



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

VIA UPS, Next Day Air

January 26, 2012

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

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

Dear Judge Gunning:

Enclosed please find Complainant's Motion to Correct and Supplement Complainant's Prehearing Exchange. A proposed form of Order is enclosed.

Respectfully,

A handwritten signature in black ink, appearing to read "Joyce A. Howell".

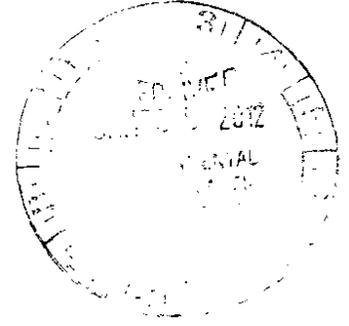
Joyce A. Howell
Sr. Assistant Regional Counsel

Enclosures

cc: Lydia Guy, Regional Hearing Clerk

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

**BEFORE 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 Industry Avenue, S.E :
1140 Industry Avenue, S.E :
Roanoke, Virginia 24013 :
:
Facility. :
_____ :

COMPLAINANT'S MOTION TO
SUPPLEMENT AND CORRECT
COMPLAINANT'S 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 40 C.F.R. §§ 22.16(a) and .19(a) and (f), and the Court's Order dated November 16, 2011, Complainant respectfully moves this Court for an Order granting Complainant leave to supplement and correct certain exhibits to Complainant's Initial Prehearing Exchange through the reorganization of certain pages on these Exhibits already contained in

Complainant's Prehearing Exchange, and through the addition of several photographs and two exhibits. . The Hearing in this matter is scheduled to commence on March 20, 2011.

A. Corrections to Complainant's Exhibits:

40 C.F.R. § 22.19(f) requires that a party who has made an information exchange shall promptly supplement or correct the exchange when the party learns that the information exchanged is incomplete, inaccurate, or outdated and the additional or corrective information has not otherwise been disclosed to the other party. Accordingly, the following corrections to Complainant's Prehearing Exchange are respectfully submitted:

1. Complainant Exhibit 18 (EPA 348, 349, 350, 351 and 352). These are photographs dated May 15, 2007 and numbered by the inspector as photographs 17 - 21. These photographs are part of Complainant Exhibit 17 and should be properly placed in that Exhibit in the numbered order.
2. Complainant Exhibit 18. Photographs that are part of the EPA Inspection Report set forth in Complainant Exhibit 18 were omitted. Photographs identified by the Inspector as photographs 17 – 21 to the Inspection Report, dated May 23, 2007 are attached [Attachment A] and should properly be placed in Complainant Exhibit 18 in number order. These photographs are marked as EPA 353a – 353e
3. Complainant Exhibit 21. Certain pages to Complainant Exhibit 21 are out of order. EPA 653 and 654 should precede EPA 652.

B. Supplemental Exhibits to Complainant's Prehearing Exchange

40 C.F.R. § 22.22(a) provides, in pertinent part, that the Presiding Officer shall admit all evidence that is not irrelevant provided that any such proposed evidence is exchanged at least fifteen days before hearing. Complainant respectfully requests leave to supplement it Prehearing Exchange through the addition of these following two exhibits.

1. Complainant Exhibit 65[Attachment B]: Photographs of sampling instruments. Complainant's Reply Brief in support of Complainant's Motion for Accelerated Decision, filed

December 22, 2011, included the Declaration of Jose Reyna, III. Attached to Mr. Reyna's Declaration were photographs of sampling instruments. The undersigned respectfully submits that these photographs are relevant in the matters herein in issue and have probative value, especially given Respondent's critique of Complainant's sampling methods. *See e.g.*, Respondent Exhibit 40, CS 312. Complainant further submits that these photographs are reliable and that they are not repetitious in nature.

2. Complainant Exhibit 66 [Attachment C]: EPA Faxback 11782, 9442.1993(02) (October 7, 1993), Re: Regulatory Status of Used Residential and Commercial Industrial Aerosol Cans. This 1993 EPA Letter Guidance is relevant to matters at issue with respect to Respondents' management and disposal of aerosol can wastes. The proposed exhibit sets forth EPA's position on this issue, clarifies existing regulations and is relevant, reliable and has probative value and is not in any way repetitious in nature.

Complainant respectfully requests that Complainant be granted leave to make the corrections to Complainant's Prehearing Exchange as set forth in Section A of this petition and to supplement Complainant's Prehearing Exchange as set forth in Section B of this petition. A proposed form of order is enclosed.

Respectfully submitted,

07 26, 2012
Date



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

10 Franklin Road
Roanoke, VA 24011

Dated:

Jan. 26, 2012



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

**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.	:	
	:	EPA Docket No. RCRA-03-2011-0068
Chemsolv, Inc.	:	
1111 Industry Avenue, S.E.	:	
1140 Industry Avenue, S.E.	:	
Roanoke, Virginia 24013	:	
	:	Proceeding under Section 3008(a)
	:	of the Resource Conservation and
	:	Recovery Act, as amended, 42 U.S.C.
	:	Section 6928(a)
Facility	:	
	:	

**ORDER GRANTING LEAVE TO COMPLAINANT TO CORRECT AND SUPPLEMENT
COMPLAINANT'S PREHEARING EXCHANGE**

This matter having been opened to the Court upon Complainant's Motion for an Order granting leave to Complainant to correct and supplement Complainant's Prehearing Exchange, and the Court having considered the argument of counsel and for good cause shown, it is hereby:

ORDERED that the following corrections may be made to Complainant's Prehearing Exchange:

1. The documents identified as EPA 348, 349, 350, 351 and 352 shall be moved from Complainant Exhibit 18 to Complainant Exhibit 17 and placed in numbered order in Complainant Exhibit 17.
2. The documents labeled EPA 353a – 353e that were omitted from Complainant Exhibit

18 shall be added to Complainant Exhibit 18.

3. The documents labeled EPA 653 and EPA 654 shall be moved to precede EPA 652; and
it is further,

ORDERED

That Complainant may supplement its Prehearing Exchange with the proposed exhibits
labeled Complainant Exhibit 65 and 66.

SO ORDERED.

Hon. Barbara A. Gunning,
Administrative Law Judge