HUNDRED DOLLARS (\$41,500.00)**, shall be paid within sixty (60) days of the date on which this CAFO is mailed or hand-delivered to Respondent;
 - c. **3rd Payment:** The third payment in the amount **FORTY-ONE THOUSAND FIVE HUNDRED DOLLARS (\$41,500.00)**, shall be paid within ninety (90) days of the date on which this CAFO is mailed or hand-delivered to Respondent,
 - d. **4th Payment:** The fourth payment in the amount of **FORTY-ONE THOUSAND FIVE HUNDRED DOLLARS (\$41,500.00)**, shall be paid within one hundred and twenty (120) days of the date on which this CAFO is mailed or hand-delivered to Respondent;
 - e. **5th Payment:** The fifth payment in the amount of **FORTY-ONE THOUSAND FIVE HUNDRED DOLLARS (\$41,500.00)**, shall be paid within one hundred and fifty (150) days of the date on which this CAFO is mailed or hand-delivered to Respondent; and
 - f. **6th Payment:** The sixth payment in the amount of **FORTY-ONE THOUSAND FIVE HUNDRED DOLLARS (\$41,500.00)** shall be paid within one hundred and eighty (180) days of the date on which this CAFO is mailed or hand-delivered to Respondent.

Pursuant to the above schedule, Respondent will remit total payments for the civil penalty in the amount of **TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000.00)**.

33. If Respondent fails to make one of the installment payments in accordance with the schedule set forth in Paragraph 32, immediately above, the entire unpaid balance of the penalty and all accrued interest shall become due immediately upon such failure, and Respondent shall immediately pay the entire remaining principal balance of the civil penalty along with any interest that has accrued up to the time of such payment. In addition, Respondent shall be liable for, and shall pay, administrative handling charges and late payment penalty charges as described in Paragraphs 39, 40, 41 and 42 below, in the event of any such failure or default.
34. Respondent may, at any time after commencement of payments under the installment schedule, elect to pay the entire principal balance, together with accrued interest to the date of such full payment.
35. The Parties represent that the settlement terms are reasonable and consistent with the provisions and objectives of RCRA Section 3008(a), 42 U.S.C. § 6928(a), and are based upon EPA's consideration of a number of factors, including: the penalty criteria set forth in Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), which include the seriousness of the violation and any good faith efforts to comply with the applicable requirements, which factors were applied to the particular facts and circumstances of this case with specific reference to EPA's October, 1990 RCRA Civil Penalty Policy, as revised in June, 2003 ("RCRA Penalty Policy"), and which reflect the statutory penalty criteria and factors set forth at Sections 3008(a)(3) and (g) of RCRA, 42 U.S.C. §§ 6982(a)(3) and (g). EPA has also considered and applied the appropriate Adjustment of Civil Penalties for Inflation, 40 C.F.R. Part 19, and the November 16, 2009 memorandum by EPA Waste and Chemical Enforcement Division Director Rosemary A. Kelley entitled *Adjusted Penalty Policy Matrices Based on the 2008 Monetary Penalty Inflation Adjustment Rule* ("Kelley Memorandum").
36. Payment of the civil penalty as required by paragraph 31 above, and/or any accrued interest, administrative fees and/or late payment penalties, by cashier's check, certified check or electronic wire transfer, in the following manner:
 - A. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action, *i.e.*, RCRA-03-2016-0006.
 - B. All checks shall be made payable to "**United States Treasury**";
 - C. All payments made by check and sent by regular mail shall be addressed to:

U.S. Environmental Protection Agency
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Contact: Craig Steffen 513-487-2091

- D. All payments made by check and sent by overnight delivery service shall be addressed for delivery to:

U.S. Environmental Protection Agency
Government Lockbox 979077
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101
Contact: 314-418-1818

- E. All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York
ABA = 021030004
Account No.: 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

- F. All electronic payments made through the Automated Clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX / Cashlink ACH Receiver
ABA = 051036706
Account No.: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - Checking

Physical Location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737
Contact: John Schmid 202-874-7026 or REX, 1-866-234-5681

- G. On-Line Payment Option: WWW.PAY.GOV/PAYGOV

Enter sfo 1.1 in the search field. Open and complete the form.

- H. Point Of Contact regarding payment questions (i.e. how to make payment via wire, ACH, check, pay.gov):
Craig Steffen, 513-487-2091, steffen.craig@epa.gov

Additional payment guidance is available at:
<http://www2.epa.gov/financial/makepayment>.

37. At the time of payment, Respondent shall send a notice of such payment, including a copy of any check or electronic transfer, as appropriate, to:

Lydia Guy
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region III (Mail Code 3RC00)
1650 Arch Street
Philadelphia, PA 19103-2029

and

Joyce A. Howell
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency
Region III (Mail Code 3RC30)
1650 Arch Street
Philadelphia, PA 19103-2029

38. Respondent agrees not to deduct for civil taxation purposes the civil penalty specified in this Consent Agreement and the attached Final Order.
39. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment as specified in this CAFO shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.
40. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of the executed and filed CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).
41. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives - Cash Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.

42. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly. A penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

IV. EFFECT OF SETTLEMENT

43. Payment of the penalty specified in Paragraph 31 above, shall constitute full and final satisfaction of all civil claims for penalties which Complainant has under RCRA Sections 3008(a) and (g) for the specific violations alleged in Count I, above. Compliance with this CAFO shall not be a defense to any action commenced at any time for any other violation of the federal laws and regulations administered by EPA.

V. RESERVATION OF RIGHTS

44. This CAFO resolves only EPA's claims for civil penalties for the specific violations alleged in the CAFO. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under RCRA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk.

VI. OTHER APPLICABLE LAWS

45. Nothing in this CAFO shall relieve Respondent of any duties otherwise imposed upon it by applicable federal, state, or local law and/or regulation.

VII. CERTIFICATION OF COMPLIANCE

46. Respondent certifies to EPA that, upon investigation, to the best of Respondent's knowledge and belief, Respondent is currently in compliance with all applicable provisions of RCRA Subtitle C, 42 U.S.C. §§ 6921-6939g, and the federally authorized, VHWMR for which violations are alleged in this Consent Agreement.

VIII. PARTIES BOUND

47. This Consent Agreement and the accompanying Final Order shall apply to and be binding upon the EPA, the Respondent, Respondent's officers and directors (in their official capacity) and Respondent's successors and assigns. By his or her signature below, the person signing this Consent Agreement on behalf of Respondent acknowledges that he or she is fully authorized to enter into this Consent Agreement and to bind the Respondent to the terms and conditions of this Consent Agreement and the accompanying Final Order.

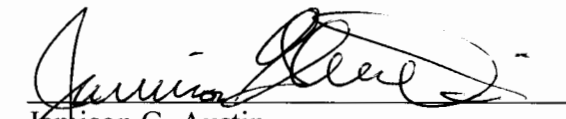
IX. EFFECTIVE DATE

48. The effective date of this Consent Agreement and Final Order is the date on which it is filed with the Regional Hearing Clerk after signature by the Regional Judicial Officer or Regional Administrator.

For Respondent, Chem-Solv:


Date: 12/16/15

By:


Jamison G. Austin
Vice-President and General Manager
Chem-Solv, Inc.

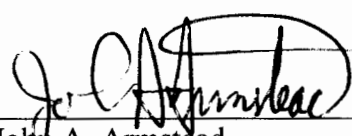
For Complainant, United States Environmental Protection Agency, Region III:

Date: 12/16/2016

By: 
Joyce A. Howell
Senior Assistant Regional Counsel

After reviewing the foregoing Consent Agreement and other pertinent information, the Director, Land and Chemicals Division, EPA Region III, recommends that the Regional Administrator or the Regional Judicial Officer issue the Final Order attached hereto.

12.16.15
Date

By: 
John A. Armstead
Director
Land and Chemicals Division

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

In the Matter of:

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Respondent.

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EPA REGION III
ROANOKE, VA

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FINAL ORDER

Complainant, the Director, Land and Chemical Division, U.S. Environmental Protection Agency - Region III, and Respondent, Chem-Solv, Inc., have executed a document entitled "Consent Agreement" which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22. The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated herein as if set forth at length.

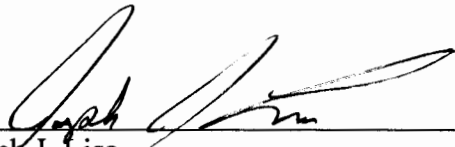
NOW, THEREFORE, PURSUANT TO Section 22.18(b)(3) of the Consolidated Rules of Practice and Section 3008(a) and (g) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6928(a) and (g) ("RCRA"), and having determined, based on the representations of the parties in the attached Consent Agreement, that the civil penalty agreed to therein was based upon a

*IMO Chem-Solv, Inc.
Docket No. RCRA-03-2016-0006*

consideration of the factors set forth in Section § 3008(a)(3) and (g), 42 U.S.C. § 6928(a)(3) and (g), IT IS HEREBY ORDERED that Respondent pay a civil penalty of **\$250.000**, and comply with each of the additional terms and conditions as specified in the attached Consent Agreement.

The effective date of this Consent Agreement and Final Order is the date on which such Final Order is filed with the Regional Hearing Clerk.

Dec. 17, 2015
Date:



Joseph J. Lisa
Regional Judicial Officer
U.S. EPA, Region III

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REGIONAL HEARING CLERK
EPA REGION III, PHILADELPHIA, PA

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CERTIFICATE OF SERVICE

I certify that I sent a copy of the Consent Agreement and Final Order in the above-captioned matter to the addressee and in the manner listed below. The original and one copy of the Complaint were hand-delivered to the Regional Hearing Clerk, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103-2029.

Via UPS, next day delivery to:

Maxwell H. Wiegard, Esq.
Gentry Locke
10 Franklin Road SE
Suite 900
Roanoke, VA 24011

Dated: 12/22/2015



Joyce A. Howell
Senior Assistant Regional Counsel
U.S. EPA - Region III