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May 24, 2012

**Via Federal Express Overnight Delivery**

Lydia Guy  
Regional Hearing Clerk (3RC00)  
U.S. EPA, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

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

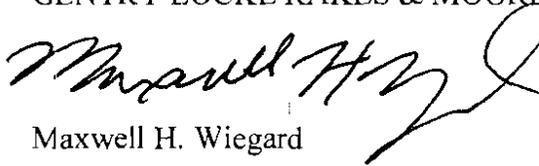
Dear Ms. Guy:

Enclosed for filing in the above-styled matter is an original and one copy of the Respondents' Motion to Conform Hearing Transcript.

Please let us know if you have any questions concerning the enclosed document. We appreciate your assistance in this matter.

Very truly yours,

GENTRY LOCKE RAKES & MOORE, LLP



Maxwell H. Wiegard

MHW:ccm  
Enclosures

cc: The Honorable Susan L. Biro (*via Fed Ex Overnight Delivery*)  
A.J. D'Angelo, Esq., Sr. Assistant Regional Counsel (*via Fed Ex Overnight Delivery*)  
Charles L. Williams, Esq. (*via e-mail*)  
Mr. Jamison G. Austin (*via e-mail*)

BEFORE THE UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION III

BEFORE THE ADMINISTRATOR

REGIONAL HEARING CLERK  
EPA REGION III, PHILA. PA

2012 MAY 25 PM 12: 16

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In the Matter of: )  
)  
CHEM-SOLV, INC., formerly trading as )  
Chemicals and Solvents, Inc. )  
)  
and )  
)  
AUSTIN HOLDINGS-VA, L.L.C. )  
)  
)  
)  
Respondents. )  
)  
Chem-Solv, Inc. )  
1111 Industry Avenue, S.E. )  
1140 Industry Avenue, S.E. )  
Roanoke, VA 24013, )  
)  
Facility. )

U.S. EPA Docket Number  
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)

**RESPONDENTS' MOTION TO CONFORM HEARING TRANSCRIPT**

COME NOW Respondents, Chem-Solv, Inc. ("Chem-Solv") and Austin Holdings-VA, LLC ("Austin Holdings") (collectively, the "Respondents"), by counsel, pursuant to 40 C.F.R. § 22.25, and the Post-Hearing Scheduling Order entered on May 10, 2012 by the Honorable Susan J. Biro, Chief Administrative Law Judge (the "Post-Hearing Scheduling Order"), and file this Motion to Conform Hearing Transcript in the above-referenced matter. In support thereof, the Respondents state as follows:

1. The Court held an administrative hearing (the "Administrative Hearing") in the above-referenced matter from March 20, 2012 through March 24, 2012 in Roanoke, Virginia.

2. On April 19, 2012, the Regional Hearing Clerk for EPA Region III (the "Regional Hearing Clerk") received a five volume transcript of the testimony given during the Administrative Hearing (the "Transcript").

3. On April 23, 2012, the Regional Hearing clerk forwarded a copies of the Transcript to the Court and the Complainant.

4. On May 10, 2012, the Court issued the Post-Hearing Scheduling Order, which provides that any party may file a motion seeking to conform the transcript to the actual testimony given during the Administrative Hearing on or before May 25, 2012.

5. On May 14, 2012, the Respondents received a copy of the Transcript from the court reporter.

6. 40 C.F.R. § 22.25 requires that a hearing conducted in the Consolidated Rules of Practice "shall be transcribed verbatim". 40 C.F.R. § 22.25 further provides that "any party may file a motion to conform the transcript to the actual testimony" given at an administrative hearing.

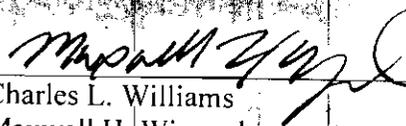
7. The Respondents have reviewed the Transcript and determined that it contains errors and, in its current form, it is not a verbatim transcript of the actual testimony given at the Administrative Hearing. Accordingly, it is necessary to conform the transcript to the actual testimony given during the Administrative Hearing by revising the Transcript in the manner set forth in Exhibit A attached hereto.

8. For the foregoing reasons, pursuant to 40 C.F.R. § 22.25 and the terms of the Post-Hearing Scheduling Order, the Respondents hereby seek to ensure that the record in this matter contains a "verbatim" transcript of the testimony given during the Administrative Hearing held in this matter, as required by 40 C.F.R. § 22.25.

WHEREFORE, the Respondents, Chem-Solv, Inc. and Austin Holdings-VA, LLC, hereby respectfully request that the Court enter an Order conforming the Transcript to the actual testimony

given during the Administrative Hearing held in this matter on March 20, 2012 through March 24, 2012 by revising the Transcript in the manner set forth in Exhibit A attached hereto.

Respectfully submitted,



Charles L. Williams  
Maxwell H. Wiegard  
J. Scott Sexton  
Gentry Locke Rakes & Moore, LLP  
10 Franklin Road, SE, Suite 800  
Roanoke, VA 24011

Date 5-24-12



## EXHIBIT A

**Transcript Date:** *March 20, 2012* (Day 1 of Administrative Hearing)

**Pursuant to 40 C.F.R. § 22.25, in order to conform the transcript of the testimony given on March 20, 2012 to the actual testimony given at the administrative hearing, the transcript for March 20, 2012 should be revised so that the lines of transcribed testimony set forth below read as follows:**

<b>Page</b>	<b>Line</b>	<b>Restated Transcript Line Conforming to Actual Hearing Testimony</b>
5	12	Mr. James, Jamison Austin, the company
5	25	be with us today. We expect he will be in tomorrow – Mr. Joe Lowry
32	1	marked Exhibit 43, and I believe it begins on page EPA 1543.
50	23-23	This is an email from Willie to our central office staff, Sanjay Thirunagari and to Daniel Gwinner
79	23-23	I call your attention to Complainant’s Exhibit 46, which I believe begins on page EPA 1580.
111	7	No, it – Cary did make the statement that
150	15-16	This is a letter from Jamie Austin to Dan Gwinner
155	11	resolution to them. They’re extant. They’re --
169	18	when analyzed, yielded one analytical result,
178	25	That’s subject of some debate.
189	15	are also stipulating to the admission of Complainant’s Exhibits 30 and
189	17	44 I think is already in the record
189	19	the parties are stipulating to the admission of Complainant’s
190	1	other than that, I don’t believe that the rest have been
190	5	Not at this time, Judge.
192	6	that are in front of you. There are 4 labeled binders,
193	13	A: Initially, I was employed as an ambient water
196	2	purposes for which hazardous waste sampling activities might be
197	7	accompany inspectors who were more senior than you on
197	24	you perform annually in the course as an EPA
199	12	perform RCRA sampling at the Chem-Solv and Austin Holdings
199	13	facility located at 1111 and 1140 Industry Avenue, Roanoke,
200	14	Cox who asked for my availability and we have a procedure for
201	24	Jose Reyna was the person selected to help during the
202	1	Q: If you know, how was Mr. Reyna selected?
204	25	top. The septa top is a lid that’s essentially a
206	11	Q: What was Mr. Reyna’s role during the
207	13	A: Mr. Reyna did make some entries.
208	6	log book entries, it’s EPA page 1210, and I’ll ask if
208	12	that you arrived at the VA DEQ offices in Roanoke on
209	5	Mr. Lester, Jamie Austin and Glenn Austin. Were either of

210	14	1215 in Complainant's Exhibit #29, which is your
210	24	corrosion and TCLP. Four drums of pit sludge were just
211	19	the totes or if Mr. Reyna took the photographs of the
211	22	and he was the one who wrote some information down in the
213	9	a pH of 10. My note, it was right on 10. And then using
215	9	called the drum destruct area we proceeded to.
215	25	Q: Did you do any other sampling in the container
216	1	destruct area of the facility?
216	23	Q: Did you or Mr. Reyna take any photographs at
217	9	Q: How did you begin to prepare your sampling at
217	20	bring to the pit area in order to begin your sampling?
221	11	over to the pit area. I and Mr. Reyna both dipped the
221	24	samples or did Mr. Reyna take the pit water samples?
223	16	with the D.I. water and air-dry it.
225	21	tags you prepared for the jars of sample material that you
226	12	you collected the pit water samples at the Chem-Solv
227	11	Exhibit # 65, then I believe that's comprised of pages
228	3	a very fair representation of the two handles we use to
228	16	sampler, of the manufacturer's label on there, and their
229	17	purified water to rinse that sampler again. A portion of
229	20	analyzed for. We do that to ensure that there's no
229	23	with you collected have a name or term of art?
232	21	Q: Mr. Reyna and myself both dipped samples.
233	4	the same area of the pit?
236	5	A: No chain of custody seals were placed on the
236	21	spilt for duplicate samples would be provided?
239	12	Q: Do you recall approximately what time of day
240	12	Q: Are you referring to the permanent sample tags?
240	20	Complainant's Exhibit-15, which I believe in binder number
241	10	identification numbers on each line that corresponds
241	17	custody form, are they the same laboratory I.D. numbers that
242	2	A: Volatile organic compound targets.
243	25	Q: What's identified or listed on the third row.
244	13	VOAs, and the TCLP extractables. Next to that I listed the
245	12	Q: Now where did you execute - sign your name
247	5	A: It was the same, TCLP volatiles and TCLP
247	10	from Ken Cox, the analysis that he wanted.
248	22	A: The final report was early October.
250	7	A: That is a listing of the analytes found, that
250	8	I observed in the analytical lab report. I did not list
250	10	the ones where they actually found that chemical.
250	23	in the Code of Regulations. In this particular table.
252	2	and 5 of your inspection report in Complainant's Exhibit-18, was that
252	23	18, I believe cover pages EPA 338 to pages EPA 362, and I
253	2	that myself or Mr. Reyna had taken during our sampling

253	13	Q: And who inserted the captions that are inserted
253	19	at the 1111 Industry Avenue of the Chem-Solv warehouse on
255	13	the pit. I understand subsequent to this observation it
257	1	A; Mr. Reyna took this.
257	8	the drums were managed. Apparently it collects water.
257	20	sampling activities that you and Mr. Reyna conducted at
257	22	located at 1111 and 1140 Industry Avenue in Roanoke.
258	17	Mr. Wiegard: No objections to those
260	11	By Mr. Wiegard:
260	24	dirt off the exterior of containers on the acid pad? Is
262	4	sampling of the settled solids and the rinse water in,
262	13	Q: But you and not Mr. Reyna were the person who
263	6	any rinse water samples from rinse water tank #1?
263	23	A: The sludge layer was determined when we
264	1	tape measure or a probe-line or a sludge judge to test
264	9	collected the rinse water samples, you and Mr. Reyna
266	10	Q: Did you collect any settled solids
267	11	mL bottles.
267	12	Q: The 40 mL bottles of the rinse water
267	14	A: Of all the samples. The 40 mL bottles were
268	23	you have "EB equals" and then you have "6 VOA." You
271	4	Q: You affixed them before you actually
273	12	Q: Alright. Mr. Houghton, do you know if the TCLP
275	16	CONTINUED CROSS
275	17	BY MR. WIEGARD:

**Transcript Date:** *March 21, 2012* (Day 2 of the Administrative Hearing)

Pursuant to 40 C.F.R. § 22.25, in order to conform the transcript of the testimony given on March 21, 2012 to the actual testimony given at the administrative hearing, the transcript for March 21, 2012 should be revised so that the lines of transcribed testimony set forth below read as follows:

Page	Line	Restated Transcript Line Conforming to Actual Hearing Testimony
6	7	of the equipment that I'm using now was a 1 week course.
7	23	Q. Okay. Now I'm – I'm – I'm going to have you
9	22	our case file that is put together for a set of analyses
12	19	are – our sample tag numbers which are attached to
16	9	what's in the sample that could possibly exceed regular
18	15	billon; so if you considered it in parts per million
19	3	A. – which was tetrachloroethene on page
20	2	A. Well trichloroethene was also present
20	8	decision -- pick individual substances to analyze for or
20	13	Ahead with a TCLP test say for tetrachloroethene, do
20	14	you just run it for tetrachloroethene; or is there --
20	17	Tetrachloroethene would – would also include all the
20	22	Q. Okay. Now back up a little bit, what -- what
21	2	is – has an inert gas that bubbles through it – that drives the bubbles out
		of
21	14	as tetrachloroethene.
22	6	A. When the analysis is completed it would be my
24	14	Q. Now, to the extent that being outside of the
24	18	A. Likely to be biased low -- that the true value
25	23	tetrachloroethene --
25	24	A. I am referring to the tetrachloroethene,
26	1	Q. And as I understand, tetrachloroethene
26	24	Consider the tetrachloroethene to simply be present
27	6	-- for tetrachloroethene, it has a qualifier of L.
27	8	A. Sure. The qualifier L. that would be – and all
27	18	Tetrachloroethene. So it's biased low because there
27	21	Q. Okay. Now for trichloroethene, it has a
28	13	for tetrachloroethene is – comes out at 37,000
28	23	trichloroethene?
29	23	Initiate – it would initiate us starting what we would
30	24	MR. WIEGARD: No objection, Judge.
32	5	into a cylinder which is gas tight because we retain
32	12	Q. Okay. So the TCLP process itself is not an
33	7	tetrachloroethene was present at 457 milligrams per
33	9	trichloroethene also exceeded its limit.
36	11	analytical report that is Complainant's Exhibit 15 is not an
36	16	testified earlier that the report narrative on EPA 242

37	9	Q. And which – there's a -- looking with me
38	6	Q. And this report -- as compared to Complainant's
39	1	analysis for the TCLP extracted VOCs for the – the
39	17	the TCLP extracted VOCs – excuse me, let's step back.
40	4	Chem-Solv pit water samples from the data
40	17	I believe you just testified that the – the date listed in the
41	23	page EPA 288 and page 289, the second column from the
42	22	The laboratory ID number assigned to – that sample
43	11	here where the laboratory – entered laboratory ID
43	20	Q. And then the laboratory ID number assigned
43	21	to the Chem-Solv pit sludge sample appears to be 0705030
45	9	the site's name is Chem-Solv; is that correct?
45	13	sample, that is the water sample, did you analyze in
46	2	VOA containers of that sample did you analyze in your
46	3	TCLP analysis?
49	17	leach, is that correct?
50	16	Q. All right, a few questions on redirect.
54	20	MR. WIEGARD: No more questions, Judge.
55	11	properly. So if we put 20 parts per billion in, we
55	12	expect to see 20 parts per billion on the machine.
56	14	in the report as a matrix spike.
56	18	would – my eye happened to fall on the chloroform result.
57	7	built in variation. So what it is a measure of that
58	23	semi-volatile compounds.
59	12	dilution to bring it into the range of the
59	19	tetrachloroethene. I did. And I had already diluted
60	13	about the results for only a particular sample shown
61	8	Q. All right. So for the semi-volatiles
62	3	the last sample would have been for the three tests, the
69	2	provided it in agency guidances.
72	23	which is in the EPA's methods manual called SW 846.
74	12	A. Yes. In the regulations as appendix 1 to
74	16	that if you follow this method we give you safe
75	6	make sense for the standards to be exclusive or not
77	24	any reason why it – it would be perhaps a less
78	13	way over the limit, then you know that the whole
78	14	waste has to be over the limit. So you don't need as
78	16	objective. For the does not, if you want to do your does
78	23	pit, if -- if he came out with a number that was near
79	9	everything. But for the objective, since he hit 3.7
79	17	in a waste – if you're going to do a waste analysis plan at a
80	20	and mostly in solids. You might see – if a tank is
81	10	the physical material is hazardous, then it is.
82	3	to the idea of sample doesn't make a lot of sense in that
83	23-24	at Complainant's Exhibit 16, it's in the same volume, that begins on

		page EPA 284
85	22	you specifically to comment on the sampling of a below
86	8	called a coliwasa, and for a cylindrical container,
86	11	sample. And so a coliwasa is a common tool to – to
86	13	with depth. The problem with a coliwasa is if you hit
86	22	sample with to get down low. And a coliwasa wouldn't
88	14	you don't want to break the tank open and let it leak out.
89	25	Q. Now would the procedures perhaps be different
90	22	the sludge. He sampled the upper layer, the one foot
91	7	Q. Can you explain why?
91	13	Fit in the 1-foot layer, the bottom of the sampling
92	8	coliwases and the sludge judge are plastic, they're not
95	25	droplets; it's – it's well past its solubility in
96	7	work their way down to the bottom of the tank. You
98	5	various levels in
98	6	the – pit sludge?
102	18	Q. So in other words if it's an active tank
102	19	and it's being – and that liquid is being
103	3	high as your level of confidence in the – in the 486
104	24	page 1799 it says January 28, 2008.
107	22	Q. Now for purposes of – subpart CC of
109	15	9 guidance in SW 846. This was intended to replace
112	5	Q. Okay. And so it's – it's not yet been
112	8	you believe varies substantially from what you said
114	19	then fill up four, five, six, seven VOA bottles which
115	6	the – to make the sample, all four of those could have, as
119	18	And I'll ask you two questions. Do you understand that
125	17	Q. – work? All right. Have you seen any
125	22	data quality objectives?
141	6	called it yesterday, it's a Jersey pipe or something
145	15	Houghton is wrong and there was 3 or 4 feet of aqueous
145	17	Critical to use one of these measuring techniques that actually
146	3	A. And those are all segmented?
146	6	mentioned in your testimony, like the coliwasa, which
146	23	Now in that instance, a coliwasa would have
146	25	extending the coliwasa down in there and obtaining a
150	4	had coliwases that day in his possession?
150	9	coliwasa.
151	11	of settleable solids at the top of the consolidated solids.
155	13	coliwasa being pulled out so that you could look at the
155	20	had a coliwasa to – available to him that day.

161	17	precision as to a high level of precision. Do you
161	22	upper confidence interval of the mean, you need the
162	12	apparently written down the wrong page. So I'm just going
164	13	precision, bias, representativeness, comparability,
165	10	seems like – would I be comforted that they did this,
167	8	looking at these notes that you have before you in
169	19	Each event are not present for the sample and therefore,
172	14	you raise it. That's in Exhibit 15.
172	20	any way involved as a sampler in this case?
175	16	one VOA for that?
177	2	Q. And you realize that there was a second
182	22	was that Ms. Zawodny said today was just automatically
185	19	drawing incorrect inferences by obtaining samples that are
185	23	and chemical composition of the population from which it was collected and
186	4	SW 846?
186	17	to representative samples as given by the EPA in SW
186	18	846, Chapter 9?
186	20	Q. Okay. And then following on, a
187	16	can calculate a standard deviation and calculate an
188	20	Q. Okay. And have you assumed that to use your
189	12	A. Yes. A settleable solid means it's pretty
194	25	it would be the same or higher than those four feet that
199	25	Rocky Mountain snow down here and it
202	10	would be a U210 listed wasted everything by a mixture
206	6	called RCRA Wasted Sampling Draft Technical Guidance?
206	20	accepted, Chapter 9 of SW 846 is the applicable
207	13	Q. Is it sometimes called prove the positive?
207	15	Q. What's the slang for it? Is it prove the
211	14	at a log normal distribution as opposed to the
218	25	where, if the regulated community uses that, we will not
219	2	A. They're not in SW 846. They're in Appendix
223	21	assumption – based on the assumption about the homogeneity of

**Transcript Date:** *March 22, 2012* (Day 3 of Administrative Hearing)

**Pursuant to 40 C.F.R. § 22.25, in order to conform the transcript of the testimony given on March 22, 2012 to the actual testimony given at the administrative hearing, the transcript for March 22, 2012 should be revised so that the lines of transcribed testimony set forth below read as follows:**

<b>Page</b>	<b>Line</b>	<b>Restated Transcript Line Conforming to Actual Hearing Testimony</b>
9	9	identified as Jimconate, a surfactant. I looked at
63	19	used the work swale. Did you use the word swale
67	7	Did you hear Ms. Lohman testify?
67	14	Then what do you base your conclusion for
71	13	say that except for the handwriting – and I don't
87	10	By the Agency, and we know at least there
88	15	that rinse area and the tank other than on that one day?
90	10	there in this case with respect to air emissions?
90	12	emissions of these kinds of tests, I just enforce the
127	7	Q. Do you have familiarity with the acid pad
127	11	was once referred to by certain people at Chem-Solv as the pit, it's
128	3	A. We had a hose hooked up out there that we hooked
128	21	Q. At the top? At the bottom?
129	9	A. About 7 and a half feet.
130	20	A. Beside of it, about 5 foot.
131	9	can, but it's hard for us, so you will have to bear with me.
131	20	A. Because I've been around it and I've seen it.
132	22	MR. D'ANGELO: No objection. (Inaudible)
133	11	Q. Are the hoses hanging over it?
133	20	drums, on the acid pad?
133	22	Q. Where would the rinse water that was used to
134	16	A. The coal.
134	17	Q. Coal?
135	25	from the dike walls into our tankers.
137	18	Let's look -- look with me, if you would, just
137	25	A. That's another batch ticket.
138	10	read, pit totes said and then in parentheses, "See Don."
138	14	writing on this batch ticket.
138	16	Q. Where would that water have been saved up?
139	8	Q. There's been some testimony in this case about
139	9	neutralization. Do you know what that word means?
139	19	A. Check the pH level and adjust up or down
139	22	the pH up, if it was too low?
140	1	Q. So, if you wanted the pH to go up, you put in
140	4	Q. If you wanted the pH to go down, you would

140	23	A. It was sand.
141	7	and EPA 1164. Let me know when you have found those.
141	9	1163 and 1164. I know it's a lot of pages to flip through. Can you look
141	20	and accurate representation of the what the inside of the tank
142	4	Q. What is that a photograph of?
142	11	Q. Turning over one page forward to EPA 1163.
142	18	Q. Is that photo #1 at the top of page EPA 1163.
144	1	Q. Are you referring to that wall that you described earlier?
144	22	that you would know it was about 2 feet deep.
145	8	removed from the ground?
145	23	Q. You testified earlier that you started working
145	24	at Chem-Solv in 2004.
146	16	drain into the pit?
146	24	Q. Okay. Do you have any knowledge as to whether that
147	24	Q. Were those workers who were working on the
147	25	acid pad in 2007, are they still
148	7	Q. And that those totes ultimately were used – some of the
148	21	one moment?
149	3	that lead from the trench drains into the pit was still in
149	4	place, in 2008 when the trench drain was filled with
149	10	for the Complainant is going to ask you some questions.
150	8	A. We had a hopper brought to Chem-Solv to put the sand
151	23	make a blend in a tank.
153	18	A. You would have glycols and water and some --
154	10	a trashcan – a big trash hopper. Like you see at a business.
155	14	A. The sides actually on the outsides that you can see the concrete --
156	20	THE COURT: Did it have an odor? (Insert paragraph.)
156	21	A. You would have somewhat of a – water as it sits, always has
157	18	A. I worked in a foundry once and that's what we
157	20	them to hold them down, while the product was in it - until
157	21	it dried.
158	3	to make sure it stayed, you had a 6200 gallon tank
158	4	beside of it.
158	23	Q. You did say the pH of the water in the pit,
158	24	would be adjusted, is that correct?
159	10	some of the stuff on the pad, why they were using it,
161	10	TSCA
161	12	CERCLA
163	14	Superfund sites in the country. I worked with top
163	15	Management there, overseeing action under CERCLA
163	19-21	Them for less than 3 years, I continued on with Foster Wheeler Environmental Corporation which was the Program Management Contractor out there. I was tasked at
164	10	We visit industrial facilities; we have a lot
164	17-18	Can spell them out if I need to. RCRA, CERCLA, FIFRA, TSCA,

		Clean Water Act, Clean Air Act. All of the
167	7	perspectives. Human health and the environment is a big part
168	7	Fate and Transport is the evaluation of what
168	25	traits will dictate to a large degree, how that
169	8	provide to your client? A. We provide – it ranges based on
174	22	clean air act, and EPCRA. We worked with them, as well
177	21	waste laws regarding at least a drum of sodium hydro
179	24	military munition, it has it's own place in the
180	2	first barrier, first definition
180	17	whether it's toxic, whether it passes or fails the
181	6	product it was a sellable produce, we saw the bill of sale
183	4	similar it is not dissimilar with a leaking
185	11-12	Faxbacks and other documentation that clearly states it's up to the
		generator to make decision as to
185	14	characteristics. Typically either Ignitability and/or reactivity.
185	17	Generator knowledge?
185	22	variety of different sources of information, be it material safety
185	24-25	you know what it is – it could be quantitative information from the
		laboratory, semi quantitative
186	3	what you view as sufficient generator knowledge to
186	7	dealing with that facility.
186	23	physically what the tank was, operationally how it
187	5	First we divided it up into two different
187	7	question was the settled solids and when we looked at
187	18-19	was really two fold. Primarily, it was to clean the outside of the drums.
		As drums are stored outside, they tend
188	2	The secondary purpose was in the process of filling
188	4	there is some residual, maybe there's some glycol on the top around the
188	8-9	water that was thus generated, would flow into the sub grade tank, once
		that tank was full, it was pumped into
189	15	generally the grade, the flow, if rain were to fall for
189	25	No, no. If you look up top, you'll see a roof. over the words "drum
		rinsing area."
190	1	That roof is there today, that roof
190	5	entirety of the area that you see is kind of dark and shaded, that entire
190	9	It is physically impossible for rainwater to
191	4	Yes, from regulatory compliance stand point.
191	9-10	Rinse water – it's really easy when you are talking about it as it is
		entering the tank. It's the liquid
191	17	top, dirt on the bottom, it's, there's a continuum
192	3	your in an aquarium. You would see very clearly a gradient.
192	5	solids, more solids, till you get towards the bottom where
192	9	continuum, so when you ask what's the rinse water in
192	19-22	called the Continued Use concept, it's referred to sometimes as EPA's
		Continued Use policy. And that was first introduced in a 1985 federal

		register. It has since been expanded on, in a variety of different ways.
192	25	that doesn't mean it's necessarily a waste. So if
193	2-5	use it a second time, you can do that without worrying about being a waste, if it meets certain criteria. It's referred to as a two part test and the first part is the use. second time you use it, is it
193	9	yes, it's an identical use. So you pass the first test.
193	12-13	pieces, but it's a legitimacy test. Is it a legitimate second use and that legitimacy test is made up with three
193	15	not to excess? So first one, is it necessary? Is it
193	19	drums being effectively cleaned? Yes they are. If they
193	22	residue on them from filling operations. Certainly
193	23	CHEM-SOLV would get a lot of complaints from their
194	3	expect a clean item, their bringing it often times into
194	7	not to excess, is the third question. And it would be
194	10	would be to excess – it would fail the test.
194	12	for inordinate amounts of time, washing these
194	19	part test, it satisfies this Continued use.
195	9-10	parts washer is a drum of solvent with a pan over the top of it and almost like a tub, and say you have greasy parts, say you
195	15	down into the drum, you use it again a second time,
195	20	There's a lot of examples in industry of
196	4	have a perfectly efficient system and you turned on
196	9-10	You have one individual doing the operation. You've got pumps that are very complex for them to operate. Got a lot of
196	12	concern. So from a logistical kind of practical standpoint,
196	13	they do need to periodically drain the 6000 gallon aboveground tank
196	22	As far as whether it would be a hazardous waste?
196	24-25	No. It can't get to that center hazardous waste circle because it doesn't penetrate the outer rings on
197	5	chloroform in the environment or in water form?
197	9	Back in the 1990's, I did a lot of work
197	12	But that was when it was first beginning to be
197	14-15	something called the Total Trihalomethanes Rule. Chloroform is one of a number of different trihalomethanes. Just a category of
197	17	it's used in industry for a bunch of different
197	21-23	Chloroform, the reason they had the Total Trihalomethane Rule, was because they discovered that elevated levels of chloroform were in drinking
198	1	water was reacting with what are called organic
198	2-3	precursors. Things that are.. and there is a variety of them, fulvic acids, humic acids, these overall things are
198	5	organic matter degrades if it's put into the presence
198	9-11	in the water and they react with chlorine and create chloroform. That's why they passed the Total Trihalomethane Rule.
198	13-14	challenge with waste water plant discharges. Waste water plants

		discharges have organic precursors in them.
198	16-18	the stream. They create these trihalomethanes and now they have chloroform, bromoform and other things in the stream.
199	3	introduced into this pit? I think you answered this
199	5-6	Yes, that's the feedstock so to speak, the source of the original water that goes in there. Sure.
199	11	matter in the form of a certain percentage of the settled solids has
199	12-13	original content, an organic component to it. Mr. Sexton's pollen floating on the top, leaves that get blown
199	22	that chloroform was created through the reaction of chlorine
200	9	Ergo, it would be a solid waste, then the
200	10	question becomes, does it meet one of the hazardous waste
200	12-13	potential types of hazardous waste, it could in theory be, there's all sorts of different U codes, and F codes and all
200	21	regulations because, as I mentioned earlier, a
201	6	toxicity threshold. Stopping at the fact that it's a
201	12-15	The 261.4c exemption, which most people list as the MPU exemption, it's a bit of a misnomer, but people typically call it the MPU exemption.
201	17	I often times call it the MPU exemption as
202	1	Back in, can I tell you where it came from? It might help you understand.
202	5-6	Exactly. Back in 1980, when RCRA was brand new, the EPA received a lot of input from the regulated
202	8	the rules, would result in a remarkably large number of
202	12	reading of the regulations would lead you to conclude that, anytime
202	14-15	those solids would have to be evaluated for, it would have to be characterized as to whether or not, it was
202	21	as gas is, things settled out of it. Solids settle out of
202	23	the tanker truck. Those settled solids, typically are going to be
202	25	literal interpretation of RCRA back in 1980, would
203	7-8	precipitates, solids that fall out of solution and would need to in theory characterized as soon as the particle
203	13	preamble to the regulation said that the stated intent
203	16	products. All of these things are going to be exempted from
203	20	this by saying, the container they are in are intended
203	25	container of solvent in an industrial
204	4-5	different liquids, including water. Typically you have settled solids that fall out, you don't have to
204	14-15	theory's by looking at other examples? We call it precedent, but do you look at other and try to find
204	18	My opinion is based on a couple of different
204	21	language in the preamble, when the rules was published in
204	23	any direct interaction I've had with regulators on the
204	24	subject. Any information I have received from training
205	5	I think we got into this, because you said you

205	11	old cooling tower at the airport here. That I had an
205	17-18	five examples in the preamble. But I wanted to go and understand more about how this think had been applied in
205	23-24	been referenced as meeting this 261.4c exemption. I mentioned parts washer earlier, parts washers is a good example.
206	4-5	good example. One that I thought was pretty interesting is an absorption refrigerator.
206	8	and the reason I know this, is we have a client at a
206	12	either lithium, bromide salt and water based, or maybe ammonia based. It's a liquid and that liquid is
206	16	Typically during the condensation step. There is an
206	21	can create a solid, a settled solid that is hazardous for
206	24	systems in America, if they were all considered hazardous
207	20	recirculating systems, zero discharge, not connected to
207	11	the sewer at all. And the accumulated solids in the tank,
207	14	Those settled solids periodically get characterized and
207	17	heavy metals content of different types, under the
207	21	the allegations of violations regarding the tank are any
208	2-3	resource conservation and recovery act. And based on your conclusion, are the activities which Chem-Solv allegedly
208	8	requiring a PE Certification. Not requiring closure.
208	11	leaving unit, then become subject. They lose their
208	15-17	hazardous, and if they are not, there's the sodium hydrosulfide and aerosol can question but, those two things are tied to each one of the counts.
209	1	water from secondary containment, bermed areas, if it
209	8	freezing point as required by the customer and
209	23	in the years, the two years leading up to the EPA's visit,
210	4	what I understand there is no "repackaging" of those
210	8	falls into the generator knowledge for purposes of
210	13	generator knowledge, first thing you do is think
210	15-16	realistically get in there, based upon the process. A good example is pesticides. The TCLP, the toxicity
210	20	chloroform, and then pesticides and herbicides. And
210	23	for, based on generator knowledge. So if they never
211	8	Okay, the idea of a combination of generator
211	11	that, with respect to the contents of this tank, there
211	17	that sample was analyzed for, among other things, TCLP, Volatile
212	3	what that other source was. The indication that I've gotten
212	7	there is a question as to exactly when the sample was
212	10	honestly I can't tell you if that stuff was added
212	25	gave an indication as to the source of the material,
213	4-6	of chloroform. There's been testimony that allude to the fact that these solids may have come exclusively or primarily from the so-called swale.
213	8	chlorinated water not having gotten into that swale.

213	22	It has a reporting limit of .02.
214	7	Same thing? So, again based on, from your
214	9-11	small amount of this material were from the tank, does that tell you something? Do these results tell you anything?
214	19	something that was routinely in this waste stream.
214	21	routine, ongoing discharge of chlorinated solvents,
215	10	by the Virginia DEQ and U.S. EPA, in Complainants'
216	1	done, have I supervised, seen and been familiar sampling of tanks
216	24	Yes, I have looked at the entire train
217	1	process, through the sampling management and then
217	3-4	the regulatory requirements, guidance, and standard industry practice
218	2-3	required and why it was not performed, how it was not performed?
218	5	under the resource conservation and recovery act. We heard
218	9-12	and some are not required by RCRA. Method 1311 which is the first step in the TCLP process, is a required method. You have to use method 1311 from SW 846, and it says so in 40 CFR 261.24. Which is where they talk
218	24-25	definition and an understanding of what representative is., and we've heard a lot about guidance and
219	1	guidance Vs. requirements and how there is SW 846 and there's
219	5	Technical Guidance, the RCRA waste sampling draft
219	14	to collect a representative sample, and there is quotes
219	21	And in no way was their sample representative of the
220	4	of sampling equipment. And we've heard a lot about this
220	9	Universally it's referenced as a tool that you use for
220	12	according to Mr. Reyna's Deposition, and according
220	20	There are, Mr. Lowry talked about the Coliwasa,
220	25	column is less than the length of the Coliwasa
221	1	tube, it allows you to determine the depth of the
221	6	since you have it here, you may use that to explain..
221	20	approximately 3/4 of an inch in diameter. It's got a
222	7	that you want to collect the sample in, you release the
222	10	gradation in its solids content. If you happened to
223	2	The scraper got two to three feet below the surface of the
223	6-7	point, it could down that deep. I suspect based on the testimony of Mr. Houghton, that this would not get down
223	9	this is intended for water, not solids
223	14-15	Coliwasa tube in this instance, is predicated on, it's simple and with the gate that was surrounding a concrete wall,
223	19	gate. In the concrete wall at Chem-Solv. It's
223	25	come up to, right above my stomach, below my chest. I
224	7	preferred method of taking a water sample?
224	13	to that like a drum thief. There is one of our exhibits, has a long list
224	18	Exhibit-27 is the RCRA Waste Sampling draft
225	9	was one of the reasons that the sampling that actually took

225	22	behave differently. Some have a tendency to adsorb
226	1	example that was given, although that's aided with chemical
226	10	created, from the reaction between chlorine and Organic
226	12-13	just because you collect a sample from one location, does not by any stretch of the imagination, mean you understand
226	15	The only exception to that.. is if you take that medium and
226	16-17	you perfectly homogenize it, by stirring it, shaking it, blending it. Which you are not going to do, in case of the
226	21	If you used a Coliwasa and took several
226	22	samples, in different locations horizontally, in
227	2	the top of my head because I would have to think through,
227	3	the degree to which I wanted to have the degree to
227	5	would depend on data quality objectives, data quality
227	14-15	With the Coliwasa tube, if extended through the water column to the bottom of the water column. And if
228	4-5	filling up a 40 ounce, or a couple of 40 ounce VOA vials, presumably you would take that Coliwasa tube,
228	6-7	you would gently release the contents to minimize agitation, into a larger laboratory pre cleaned
228	9	your VOA vials. Otherwise, all you're going to do, is take
228	11-12	put it into VOA vial one and take the next couple of inches into VOA vial two, and now you're talking about mobile
228	15-16	Now in the event that you pull out your Coliwasa tube and you see some sort of layer on the top that is very
229	1	of understanding how deep it goes. the water goes
229	5	about how the equipment, water sampling equipment was
229	10	deficiencies, with respect to how the water sampling
229	13-14	I'm talking about relating to the rinse tank.
229	18	the scrape. I heard that he pre-cleaned that at the
229	20	with lab grade water and the appropriate, presumably
229	22	it in aluminum foil, then he transported it from the
230	20-21	any regulatory requirements regarding field notes in your view?
230	25	mentioned, in 40 CFR 261.20, as I recall, the toxicity
231	4-5	The quality control section of method 1311 in SW 46, which you are legally required to follow, references the subsequent
231	8	method 1311, which is the preparation step that I think
231	10-11	from volatiles and semi-volatiles and you use a different method for that SW-846, 8260, or 8270. So this method for the
231	13	follow method 8260's quality control requirements. You
231	15-18	quality control, it says see chapter 1 of SW-846. Chapter 1 of SW-846, as Mr. Sexton went over exhaustingly yesterday, has a whole array of requirements that weren't followed.
231	24	point. In my mind, the legal requirement to use TCLP, use that method and that method's reference to the
232	1	quality control steps in the subsequent method. And that

232	7	to Chapter 1. Chapter 1 has to be looked at very
232	10	Chapter 1 has references to sampling protocols and it
232	14	And all these different guidance documents say roughly the same
232	18	there, what your data quality objectives are, what your data
233	1	applicable standards with respect to rinse water, have
233	11	I've drawn a lot of the same conclusions, as it
233	13-14	equipment, all of this being not up to par is kind of a casual way of
		describing it. I've been doing sampling
234	4	sample collection itself. The first thing you
234	9	dropped a line into it to see where the solids
234	12	They dropped their scrape into it to see what they got.
234	15	what you are getting yourself into. Let's look at the
234	21	length to the folks that are aware of the physical
234	22	nature of the challenge, so to speak. Then you make a
234	24	where there is a lot of potential variability, and maybe a
235	3-4	Knowing that, who knows.. when you get there, maybe it's less
		accessible than you think, maybe it's deeper than you
235	8	And in the case of these solids, a
235	13	tall, that's about say, I would choose a relatively narrow
235	24	easily lean over a 4 foot wall, or 3 foot wall or
236	2	understanding of exactly how tight formation it is, how
236	8	this situation, that's the one that jumped out to me initially.
236	11	concern. Speaking with the workers that are there and communicating
236	15	whether it's conical at the bottom. Whether is convex

**Transcript Date:** *March 23, 2012* (Day 4 of Administrative Hearing)

**Pursuant to 40 C.F.R. § 22.25, in order to conform the transcript of the testimony given on March 23, 2012 to the actual testimony given at the administrative hearing, the transcript for March 23, 2012 should be revised so that the lines of transcribed testimony set forth below read as follows:**

Page	Line	Restated Transcript Line Conforming to Actual Hearing Testimony
4	4	To the rinse water, or to the solids?
4	10	Primarily to remove any residual dust, dirt et cetera. There
4	21	RCRA regulations in terms of doing an analysis of
5	4	You did what backwards?
6	15	abandoned, recycled, is inherently waste-like, or is a
7	3-4	criteria, one of the characteristics of listed waste descriptions, then it is a hazardous waste in the center of the bulls eye. So
7	19-20	Okay, let's do the same with respect to the solids?
7	21	So the settled solids are different because
7	23	them. Everyone knows that eventually as this stuff
9	12	regulation. One is if you remove it from the unit. Once
10	14	filled up 32 drums, is my understanding – 32 steel drums
10	18	And then they were shipped off site on February
11	4	back to the sampling. You spent a fair amount of
11	9	contents of this container. We don't want to go through that again.
11	16	And did you hear Mr. Reyna testify in his deposition?
11	21-22	contained for transportation and ultimately analysis?
12	7-8	laboratory. They had a number of 10, 40 ml VOA vials, and I believe it was seven, one-litre ambers. And,
12	10	filled as many of the VOA vials as they could, and I'm
12	15	up a number of additional VOA vials, and they passed
12	18	few VOA vials to give to Mr. Reyna to pick up a scoop,
12	21	they follow that process filling up all of the
13	7-9	schools of thought on that. Some say that if you're sampling for volatile organics, homogenize. Some say don't because you're going to lose volatiles to volatilization. In the
13	12	of those discreet grab samples individually, and then you can do a
13	17	not just one of those VOA vials, but a larger amount.
13	22-23	is that she chose one VOA vial and pulled her aliquot, her portion for analysis from that
13	25	some from some of the other VOA vials, to do a variety
14	14	the volatile organic result with chloroform that
14	17	Now let's go to the sampling of the solids.
14	18	You demonstrated or you showed us a Coliwasa tube and
14	20	how the results of the sampling from Coliwasa
14	22	the solids. The Coliwasa was not a device typically used to sample

		solids.
15	6-7	until they were placed in a container for transportation and ultimate analysis.
15	11-12	sampler that we have all seen pictures of. They reached down – they reached down into the sub-grade tank,
15	15	notes don't indicate at what stage they did that.
15	23	inches, 24 inches – however much water was there. Again, we don't know that either.
15	25	yesterday, there is going to be a gradation – a
16	3	Is this your pond example?
16	4	This is my pond example.
16	8-9	where you can actually sense it physically as you're bringing the scrape down with your hands. And then based on
16	16	notes, typically you do a diagram in the field notes
16	18-19	is our tank, it might show where they pulled it from, did they do the entire width of the tank, did
16	22-23	it. We are not sure. So they filled to a degree, their scrape, they brought it up through the water
17	15	That are beneath water is insulating the samples that are
17	22-25	the solids that you collect from the overlying liquids. Nevertheless, they brought it up through the liquids mixing the overlying water with the sediment that they have collected. Then they decant it and it is not
18	1	clear to what degree they decanted and there is no
18	5	Well it happens if you decant one from the
18	11	SOP. So, presumably – and we don't have their SOP, so we
18	13	not in their SOP and consequently, should document.
18	21	what it was and more importantly, how many pulls
18	23	did reportedly attempt to homogenize to a degree
19	4	but generally, they pulled a number of these pulls from
19	6	measured, it was estimated – as a couple of feet, we've heard a variety of different numbers, but they
19	11	either, whether that was a lab-pre-cleaned device – whether it was decon'd
19	14	transferred the solids into these bottles, and
19	20	more reliable sampling methodologies?
19	25	coring device. A manual coring device, which I
20	5	hollow cylinder made of metal with – there is a
20	19	only kind of soil-like material or solid – settled
21	6	is a ponar dredge, a bigger device. It might be a
21	14-16	were calling the solids, and allow their removal – without further interference with the water column?
21	20	coring, there was a concern that you might drill a
22	3	on site, talking to representatives from the facility,
22	9	Ceramic and steel, yes. And, I agree, you

22	17	and still have easy access to it either over the gate
22	25	understanding of where ultimate resistance is, i.e.,
23	1	where the bottom of the tank is, and you
23	5	progressively going deeper. It would work quite well.
23	8	of how the solid material was decanted and placed in
23	11	And I think you mentioned there was – I
23	13	some effort to combine the materials
23	19	used. The impression I got is that they slightly
23	22-24	when you are concerned about volatile organics, which they were in this case because it is one of the two analyses that they were sending it for is losing
24	15	phase essentially from liquid to gas.
25	17	approach to helping ensure the legal defensibility
25	19	was not designated in his field notes. So, I am not sure.
26	7-10	on the cooler itself. Typically, the practice is to put chain of custody inside the cooler. If you're hand delivering it to the laboratory, and place the custody seal over the cooler itself, signed and again to ensure tampering.
26	17-18	samples hadn't been tampered with. Not that anyone is alleging they were tampered with, but it is just a
27	2	question did reach Ft. Meade, Maryland
27	13	handled the solid samples?
27	18	was not the recipient of the samples. There is a sample
27	25	unusual. Typically, they're dated and timed – there is
28	4	and date it, and those would be the same and that would
28	25	number of data quality indicators that you would identify
29	2	here. You identify things like precision, accuracy.
29	4-7	typically try to assign to the degree you can, quantitative values with those data quality indicators. And so when we're talking about completeness you may say before you sample – OK, I'm going to sample this tank. I need five
29	12	my completeness criteria, and then I need to address
29	16	results.” So it is important to understand what breakage
29	20	then is typically conveyed back to the sampler. The samples
30	7-9	It is my understanding that, and again I don't remember the exact number of jars – let's talk about volatile organics. I forget how many jars – I don't
30	12	Right, jars that had the solids for volatile
30	16	is going to pull an aliquot from one of those
30	20	analyzed by the VOC method, and that then gives you the
31	8	custody, which is in essence, the directive.
31	11	Chain of Custody is in Exhibit-15, EPA 244,
31	17	Okay. And is the document itself formatted
32	4	“VOA, TCLP VOA, TCLP EXTRACT.”
32	9	people call base neutral acid extractables, which are

32	11	trip blank, which is the first row, in the chain of
32	13	says. And under station location, "trip blank." They
32	16-19	designated in the station location column as "Chem-Solv Pit." They wanted that sample analyzed for TCLP VOA and TCLP Extractables. If you jump down two lines, you will see a station location, "Chem-Solv pit sludge." That is`
32	22	the direction from the samplers, and we don't
32	24-25	But the samplers – it is the direction from them to the laboratory saying – analyze this Chem-Solv pit
33	7	some people actually put the method number. Often
33	16	sampler. And it is not unusual for a sampler and the
33	20	forward into what the analyses showed?
33	24	analyzed total volatiles, and total semi-volatiles. If you
34	4	which is the volatile organic analytical method and they did
34	8-9	sampler requested, it was not clear why it was not discussed in the report or in any other documented
34	13	in my mind exactly why it happened. Typically, as I
34	22-23	There has been some conversation about the analytical being done outside the holding time.
34	25	What is the holding time?
35	6-7	organics, you are according to the method in SW-846, supposed to analyze, within a certain number of days --
35	8	seven days, 14 days, 40 days are some of the relevant holding
35	14	which that might affect the results
35	17	their totality, did the chain of custody basically track
35	19	The chain of custody tracked the samples up until
36	21	I can get comfort that EPA 15 Exhibit-15 these total
37	2	correlate to anything. There is no documented
37	9	am sorry, volatile organic compounds.. Chem-Solv pit water
37	13	And solids?
37	21	whether or not a substance is hazardous in context with
38	8	May 23 <sup>rd</sup> , of course, the date received by the lab was August
38	10	What, received by the lab when?
38	17	recall, did volatiles in this TCLP round, they did not do semi-volatiles. I
38	18	am not sure why they didn't do semi-volatiles. It was on the
39	6	is that as a sampler or as someone that is involved in a
39	10	the stuff behind the curtain. Often times for
40	2	value. When it says the sample was analyzed on a
40	14	everybody that this is reliable." But that is a strange
40	16	Okay. Now, let's briefly talk about the
40	21	sludges.
41	12	has been referred to as "prove the positive." and that is
41	15	What two occasions do you mean?
41	20	and white in 40 CFR 261.24. It says that "representative"
41	24	methods and it has got some chapters with text, and we

42	3	chapter. Back in 1989, the EPA intended to update SW 846
42	7	to update SW 846.” In 1990, the next year, they said --
42	8	“we are going to extend the public comment period,” and they
42	10-11	of “prove the positive,” they said, “we are going to revise SW 846, and
42	18	we are going to include a provision that
42	23-24	waste. You’ve got to characterize that waste.
42	23-24	lead-based paint. Collect a biased non-representative sample, show
43	5	“hey, you’re exceeding the TCLP value for
43	9-10	collecting a small piece of the surface water, and say -
43	11-12	the process and it did, and there was a lot of public comment, and there
43	16	was averse public comment, and in 1993, the EPA
43	19	published a final rule making adopting changes to SW 846 that did not
43	25	include this prove the positive concept. They
44	1-2	road, going to supplant Chapter 9 with a technical
44	6	to do,” which is how to generate sampling plan, how to
44	9	comment. And this is the RCRA – I sometimes get the
44	12	words wrong, the RCRA waste sampling draft technical guidance, which
44	13	is one of the Complainant’s Exhibits, I
44	14	can kind of categorize it into three.
44	17	are part of that docket can be broken up into three
44	21	generally were very supportive. They for the most part
44	22-24	did not reference the prove the positive concept. There is
45	8	a lot of other things going on in this docket. but
45	12	industry trade groups – groups like the American Petroleum
45	13-14	single comment that was positive regarding this prove the
46	1	positive concept. They were all averse to it. And the reason they were
46	6	averse to it is because they thought it was a double standard. They
46	12	thought it wasn’t
46	19	prove the positive concept, we don’t like it, and we are
47	23	EPA gets – they get averse comments all of the times
48	4	-- comments for and against virtually every proposed rulemaking, every
48	6	guidance document that comes out, and
50	2	confusing for us this draft technical guidance.: And the
51	10-11	draft technical guidance it is not in effect.”
52	2	I would say look at SW 846.
52	4	wasn’t a need for a screen on that pump, because it
52	6	Air diaphragm pump. thank you.
52	8	gallon aboveground tank t the spray device. and that had
52	10	would have on at your house on a variety of different things – the way
52	12	it was
50	2	chemistry – myself, another professional engineer, and some
51	10-11	and was subject to the SPCCP spill prevention control and counter
52	2	measures – PE certification requirements. We
52	4	with, RCRA honestly was a small piece of it --
52	6	Clean Air Act Risk Management Program, the EPCRA

52	18	just described, did Chem-Solv accede to all of your
52	24	you collectively and your team?
53	7	Structures are classified based on use. This
54	1-2	fire department interested in both the 1111 Industry Avenue and the 1140 Industry Avenue?
54	20	ignitable products. And so the fact that they were using
55	22	officials?
56	14	Have the Regulators conveyed to you their current impressions? A. Very clearly your Honor. Q. What is their impression?
56	18	Mr. Shawver to appreciate this, but he is "tickled pink"
57	2	familiar with the RCRA civil penalty policies
57	6	to the risk, the term, "potential for harm," does that
57	12	prospective damage to human health, the environment.
57	15	potential for harm and end up with harm because an accident happens
58	4	And the system is designed to be protective
58	9	through the various counts. First, I think we all know
58	11	treatment, storage or disposal facility
58	13	And, yet there is a count that because of
59	7	certain inspections and document those inspections.
59	10	a permitted entity they would have to do and then you can
59	15	is about. The administrative requirements have to do
59	24	looking at all of these other things, it is a lot of the
60	1	What other things? The other counts.
60	2	The other accounts – failure to document pit inspection, failure
60	5	secondary containment for the pit. So, it is all
60	16	aerosol cans. Again, the same question. in your
61	20-21	lead me to conclude anything other than maybe a moderate level risk – high minor, low moderate, this was how I
62	16-17	How about a secondary containment – the absence of a secondary containment?
62	21	secondary containment. If this were a tank of benzene,
63	1	large there is very few requirements that attach to it, in
63	12	view it I suppose to ways – it is an administrative
64	10	then they didn't come close to addressing the
64	16	for harm. The process for going through RCRA
64	17	closure, and we didn't speak with the DEQ about the RCRA
64	21-23	DEQ may have requested that that be analyzed. We are not sure what they would have requested based on, but my understanding is based on olfactory and visual
66	19	Okay, you referenced the concept of generator
67	5	what generator knowledge existed with respect to these
67	7	The generator knowledge that existed with
67	9	categories. One is historic analytical
67	12	vicinity of the wash pad and the receiving tank.

69	1	having to do with containers, the labeling and storage
69	17	Air Act issues – issues under the emergency planning and
70	12	Settled solid sampling.
70	17	to do with Coliwasa tubes and the use of Coliwasa.
70	19	Coliwasa procedure?
71	10	Pro Chem Analyticals from --
71	13	understand, all of this is already in the EPA exhibits, right?
74	8-10	the profile for the screening associated with analysis. The materials combined with solids removed from the solids accumulated from the drainage swale.: So now do you
74	12	the analytics in Attachment 9 constitutes their entire waste determination?
74	18	they – they were asked to provide a waste determination,
74	21	saying – “Attachment 9 is our waste determination.”
74	23	profile for this stream and the associated analysis.
74	24	So in response to the EPA’s question to submit
75	16	illuminating if they had provided the entirety of their
76	13	earlier passage we’re talking about, correct?
78	5-7	retention basin, so that is you agree that the retention basin sediment are not what is in the pit, it that correct?
78	9	understand that intuitively retention basin would
78	14-16	retention basin sediments is sediments from the swale that you all have been referring to as the retention basin.
78	19	“Process generating waste.: And it talks about the
78	21	runoff in the paved parking lot of the facility production area.
79	2	not taken of the pit sludge, is that correct?
79	13	there are profiles that are generated that are very generic
79	21	waste will understand that rarely is there a one to one
80	9	along with generator knowledge to draw a conclusion
82	14	materials added to that roll off, if that is what it
82	18	say that the samples come from the retention basin
84	9-10	Okay, so did you speak to Cary Lester? I have spoken to Cary Lester, Cary lives in my neighborhood.
85	16	-- you don’t have anything beyond attachment nine to
86	1	QA/QC package request. it says, “none.” So can you tell me what that means
86	3	That means that it is not requesting the QA/QC
86	15	back of profile – or summary analytics.
87	21	would do this with any waste stream, regulated or unregulated.
87	25	Do you think this is in it? – Do you think that is in it? – and if you
88	5	parts of a million? That is where this is coming from.
88	12	I am sorry I missed it - when you said --
89	7	question. They provide the analytical report and the
90	9	I’m sorry, Faulkner & Flynn was requested to help
90	13	Scott Perkins and Sue Deegan.

90	15	Sue Deegan.
90	18	Okay, is Sue Deegan a Chemist?
91	2-3	time that the EPA was concerned, which this was not the RCRA case was under the Clean Air Act -- I can't
91	15	RCRA case progressed, we obviously zeroed in on
92	16	I am not sure -- Jamie has direct access to the inventory system
94	2	grade tank had been cleaned out.
94	21	Did I say that, or do I agree that they are?
95	17	found in the pit sludge by that name, and you would agree that the
96	7	Trichloroethene is listed as a synonym, is that
96	11	and trichloroethene are the same chemical substance,
97	10	instances, they saw labels for products that were empty,
97	14	had that product in it. I know that that was an issue
98	5	To a degree, yes.
98	19	good chance there is trichloroethylene on site, is
99	4	But you're speculating. Completely.
99	5	Based on what I have heard the
100	9	that includes glycols, it included motor oils with
100	11	that were cyanides, which were a problem for the fire
100	17	There is always a possibility of anything.
101	2	the inventory management system when contrasted with my
102	1	Okay, and it is at the Roanoke
102	10	It looks to be similar, yeah. I think it is important to
103	6	case, there was an accelerated civil motion filed it was a
103	9	trichloroethylene was found in the pit samples. Do you
103	14	paragraph 17 said, "IN response to Mr. Cox's
103	22	material through any hoses and pumps.: Now, does Mr.
103	25	There is no time relevance to that. The
104	8	Would you mind if I saw what we're talking about?
105	9	is packaged in 55 gallon steel drums that are not
109	5	manufacturing processing unit exemption?
109	14	considered a solid waste management unit -- a SWMU is
110	5	with the Clean Air Act, EPCRA, RCRA, the fire code stuff
110	10	Mr. Austin can provide a better number -- my understanding is
112	2	a shed to the right where the word "waste" is that is not showing
112	3	up -- and so there is a few things that aren't on there -
112	16	is actually a circle above the word waste.
116	4	in that other graphic -- just a bund of tanks and a big
118	5	contain perc or TCP?
119	12	So, and they are making the legal certification. So
119	22	paper saying, "I hereby certify that on penalty
120	15-17	and so if you are alluding to maybe like a raw ingredient that combined with another raw to create a third product.
121	19	representative -- to make the water -- the whole tank of
121	21	issues. And I -- other than a spill of PCE or perk,

122	16-17	first to volatilize. So, that is one variable, you have – if let's assume some portion or all of chloroform is
122	20	generated by a reaction with the settled solids? Is there a
122	24-25	going to be seen everywhere. And chloroform – all chemicals to a degree absorb or adsorb onto organics in the
123	4	guidance says – assume it is not homogenous. Assume
124	18-19	pipe that connects to the acid pad where water or what is washed off from the acid pad coming in.
125	1-3	Okay. And the tank – from the tank – the 6,000 gallon above ground storage tank, there is another hose or pipe – were you explaining that that is the case?
126	12	clogged up, that pea-sized screen I was talking about.
126	22	because that it would not be required. I should clarify
126	25	pumps are very expensive, and a lot more sensitive, so there
127	6	that the contents of the containers and these were the
127	20	going to use it, someday I am going to sell it – that doesn't
128	11-12	opinion they were going to use this drum of X, doesn't there have to be some history or some known market or
129	9	reference? Was it, you know, six months before the
131	2	generator knowledge, that they are going to be RCRA
131	4	generator knowledge reliable or valid. don't you have
131	14	to have a system of checks and whether that's a formal
132	16	responding to regulator issues and we are trying --
134	23	One fire in an engine back in '05, '06. In
135	8	affirmatively). And, did they have a filing under EPCRA
135	10	teams – state, local?
135	12	2004/2005, that did not exceed an EPCRA reportable
135	18	Sure. Form Rs under the toxic release
137	4	in the so-called flames pad outside. Glycols, they
137	7	towards helping them respond to an emergency rather than
137	11	I think they have got a much better understanding now.
140	1	Scheduled 80 PVC pipes, yes.
140	6	Monitoring and such, okay.
142	20	falling under this raw material storage tank, is that
144	9	and Tank B is – it's not a tank, it's part of
144	18	they're in were designed for that purpose.: The
162	10	from common carrier freight, such as Estes or somebody
164	14	asked about off specification – off spec products that
184	17-19	Okay. To your knowledge, were containers of tetrachloroethylene or perchloroethylene ever rinsed or processed in the
185	19	21.
196	6-7	Sometime in the late '90's the Western Virginia Water Authority, I'm not sure if it was Western Virginia
202	11	washing was placed on the pad?
203	24	schedule 80 PVC pipe, that went down a couple of inches

204	15-16	here as a 6,000 gallon tank, got full and the below grade tank got full and you had to store or stage water?
206	20	the piping, had been capped.
209	19	schedule 80 pipe that flowed into the tank.
212	2	place, is this a compilation – an exhaustive
212	7	everyone, there is not one missing and I stake my
212	10	representative?
223	24	For no other reason, it's the path of least
248	13	As an attachment in an RFI dated February 6 <sup>th</sup>
251	2-3	Unrecoverable? Unrecoverable, yes.. We could not recover that
256	15	You were grandfathered?

**Transcript Date:** *March 24, 2012* (Day 5 of Administrative Hearing)

**Pursuant to 40 C.F.R. § 22.25, in order to conform the transcript of the testimony given on March 24, 2012 to the actual testimony given at the administrative hearing, the transcript for March 24, 2012 should be revised so that the lines of transcribed testimony set forth below read as follows:**

<b>Page</b>	<b>Line</b>	<b>Restated Transcript Line Conforming to Actual Hearing Testimony</b>
4	22	Well, do you recall this instance because we've
5	1	procedure of creating leachate and I don't think we
5	7	just said. Do the process – what happens to the leachate
5	8	after you've finished this process?
7	7	what now has been marked as Complainant's Exhibit 16A. I'll
7	25	before – I will add this to my lab records.
10	14	A. Yes. The second entry, EPA number 5 VOA, that
11	7	A. They were run as totals which we would do
11	12	they weren't fit – the contaminants of concern were
11	13	not semi-volatiles but were volatiles.
12	8	A. It's actually for both: for my reference in
12	13	sample ID. I mean there's data associated with the
15	16	THE COURT: She certainly can look at it.
26	7	No." What does "Custody Seals: No" mean?
27	9	Q. Is that what we call the pit water?
27	12	A. That it's an environmental sample in the
27	13	lab --
28	25	was assigned the lab for the report matrix of solids.
31	17	use to collect TCLP leachate from the TCLP apparatus.
32	17	the leachate is created.
37	4	A. It's a formation of solid that falls out of solution.
37	22	it would be roughly 22 and a half in a year. 45 percent would
37	23	become 22 and a half in a year.
40	4	unlimited quantity of air.
43	3	A. Because you know, perchloroethylene has –
43	7	dichloroethylene and eventually it can go to vinyl