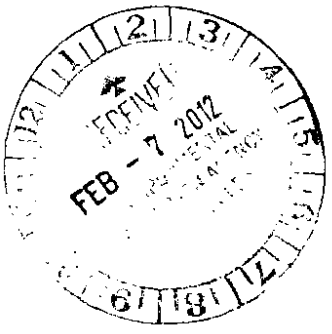
UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR



IN THE MATTER OF	)	
	)	
CHEMSOLV, INC., formerly trading as Chemicals and Solvents, Inc.	)	
	)	DOCKET NO. RCRA-03-2011-0068
and	)	
	)	
AUSTIN HOLDINGS-VA, L.L.C.,	)	
	)	
RESPONDENTS	)	

ORDER ON COMPLAINANT'S MOTION FOR PARTIAL ACCELERATED DECISION AS TO LIABILITY

This proceeding arises under the authority of Section 3008(a)(1) and (g) of the Resource Conservation and Recovery Act of 1976 and the Hazardous and Solid Waste Amendments of 1984 (collectively referred to as "RCRA"), 42 U.S.C. § 6928(a)(1) and (g). The Administrative Complaint, Compliance Order and Notice of Opportunity for a Hearing ("Complaint" or "Compl.") in this matter was filed on March 31, 2011, and alleges that Respondents violated Subtitle C of RCRA, 42 U.S.C. §§ 6921-6939e, and the Commonwealth of Virginia's federally authorized hazardous waste management program. The parties are reminded that this proceeding is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (the "Rules of Practice"), 40 C.F.R. §§ 22.1-22.32. The hearing in this matter has been scheduled to commence on March 20, 2012, in Roanoke, Virginia.

On November 29, 2011, Complainant filed a Motion for Partial Accelerated Decision as to Liability ("Motion" or "Mot."), along with a Memorandum in Support of the Motion ("Memo") and two declarations. On December 14, 2011, Respondents' Response to Complainant's Motion for Partial Accelerated Decision as to Liability ("Response" or "Resp."), including two affidavits, was received. On December 22, 2011, Complainant submitted its Reply Brief in further support of Complainant's Motion for Partial Accelerated Decision ("Reply"), along with several declarations and a revised proposed order.

I. Positions of the Parties

A. Complainant's Motion

Complainant argues that there are no genuine issues of material fact as to Respondents' liability for the alleged violations set forth in Counts 3 - 7. Mot. at 1. The Complaint alleges that, during the relevant period, Respondent Chemsolv, Inc. ("Respondent Chemsolv" or "Respondent")[1/] owned and operated a facility in Roanoke, Virginia, of which Respondent Austin owned a small portion. Compl. ¶¶ 3-4. Complainant alleges that Respondent Chemsolv is a "generator" of "hazardous waste" under RCRA and corresponding state regulations because it operated a "new tank system" (called the "Pit" or the "hazardous waste storage tank") that received and contained liquid and solid hazardous wastes that exhibited the characteristic of "toxicity" for several substances. Compl. ¶¶ 5, 14-19.

Count 3 of the Complaint alleges that Respondent Chemsolv failed to have secondary containment for the hazardous waste storage tank. Compl. ¶¶ 51-52. Count 4 alleges that Respondent failed to obtain a tank assessment for the hazardous waste storage tank. Compl. ¶ 57. Count 5 alleges that Respondent failed to conduct and/or document inspection of the hazardous waste storage tank in the facility operating records. Compl. ¶¶ 61-62. Count 6 alleges that Respondent failed to comply with Subpart CC standards for Tanks. Compl. ¶¶ 70-71. Count 7 alleges that Respondent failed to comply with the closure requirements for the hazardous waste tank. Compl. ¶¶ 78-80 and 82-84. Respondents, in their joint Answer, deny these claims. Answer ¶¶ 52-53, 58, 62-63, 71-72, 79-81, and 83-85.

Listing the *prima facie* elements of liability, Complainant argues that Respondents' responses to information requests, various affidavits, and documentary evidence submitted by both parties show by a preponderance of the evidence that under RCRA and its corresponding regulations (1) the Pit water and/or Pit settled solids are "solid wastes," (2) the Pit water and/or Pit settled solids are "hazardous wastes," (3) Chemsolv is a "generator" of "hazardous wastes"; and (4) the Pit is a regulated hazardous waste storage tank.[2/] Memo. at 10-11. Respondents do

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[1/] While Respondent Chemsolv and Respondent Austin Holdings-VA, L.L.C. ("Respondent Austin") are jointly represented by counsel and have jointly filed and responded to motions, the substantive allegations that are the subject of the Motion identify Respondent Chemsolv only.

[2/] With respect to Count 6, Complainant notes that it must also (continued...)

not dispute that these are necessary elements of Complainant's case. Resp. at 12.

With respect to the issue of "solid waste," Complainant argues that the water in the Pit is a solid waste based on Respondent Chemsolv's responses to EPA information requests in which it describes the Pit water, at various points, as "non hazardous wastewater," "wash water," "D002 waste," and "acid pad wash water." Memo. at 11-12 (citing CX[3/] 17, 19, and 21). Complainant also asserts that the settled solids in the Pit are "solid waste" based on statements made in the responses to EPA information requests. *See* Memo. at 12-13 (citing CX 21 and 23). As such, Complainant asserts that the Pit water and settled solids were discarded by Respondents. As further evidence that Respondents used the Pit to accumulate waste, Complainant points to a floor trench from a blending room that it asserts connects to the Pit through underground piping. Memo. at 13 (citing CX 17 and Decl. of Kenneth Cox, ¶ 14).

With respect to the issue of "hazardous waste," Complainant argues that samples of the Pit water and settled solids taken by an EPA inspector on May 23, 2007, indicate the presence of Chloroform, Tetrachloroethene, and Trichloroethene at concentrations that meet the regulatory standard for hazardous waste based on "toxicity." Memo at 14 (citing 40 C.F.R. § 261.24, Virginia regulations, and Decl. of Peggy Zawodny, ¶¶ 5 and 7).

Complainant acknowledges that Respondent Chemsolv's status as a "generator" depends on the quantity of hazardous waste it produces. Memo. at 15 (citing 40 C.F.R. § 261.5 and Virginia regulations) (persons who generate less than 100 kilograms of hazardous waste per month and do not accumulate more than 1,000 kilograms at any one time may be conditionally exempt provided such persons make hazardous waste determinations in accordance with regulation). Complainant asserts that Respondent is not conditionally exempt because it stored over 7,954 kilograms of hazardous waste onsite from at least May 15, 2007, through February 1, 2008. Memo. at 16 (citing the manifest submitted by Respondent as proof of disposal of the Pit solids removed in June

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[2/] (...continued)
prove that Chemsolv is the owner and/or operator of the Pit and a hazardous waste in the Pit had a volatile organic concentration in excess of 500 parts per million by weight (ppm). Memo. at 11 n.2.

[3/] In this Order, proposed exhibits submitted by the parties as part of the prehearing information exchange will be referred to as CX for Complainant's Exhibit(s) and RX for Respondents' Exhibit(s).

2007). Additionally, Complainant argues that Respondent did not make the requisite waste determination in order to take advantage of the conditional exemption and instead "opted to wait for the EPA analysis of the samples taken from this material." Memo. at 16 (citing CX 21).

Concluding that it has established the elements of its *prima facie* case, Complainant then delineates Counts 3 - 7 and the supporting evidence for each count. As to Count 3, Complainant argues that the Pit, which Respondent states was ceramic-lined carbon steel, does not satisfy the secondary containment requirements of 40 C.F.R. § 264.193 and 9 V.A.C. 20-60-264.A. Memo. at 17 (identifying the compliant types of containment). As to Count 4, Complainant argues that because the Pit was installed after July 14, 1986, it is a "new tank system" and required written certification by "those persons required to certify the design of the tank system and supervise [its] installation . . . ." Memo. at 18 (citing 40 C.F.R. § 264.192(b)-(f)). Complainant asserts that Respondent did not obtain the requisite certifications. *Id.* at 19. As to Count 5, Respondent states that the Pit was "visually inspected each time the water was pumped and during both solids removals. Management recorded no defects or deviations from normal operation at any time." Memo. at 20 (citing CX 23). Complainant argues that such inspections did not happen each operating day, as required by the regulations, and Respondent did not produce the required inspection reports. *Id.*

As to Count 6, Complainant argues that the Pit contained volatile organic concentrations in excess of 500 ppm and Respondent was therefore required to implement certain air emissions controls, set forth in 40 C.F.R. § 264.1084(a)(1). Complainant asserts that Respondent is liable for failure to comply with Subpart CC standards because the Pit did not have any air emissions controls at all. Memo. at 22. As to Count 7, Complainant asserts that any closure plan or closure activities for a hazardous waste storage tank must meet all of the requirements of 40 C.F.R. part 264, subpart G. Complainant argues that Respondent is liable under Count 7 because it removed the Pit on or about February 1, 2008, "in disregard of all regulatory protocols, without a closure plan, without an analysis of the soil that surrounded the Pit, and without a demonstration of financial responsibility that Chemsolv had sufficient resources to clean up any potential contamination from the Pit." Memo at 24-25 (citing Decl. of Kenneth Cox, ¶¶ 42-44).

B. Respondents' Response

Respondents admit that Respondent Chemsolv operates a chemical distribution business in Roanoke, Virginia, and that EPA and Virginia Department of Environmental Quality ("VADEQ") personnel inspected the facility in May 2007 and took certain

samples. Resp. at 3-4. Respondents also admit that they furnished responses to several information requests from EPA. *Id.* at 4. However, Respondents assert that the evidence submitted to date creates significant and genuine issues of material facts as to all Counts in the Complaint. In particular, Respondents argue that liability for Counts 3 - 7 is dependent on Complainant establishing that the Pit stored hazardous wastes in the first place. Resp. at 2. Respondents then make several preliminary points concerning Complainant's assertions.

First, Respondents attack Complainant's sampling methods as "flawed" for reasons set forth in their Answer, namely that the methods were not in compliance with EPA's prescribed sample collection requirements and the materials sampled were not "representative of any waste stream at the point of generation, because they were collected from an intermediate process tank." Resp. at 5 (quoting Ans. ¶ 15); *see also* Aff. of Scott Perkins, Attach. B at 2; Resp. at 7-8; RX 30 (Expert Report prepared by Scott Perkins).

Second, Respondents argue that, contrary to Complainant's assertion, Respondents analyzed a composite sample of the waste in May 2006, using the Total Characteristic Leaching Procedure, which determined that all constituents "were below regulatory levels." Resp. at 5-6 (quoting CX 21).

Third, Respondents assert that Rinsewater Tank No. 1 (another name for the Pit) was installed before the Summer of 1986, although they "believe" that some additional construction was done in approximately 1989-1990. Resp. at 6 (citing Second Aff. of Jamison Austin ¶ 10 attached as Ex. A).

Fourth, Respondents dispute Complainant's contention that either Respondent accumulated 6,000 kilograms of hazardous waste onsite at one time. Resp. at 10-11 (citing RX 2, Second Aff. of Jamison Austin, RX 30, and Aff. of Scott Perkins). Accordingly, Respondents continue, the Roanoke facility was not a "facility" within the meaning of the relevant regulations. *Id.* (citing 40 C.F.R. § 260.10 and 9 V.A.C. 20-60-260.A).

With respect to the overall issue of whether the contents of the Pit were "solid wastes," Respondents argue that evidence of two instances where washwater was shipped by tanker truck for disposal do not support the conclusion that the washwater was *entirely* waste. Resp. at 14 (citing RX 2 and 30, and Aff. of Scott Perkins). By way of explanation, Respondents state:

> [C]ertain rinsewater passing through Rinsewater Tank No. 1 eventually did become waste and, thus, such rinsewater was properly referred to as "waste water" after Chem-Solv made the election to dispose of such rinsewater. Not all such rinsewater, however, became waste. Therefore, not

all rinsewater associated with Rinsewater Tank No. 1 is properly construed or described as "waste water."

Resp. at 14-15 (citing RX 2). Respondents also argue that the reference to D002 waste in responses to EPA's information request, when read in context and "accurately interpreted," demonstrate that prior to 2005, the wash water was shipped to Nobel Oil, an entity that does not accept hazardous waste. Resp. at 15. Additionally, Respondents contend, the floor trench identified by Complainant is not, in fact, connected to the Pit and does not bolster the argument that the Pit functioned as a receptacle for discarded material. *Id.* (citing Second Aff. of Jamison Austin ¶¶ 9-11; Aff. of Scott Perkins ¶ 6).

Respondents also argue that the contents of the Pit could not be considered discarded waste "until they were removed" from the tank and Respondent Chemsolv "made the election to dispose of it" because prior to removal the contents of the Pit were "stored for possible reuse in rinsing the exterior of drums or as a constituent in the marketable product that Chem-Solv sold." Resp. at 17. Finally, Respondents raise an affirmative defense, arguing that they are protected under the manufacturing process unit ("MPU") exemption, 40 C.F.R. § 261.4, as explained in the Expert Report of Scott Perkins. Resp. at 17 (citing RX 30).

With respect to the overall issue of whether Respondents are "generators" of hazardous waste, Respondents dispute Complainant's assertions that Chemsolv accumulated more than 1,000 kg of hazardous waste on site and that Chemsolv failed to perform a waste determination of the settled solids. Resp. at 18. Again, Respondents argue that the solids were not subject to RCRA regulation until the point at which they were removed from the tank. *Id.*

C. Complainant's Reply

In response to Respondents' argument that the contents of the Pit were held for possible reuse as rinsewater or subsequently incorporated into commercial products, Complainant argues that the Pit was, at all times, a hazardous waste tank for the portion of the contents that were discarded. Reply at 5 ("[t]here is no such thing as a part time hazardous waste storage unit."). Complainant further argues that "little credibility can be assigned to [the affidavits attached to Respondents' Response] that contradict representations made to federal officials" during the inspection. *Id.* According to Complainant, even if some question remains as to the purpose and use of the Pit water, the settled solids removed in 2008 were "never anything other than discarded material and thus a solid waste and, as proved by EPA's analytical results, hazardous waste." Reply at 7. Complainant asserts that it is undisputed that the Pit solids were "disposed of as hazardous waste." *Id.*

Complainant also attacks Respondents' claim that they performed a hazardous waste determination in 2006, arguing that the material tested was a composite sample of three sources at the facility and not a pure sample from the Pit. *Id.* at 8-9 (citing CX 19 and 29).

Complainant then lays out its argument against Respondents' claim that the Pit is exempt from RCRA regulation because it is a manufacturing process unit. Reply at 10. Complainant asserts that claims of exemption are subject to close scrutiny and should be narrowly construed. *Id.* (citing *Gen. Motors Auto. - N. Am.*, EPA Docket No. RCRA-05-2004-001, 2006 WL 3406333 (ALJ, Mar. 30, 2006). Complainant argues that by claiming the MPU exemption, Respondents have implicitly admitted that, absent the exemption, the material subject to the exemption would be regulated under RCRA.[4/] *Id.*

Complainant relies on affidavits attached to its Reply, as well as Respondents' written responses to EPA information requests, in asserting that the Pit water could not, in fact, have been reused as a constituent part in a commercial product. *Id.* at 14 (citing Second Decl. of Kenneth Cox ¶ 2) (reusing Pit water as rinsewater would actually make the drum or container dirtier; Pit water would contaminate the product if used as a substitute for fresh water). Complainant concedes that Pit water may have been used to make FreezeCon (a commercial product) but argues that the batch tickets produced by Respondents indicate "that Pit Water was used only on one relevant occasion: January 6, 2008." Reply at 15 (citing RX 3). Complainant concludes that the lack of documentation "is a form of proof that the claimed exemption is sham recycling." *Id.*

Complainant also targets the merits of the claimed exemption, arguing that no product was made, and no raw material was stored, in the Pit. *Id.* at 16. Moreover, Complainant continues, the Pit does not qualify for the MPU exemption because the alleged FreezeCon ingredient function and the rinsewater function are both "part time." *Id.*

With respect to Respondents' assertion that EPA's sampling methods and analysis were flawed, Complainant argues that the sampling methods Respondents describe (and assert should have been used during EPA's investigation of the Roanoke facility) do not apply to compliance inspections because they are used by the regulated community to demonstrate that a "regulatory threshold has not been exceeded" across the universe of potential waste.

[4/] Complainant notes that the burden to prove an affirmative defense lies with Respondents and argues that, in the briefings on this Motion, Respondents have not met their burden. Reply at 11.

By contrast, the sampling during compliance inspections need only demonstrate a single instance of a hazardous waste concentration above the regulatory levels, according to Complainant. Reply at 18-19. Regardless of which sampling method is correct, Complainant argues that the concentration of hazardous waste in the sample collected by EPA was "so large, representativeness is not at issue." *Id.* (citing Decl. of Joe Lowry ¶¶ 14-15).

II. Legal Standard

Section 22.20(a) of the Rules of Practice authorizes the Administrative Law Judge to:

> render an accelerated decision in favor of a party as to any or all parts of the proceeding, without further hearing or upon such limited additional evidence, such as affidavits, as he may require, if no genuine issue of material fact exists and a party is entitled to judgment as a matter of law.

40 C.F.R. § 22.20(a).

Motions for accelerated decision under 40 C.F.R. § 22.20(a) are akin to motions for summary judgment under Rule 56 of the Federal Rules of Civil Procedure ("FRCP"). *See, e.g., BWX Techs., Inc.*, 9 E.A.D. 61, 74-75 (EAB 2000); *Belmont Plating Works*, EPA Docket No. RCRA-5-2001-0013, 2002 EPA ALJ LEXIS 65, at *8 (ALJ, Sept. 11, 2002). Pursuant to Rule 56(a) of the FRCP, a tribunal "shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). Therefore, federal court rulings on motions for summary judgment provide guidance for adjudicating motions for accelerated decision. *See, e.g., Mayaguez Reg'l Sewage Treatment Plant*, 4 E.A.D. 772, 780-82 (EAB 1993), *aff'd sub nom., Puerto Rico Aqueduct & Sewer Auth. v. EPA*, 35 F.3d 600, 607 (1st Cir. 1994), *cert. denied*, 513 U.S. 1148 (1995).

The United States Supreme Court has held that the burden of showing that no genuine issue of material fact exists rests upon the party moving for summary judgment. *Adickes v. S. H. Kress & Co.*, 398 U.S. 144, 157 (1970). In considering such a motion, the tribunal must construe the evidentiary material and reasonable inferences drawn therefrom in the light most favorable to the non-moving party. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1985); *Adickes*, 398 U.S. at 158-59. Summary judgment on a matter is inappropriate when contradictory inferences may be drawn from the evidence. *Rogers Corp. v. Envtl. Prot. Agency*, 275 F.3d 1096, 1103 (D.C. Cir. 2002).

In support of or in opposition to a motion for summary judgment, a party must "cit[e] to particular parts of materials

in the record," such as documents, affidavits or declarations, and admissions, or "show[] that the materials cited do not establish the absence or presence of a genuine dispute." Fed. R. Civ. P. 56(c)(1). The Supreme Court has found that, once the party moving for summary judgment meets its burden of showing the absence of genuine issues of material fact, the non-moving party must present "affirmative evidence" and that it cannot defeat the motion without offering "any significant probative evidence tending to support" its pleadings. *Anderson*, 477 U.S. at 256 (quoting *First Nat'l Bank of Arizona v. Cities Service Co.*, 391 U.S. 253, 290 (1968)).

More specifically, the Supreme Court has ruled that the mere allegation of a factual dispute will not defeat a properly supported motion for summary judgment. *Celotex Corp. v. Catrett*, 477 U.S. 317 at 322 (1986); *Adickes*, 398 U.S. at 160. Similarly, a simple denial of liability is inadequate to demonstrate that an issue of fact indeed exists. *Strong Steel Products*, EPA Docket Nos. RCRA-05-2001-0016, CAA-05-2001-0020, and MM-05-2001-0006, 2002 EPA ALJ LEXIS 57, at *22 (ALJ, Sept. 9, 2002). Rather, a party opposing a motion for accelerated decision must produce some evidence that places the moving party's evidence in question and raises a question of fact for an adjudicatory hearing. *Id.* at *22-23; *see Bickford, Inc.*, EPA Docket No. TSCA-V-C-052-92, 1994 EPA ALJ LEXIS 16, at *8 (ALJ, Nov. 28, 1994).

Where the non-moving party has asserted an affirmative defense, the moving party must demonstrate that there is an absence of facts present in the record to support the defense in order to dispose of it. *Rogers Corp.*, 275 F.3d at 1103 (quoting *BWX Techs.*, 9 E.A.D. at 78). If the moving party properly shows an absence of facts supporting the defense, the non-moving party must identify "specific facts" from which a reasonable fact finder could find in its favor by a preponderance of the evidence in order to preserve the defense. *Id.*

Ultimately, "at the summary judgment stage[,] the judge's function is not himself to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." *Anderson*, 477 U.S. at 249. Even where summary judgment is technically appropriate based upon a review of the evidence in a case, sound judicial policy and the exercise of judicial discretion permit a denial of summary judgment to allow the case to be developed fully at trial. *See Roberts v. Browning*, 610 F.2d 528, 536 (8th Cir. 1979); *Anderson*, 477 U.S. at 255.

III. Discussion

The parties in this case have filed numerous proposed exhibits and made substantial arguments in support of their respective positions. The parties also engaged in the good

practice of including sworn affidavits or declarations along with their briefings for the instant Motion. However, I find that several genuine issues of material fact and several practical considerations remain, which makes an accelerated decision on Counts 3 - 7 inappropriate.

Initially, I note that in their Answer, Respondents have offered specific admissions or denials to each of the allegations in the Complaint and that both parties, in their briefing for this Motion, have demonstrated a good faith effort to agree on specific, undisputed facts. *See* Memo. at 4-7; Resp. at 3-10; Reply at 3-4. However, the parties have not yet submitted joint stipulations of fact and the universe of potential evidence may still be expanding. *See, e.g.*, Motion to Supplement Respondents' Prehearing Exchange, submitted Feb. 2, 2012. While Complainant diligently provides references to its various proposed exhibits, I find that it has not carried its burden of proving the absence of any genuine issue of material fact.

To take one example, Respondents assert, and provide some documentary evidence, that the liquid contents of the Pit/Rinsewater Storage Tank had multiple purposes, including reuse as rinsewater and, on certain occasions, as constituent ingredients in a commercial product. Answer ¶ 22; Resp. at 14 (citing RX 2, 30, and Aff. of Scott Perkins). Respondents' arguments are not simply conclusory statements and are relevant as to whether the contents of the Pit/Rinsewater Storage Tank were discarded as that term is defined under RCRA. This issue goes to Complainant's *prima facie* case for Counts 3 - 7 and is not limited to Respondents' assertion of the MPU exemption.[5/] As Complainant implicitly concedes, the conflicting affidavits and declarations offered by each party on the various issues, including the purpose of the Pit/Rinsewater Storage Tank, the characterization of its contents, the quantity of its contents, and the ultimate disposition of those contents, concern the credibility of multiple individuals (including expert witnesses). Such issues of credibility are best addressed in the context of an evidentiary hearing.

[5/] As to the issue of the affirmative defense, Complainant places too much reliance on case law putting on a respondent the burden of proving an affirmative defense *at trial*. In the context of a motion for accelerated decision, the burden is on Complainant to show that there is an absence of facts present in the record to support the defense in order to dispose of that defense. *See Rogers Corp.* at 1103. As Complainant has not done so here, it is prudent to wait for exploration of the evidence at an evidentiary hearing to determine whether Respondents may prove their affirmative defense by a preponderance of the evidence.

Furthermore, I find that granting the Motion will not eliminate the need for substantial testimony at the hearing. Noting that the Motion only addresses five of the seven counts, I also perceive there to be an overlap between at least some of the evidentiary materials Complainant would submit on liability and the evidentiary materials it would submit with respect to penalty. Moreover, as noted above, even if a judge believes that summary judgment is technically proper, sound judicial policy and the exercise of judicial discretion permit a denial of summary judgment to allow the case to be developed fully at trial. *See Roberts*, 610 F.2d at 536; *Anderson*, 477 U.S. at 255. For all of these reasons, I find that accelerated decision is an inappropriate remedy. Accordingly, the Motion is **DENIED**.

Barbara A. Gunning
Administrative Law Judge

Dated: February 7, 2012
Washington, DC

In the Matter of *Chemsolv, Inc., formerly trading as Chemicals and Solvents, Inc., and Austin Holdings-VA, LLC*, Respondents.
Docket No. RCRA-03-2011-0068

CERTIFICATE OF SERVICE

I hereby certify that a true copy of this **Order on Complainant's Motion for Partial Accelerated Decision as to Liaiblity**, issued by Barbara A. Gunning, Administrative Law Judge, dated February 7, 2012, in Docket No. RCRA-03-2011-0068, was sent to the following parties on this 7th day of February 2012, in the manner indicated:

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Dated: February 7, 2012
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