

the violation's duration; 3) adjusting the sum of the gravity based and multi-day components, up or down, for case specific circumstances, and (4) adding to this amount the appropriate economic benefit gained through non-compliance.

Penalty Policy at 1.

The proposed penalty is based upon the facts and circumstances known to Complainant at the time of the issuance of the Complaint or that have become known to Complainant after the Complaint was issued.

The proposed penalty contained herein does not constitute a "demand" as that term is defined in the Equal Access to Justice Act, 28 U.S.C. § 2412. Pursuant to Section 22.14(a)(4)(ii) of the Consolidated Rules of Practice, an explanation of the number and severity of violations is given below concerning the aforesaid Counts alleged in this Complaint.

COUNT I - Owning and/or operating a hazardous waste storage facility without a permit or interim status as to Respondent Chemsolv:

Potential for Harm: Moderate. Respondent Chemsolv's failure to comply with the permitting requirements of RCRA and the authorized VAWHP constitutes a moderate potential for harm to human health, the environment and the RCRA program. The permitting process is the backbone of the RCRA program and ensures that facilities that manage hazardous wastes handle them in a manner so as to minimize their risk to human health and the environment. Failure to obtain a permit or interim status prior to the treatment, storage and/or disposal of hazardous waste is evidence indicating that a facility is not instituting those practices and procedures required by RCRA for the safe management and handling of these waste, thereby, posing a risk to human health and the environment. Failure to obtain a permit and interim status also impedes EPA's ability to regulate hazardous waste activities by members of the regulated community, like Respondent Chemsolv, due to the fact that the RCRA regulatory program and Complainant rely upon the self-reporting of members of the regulated community.

Deviation from Regulatory Requirements: Moderate. Respondent Chemsolv met some, but not all, of the conditions which they needed to meet in order to be exempt from permitting requirements.

Gravity Matrix amount: \$8,382

Increase/Decrease: 0%

Multi-day: \$69,094 (\$386 x 179 days). See Penalty Policy, p. 23.

Economic Benefit of Non-compliance: \$0. EPA did not assign a value to this component.

Total Penalty for Count I as to Respondent Chemsolv: \$77,476

COUNT I - Owning and/or operating a hazardous waste storage facility without a permit or interim status as to Respondent Austin Holdings

Potential for Harm: Moderate. Respondent Austin Holdings' failure to comply with the permitting requirements of RCRA and the authorized VAWHP with respect to a single container of hazardous waste constitutes a moderate potential for harm to human health, the environment and the RCRA program. The permitting process is the backbone of the RCRA program and ensures that facilities that manage hazardous wastes handle them in a manner so as to minimize their risk to human health and the environment. Failure to obtain a permit or interim status prior to the treatment, storage and/or disposal of hazardous waste is evidence indicating that a facility is not instituting those practices and procedures required by RCRA for the safe management and handling of these waste, thereby, posing a risk to human health and the environment. Failure to obtain a permit and interim status also impedes EPA's ability to regulate hazardous waste activities by members of the regulated community, like Respondent Austin Holdings, due to the fact that the RCRA regulatory program and Complainant rely upon the self-reporting of members of the regulated community.

Deviation from the regulatory requirements: Minor. Respondent Austin Holdings owns a portion of the Facility on which a relatively small amount of hazardous waste was stored or contained, and had no involvement in the daily operation of the Facility.

Gravity Matrix amount: \$5,158

Multi-day: \$23,091 (\$129 x 179 days). See Penalty Policy, p. 23.

Increase/Decrease: 0%

Economic Benefit of Non-compliance: \$0. EPA did not assign a value to this component.

Total Penalty for Count I as to Respondent Austin Holdings: \$ 28,249

COUNT II - Failure to perform Hazardous Waste Determinations (Respondent Chemsolv)

Potential for harm: Moderate. The performance of hazardous waste determinations is the initial trigger for the implementation of the RCRA regulations and the authorized VAWHP at a facility for the safe handling and management of hazardous wastes. Respondent Chemsolv's failure to perform such determinations resulted in hazardous wastes not being identified as such and not being properly managed and handled at the Facility, thereby, posing a significant risk to human health and the environment. Additionally, the failure to perform such determinations poses a significant potential for harm to the RCRA program which relies upon members of the regulated community, like Respondent Chemsolv, to identify hazardous wastes and institute those practices and procedures deemed necessary under RCRA for their safe handling, storage, treatment and/or disposal.

Deviation from the regulatory requirements: Major. Respondent Chemsolv failed to perform waste determinations on at least six separate waste streams.

Gravity Matrix amount: \$12,250

Multi-day: No multi-day component is proposed for this Count.

Increase/Decrease: \$1,225. 10% increase for history of noncompliance. *See* Penalty Policy, p.37. (State Inspection 11/1/2005; Warning Letter 11/9/2005).

Economic Benefit of Non-compliance: \$0. EPA did not assign a value to this component.

Total Penalty for Count 2 as to Respondent Chemsolv: \$13,475

COUNT III Failure to Have Secondary Containment (Respondent Chemsolv)

Potential for harm: Moderate. The Subpart J requirements regulate the management of hazardous waste in tanks. The failure to properly manage a tank being utilized for hazardous waste storage can result in an injury or a release to the environment. Respondent Chemsolv completely failed to comply with this secondary containment requirement.

Deviation from the regulatory requirements: Moderate. Respondent made no attempt to meet the regulatory requirements to provide secondary containment for this tank.

Gravity Matrix amount: \$ 8,382.

Multi-day: \$69,094 (\$386 x 179 days). *See* Penalty Policy, p. 23.

Increase/Decrease: 0.

Economic Benefit of Non-compliance: \$28,222. *See* Penalty Policy, p. 29. \$30,000 was the estimate used for the *avoided* cost of installing secondary containment (digging a hole, installing an eight inch concrete wall, and installing some form of leak detection). The time period was May 23, 2007 – February 20, 2008. Date of penalty payment estimated as December 1, 2011. The BEN model result is \$28,222.

Total Penalty for Count 3 as to Respondent Chemsolv: \$105,698

COUNT IV Failure to Obtain a Tank Assessment (Respondent Chemsolv)

Potential for harm: Moderate. Respondent Chemsolv's attempt to prove compliance with this requirement constituted a statement that the tank plans had been stamped by an engineer. This falls far short of meeting the regulatory requirement. The failure of a tank being used to store hazardous waste can result in an injury or a release to the environment. Respondent Chemsolv completely failed to comply with this requirement.

Deviation from the regulatory requirements: Moderate. There was no substantial attempt to meet the regulatory requirements to ensure proper design and installation of the Pit.

Gravity Matrix amount: \$8,382

Multi-day: \$69,094 (\$386 x 179 days). *See* Penalty Policy, p. 23.

Increase/Decrease: 0.

Economic Benefit of Non-compliance: \$4,052. *See* Penalty Policy, p.29. The estimated *avoided* cost to retain a professional engineer to certify the design of the tank system and supervise the installation of the tank system in accordance with the requirements of 40 C.F.R. § 264.192(b) - (f) for the Pit, as required by 9 VAC 20-60-264.A which incorporates by reference 40 C.F.R.

§ 264. 192(a) and (g) is \$5,000. The time period is May 23, 2007 – February 20, 2008. The BEN model result is \$4,052.

Total Penalty for Count 4 as to Respondent Chemsolv: \$ 81,528.

COUNT V Failure to Conduct and/or Document Inspections in the Facility Operating Record (Respondent Chemsolv)

Potential for harm: Moderate. Respondent Chemsolv stated that the Pit was visually inspected when material was placed into or taken from the Pit. Such observations fail to satisfy the “each operating day” requirement of the regulation and fail to create the written record that the regulations require. The failure to properly manage a tank being utilized for hazardous waste storage can result in an injury or a release to the environment. Respondent Chemsolv completely failed to comply with this requirement.

Deviation from the regulatory requirements: Moderate. There was no attempt to meet the regulatory requirements, only, at best, the sporadic visual observation by employees adding material to or removing material from the Pit.

Gravity Matrix amount: \$8,382.

Multi-day: \$69,094 (\$386 x 179 days). *See* Penalty Policy, p. 23.

Increase/Decrease: 0.

Economic Benefit of Non-compliance: \$3,383. *See* Penalty Policy, p.29. The initial estimated *avoided* cost to set up an inspection program is \$1,536. The estimated *avoided* annual recurring cost of inspection is \$1,942. The time period is May 23, 2007 – February 20, 2008. The BEN model result is \$3,383.

Total Penalty for Count 5 as to Respondent Chemsolv: \$80,859

COUNT VI Failure to Comply with Subpart CC Standards for Tanks as required by 40 C.F.R. § 264. Subpart CC. (Respondent Chemsolv)

Potential for harm: Moderate. The Subpart CC requirements regulate air emissions from volatile organic compounds in hazardous waste. Respondent Chemsolv had an open top tank subject to the Subpart CC regulations. The Subpart CC requirements would require Respondent Chemsolv, at a minimum, to maintain air emission equipment and structural controls, inspect such equipment and document all inspections. There was no attempt to comply with these requirements, and therefore other important regulatory requirements were also violated as a result. Respondent Chemsolv’s failure in this regard resulted in the prohibited release of VOCs into the atmosphere. The release of VOCs to the atmosphere presents a substantial potential for harm both to human health and the environment. VOCs are a suspected carcinogen, can pose a risk of fire and are implicated in the deterioration of the atmospheric ozone.

Deviation from the regulatory requirements: Major. Respondent Chemsolv completely failed to comply with this requirement.

Gravity Matrix amount: \$12,250.

Multi-day: \$179,000. (\$1,000 x 179 days). See Penalty Policy, p. 23.

Increase/Decrease: 0.

Economic Benefit of Non-compliance: \$13,734 See Penalty Policy, p.29. The estimated *avoided* cost to design, manufacture and install a lid on the tank is \$10,000. The estimated annual recurring *avoided* cost of inspection and recordkeeping is \$500. The time period is May 23, 2007 – February 20, 2008. The BEN model result \$13,734.

Total Penalty for Count 6 as to Respondent Chemsolv: \$204,984.

COUNT VII Failure to Comply with the Closure Requirements for a Hazardous Waste Tank (Respondent Chemsolv)

Potential for harm: Moderate. The tank closure requirements ensure that the tank is removed properly and that any hazardous waste generated by the removal of the tank is properly managed. Moreover, closure requirements ensure that any remaining contamination is addressed. Inexplicably, Respondent Chemsolv took samples and did not have them analyzed. Absent proper closure in accordance with the regulations, the potential for harm to the environment is substantial.

Deviation from the regulatory requirements: Moderate. Respondent Chemsolv failed to comply with regulations for closure of a hazardous waste storage tank, thus failing to ensure that any potential for harm to human health and the environment was abated.

Gravity Matrix amount: \$8,382.

Multi-day: \$69,094 (\$386 x 179 days). See Penalty Policy, p. 23.

Increase/Decrease: 0.

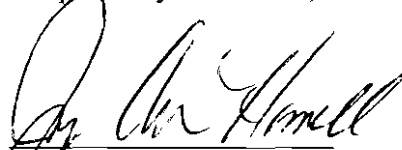
Economic Benefit of Non-compliance: \$0. EPA did not assign a value to this component.

Total Penalty for Count 7 as to Respondent Chemsolv: \$77,476.

Total Proposed Penalty:

\$669,665

Respectfully submitted,



Joyce A. Howell
Sr. Assistant Regional Counsel

THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III

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EPA REGION III, PHILA. PA

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

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)

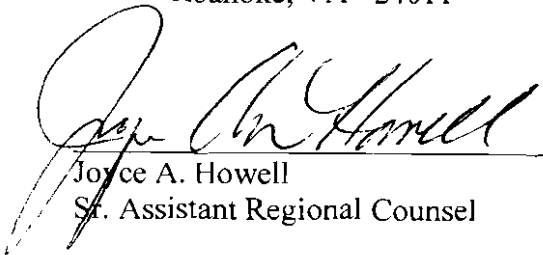
CERTIFICATE OF SERVICE

I certify that, I sent by UPS, next day delivery, a copy of the Proposed Civil Penalty to the addressees listed below. The original and one copy of the Proposed Civil Penalty 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

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Dated: 9-23-2011



Joyce A. Howell
Sr. Assistant Regional Counsel