

James W. Potter
Member
Admitted in SC, AL

April 30, 2010

VIA CERTIFIED MAIL/RETURN RECEIPT REQUESTED

The Honorable Susan L. Biro
Chief Administrative Law Judge
Office of Administrative Law Judges
U.S. EPA
Mail Code 1900 L
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

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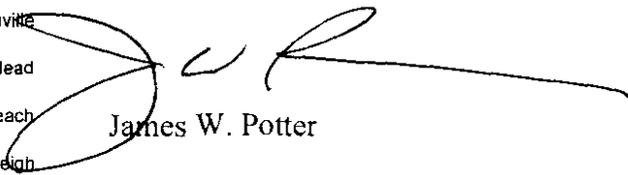
RE: *Chem-Way Corporation*
EPCRA-04-2010-2015

Dear Judge Biro:

Charleston
Charlotte
Columbia
Greensboro
Greenville
Hilton Head
Myrtle Beach
Raleigh

Please find enclosed Respondent's Prehearing Exchange. If you should have any questions, please let me know.

Sincerely,



James W. Potter

JWP/fwt

cc: Jennifer Lewis, Esquire

NPCHLT1:318966.1-LT-(JWP) 021771-00000

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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA, GEORGIA

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IN THE MATTER OF:

HEARING

Chem-Way Corporation

Respondent.

Case No. EPCRA-04-2010-2015

**RESPONDENT'S PREHEARING
EXCHANGE**

Comes now Respondent, through its undersigned counsel, responding to the Prehearing Order of March 9, 2010 and files the following information.

1. Witnesses

- (a) Mr. Tim Swain
Vice-President/General Manager
Chem-Way Corporation
5000 Nations Crossing Road, Suite 101
Charlotte, NC 28217

Mr. Swain will testify as a fact witness to chemicals present at the site and their amount at the site for the years 2005 through 2007. He will testify as to the local reporting requirements and permitting, the EPA inspection and the reasons why Tier II reports are not required. He will testify that Tier I alleged violations were not cited during the inspection process and only added when Complainant withdrew Tier II allegations.

Mr. Swain will also testify as to his belief that this was a non random inspection based on assistance to a customer of Respondent in an unrelated EPA air inspection enforcement action.

Mr. Swain will also testify as to the unreasonableness of the proposed penalty.

- (b) Mr. Vinson Poole
Compliance Inspector
EPCRA Enforcement

Mr. Poole will testify as a fact witness on the selection of Respondent for inspection, the failure to cite any Tier I violations as the basis of the inspection and the subsequent withdrawal of Tier II alleged violations by letter.

(c) Caron B. Falconer
EPCRA Enforcement Section

The witness will testify as a fact witness to his action in this proceeding and enforcement of the action.

No expert witnesses are to be called.

2. Documents enclosed are as follows:

- Exhibit 1. June 16, 2009 letter from Jennifer Lewis to James Potter withdrawing Tier II alleged violations.
- Exhibit 2. June 25, 2009 letter from James Potter to Jennifer Lewis on alleged Tier I violation.
- Exhibit 3. September 28, 2009 letter from Jennifer Lewis to James Potter
- Exhibit 4. October 29, 2008 letter and attachment (Sample 2008 form) from James Potter to Caron B. Falconer.
- Exhibit 5. Draft Tier I forms for 2005 to 2007
- Exhibit 6. Affidavit of T. Swain for Customer in unrelated EPA enforcement action.
- Exhibit 7. September 26, 2008 Notice of Violation to James Potter from Caron B. Falconer.
- Exhibit 8. Current and past local fire permit
- Exhibit 9. Charlotte, NC Fire Ordinance
- Exhibit 10. Chapter 27 of 2006 Fire Code (in read only CD)

C. The appropriate place for a hearing is either Charlotte, North Carolina or Columbia, South Carolina. This case should not take over one-day to hear. No translation services are needed.

2. Reserved for Complainant.
3. Respondent submits the following:
 - A. The testimony of Mr. Swain will explain chemical identity and amounts present in 2005 thru 2007.
 - B. See Exhibits 1, 2, 4 and 7 and proposed testimony of Mr. Swain, Mr. Caron and Mr. Poole.
 - C. As to paragraphs 23 of the Answer, EPA is bound by a five year statute of limitation; thus the 2005 alleged violations are time barred.

As to paragraph 24 and 25, Mr. Swain will testify to his belief that the inspection was non-random and in retaliation for providing an affidavit to a customer in an unrelated EPA air enforcement matter. See Exhibit 6.

As to paragraphs 26 and 27 of the answer, the testimony and Exhibits indicate that Tier II alleged violations were withdrawn by EPA (Exhibit 1) and Tier I violations only cited after the withdrawal of Tier II allegations. See Exhibits 2, 5 and 7. Mr. Swain will testify as to why the local reports are more comprehensive than Tier I reporting (Exhibit 4, 8, 9, and Exhibit 10) and that Tier II reports have never been requested for the facility. Exhibit 4 outlines the chemical list. Exhibit 5 shows the limited Tier I information.

- D. Copy attached of local fire department permit attached as Exhibit 8. A copy of the local ordinance attached as Exhibit 9. The incorporated by reference 2006 North Carolina Fire Code is viewable at <http://ww.2.iccsafe.org/states/2006NorthCarolina/fire/fire-Frameset.html> and is attached on a CD. Chapter 27 is the relevant provision. The site is read only; if the Court has trouble linking to it, please let me know and I can email the link to

your office.

E. N/A

F. N/A



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Attorneys for Respondent
Chem-Way Corporation

April 30, 2010
Columbia, South Carolina

Atlanta, Georgia 30303

This 30th day of April, 2010.

Selvia M. Jones