



UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

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

PREHEARING ORDER

As you previously have been notified, I have been designated by the May 20, 2011, Order of the Chief Administrative Law Judge to preside in the above captioned matter. This proceeding arises under the authority of Section 3008 of the Solid Waste Disposal Act, as amended, commonly referred to as the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984 (collectively referred to as "RCRA"), 42 U.S.C. § 6928. 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 ("Rules of Practice"), 40 C.F.R. §§ 22.1-22.32. The parties are advised to familiarize themselves with both the applicable statute(s) and the Rules of Practice.

United States Environmental Protection Agency ("EPA") policy, found in the Rules of Practice at Section 22.18(b), 40 C.F.R. § 22.18(b), encourages settlement of a proceeding without the necessity of a formal hearing. The record reflects that each party has, at different times, expressed a willingness to engage in settlement discussions, but no settlement has been reached. Accordingly, the parties shall strictly comply with the requirements of this Prehearing Order and prepare for hearing.

The parties are free to engage in settlement discussions during and after preparation of their prehearing exchange. However, the parties are advised that extensions of time will not be granted absent a showing of good cause. The pursuit of

settlement negotiations or an averment that a settlement in principle has been reached will not constitute good cause for failing to comply with the requirements or to meet the schedule set forth in this Order.

The parties are directed to hold a settlement conference on this matter on or before **June 24, 2011**, to attempt to reach an amicable resolution of this matter. See Section 22.4(c)(8) of the Rules of Practice, 40 C.F.R. § 22.4(c)(8). Complainant shall file a status report regarding such conference and the status of settlement on or before **July 8, 2011**.

The following requirements of this Order concerning prehearing exchange information are authorized by Section 22.19(a) of the Rules of Practice, 40 C.F.R. § 22.19(a). As such, it is directed that the following prehearing exchange takes place:

1. Each party^{1/} shall submit:
 - (a) the names of any expert or other witnesses it intends to call at the hearing, together with a brief narrative summary of each witness's expected testimony, or a statement that no witnesses will be called; and
 - (b) copies of all documents and exhibits which each party intends to introduce into evidence at the hearing. The exhibits should include a curriculum vitae or resume for each proposed expert witness. If photographs are submitted, the photographs must be actual unretouched photographs. The documents and exhibits shall be identified as "Complainant's" or "Respondents'" exhibits,^{2/} as appropriate, and numbered with Arabic numerals (e.g., "Complainant's Exhibit 1"); and
 - (c) a statement expressing its view as to the place for the hearing and the estimated amount of time needed to present its direct case.

^{1/} Respondents Chemsolv, Inc. ("Chemsolv") and Austin Holdings-VA, L.L.C., ("Austin") filed a joint Answer and are represented by the same counsel. Respondents may choose to file a joint prehearing exchange, or each Respondent may file separately.

^{2/} If Respondents Chemsolv and Austin choose to file separate prehearing exchanges, the propose exhibits should be identified as "Respondent Chemsolv's" or "Respondent Austin's" exhibits.

See Sections 22.19(a), (b), and (d) of the Rules of Practice, 40 C.F.R. §§ 22.19(a), (b), and (d); see also Section 22.21(d) of the Rules of Practice, 40 C.F.R. § 22.21(d).

2. This proceeding is for the assessment of a penalty, and Complainant has not specified a proposed penalty. Accordingly, the parties shall include in their prehearing exchange all factual information they consider relevant to the assessment of a penalty.
3. Within fifteen (15) days after Respondents file their prehearing information exchange, Complainant shall file a document specifying a proposed penalty and explaining in detail how the proposed penalty was determined, including a description of how the specific provisions of any Agency penalty or enforcement policies and/or guidelines were applied in calculating the penalty.
4. If either Respondent intends to take the position that he is unable to pay the proposed penalty or that payment will have an adverse effect on his ability to continue to do business, that Respondent shall furnish supporting documentation such as certified copies of financial statements or tax returns.
5. Complainant shall submit a statement regarding whether the Paperwork Reduction Act of 1980 ("PRA"), 44 U.S.C. §§ 3501 *et seq.*, applies to this proceeding; whether there is a current Office of Management and Budget control number involved herein; and whether the provisions of Section 3512 of the PRA are applicable in this case.

See Section 22.19(a)(3) of the Rules of Practice, 40 C.F.R. § 22.19(a)(3).

The prehearing exchange delineated above shall be filed *in seriatim* manner, according to the following schedule:

- | | | |
|--------------------|---|---------------------------------------------------------------------------------|
| August 12, 2011 | - | Complainant's Initial Prehearing Exchange |
| September 9, 2011 | - | Respondents' Prehearing Exchange, including any direct and/or rebuttal evidence |
| September 23, 2011 | - | Complainant's Rebuttal Prehearing Exchange (if necessary) |

In their Answer, Respondents exercised their right under Section 554 of the Administrative Procedure Act ("APA"), 5 U.S.C. § 554, to request a hearing in this matter. If the parties cannot settle with a Consent Agreement and Final Order, a hearing will be held in accordance with Section 556 of the APA, 5 U.S.C. § 556. Section 556(d) of the APA provides that a party is entitled to present its case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. Thus, Respondents have the right to defend themselves against Complainant's charges by way of direct evidence, rebuttal evidence, or through cross-examination of Complainant's witnesses. Respondents are entitled to elect any or all three means to pursue their defense.

If Respondents elect only to conduct cross-examination of Complainant's witnesses and to forgo the presentation of direct and/or rebuttal evidence, Respondents shall serve a statement to that effect on or before the date for filing their prehearing exchange. Each party is hereby reminded that failure to comply with the prehearing exchange requirements set forth herein, including Respondents' statement of election only to conduct cross-examination of Complainant's witnesses, can result in the entry of a default judgment against the defaulting party. See Section 22.17 of the Rules of Practice, 40 C.F.R. § 22.17.

The original and one copy of all pleadings, statements, and documents (with any attachments) required or permitted to be filed by this Order (including a ratified Consent Agreement and Final Order) shall be filed with the Regional Hearing Clerk, and copies (with any attachments) shall be sent to the undersigned and all other parties. The parties are advised that e-mail correspondence with the Administrative Law Judge is not authorized. See Section 22.5(a) of the Rules of Practice, 40 C.F.R. § 22.5(a).

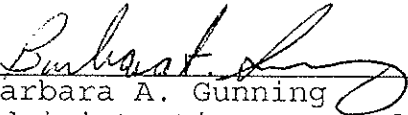
The prehearing exchange information required by this Order to be sent to the Presiding Judge, as well as any other further pleadings, shall be addressed as follows:

If sending by United States Postal Service ("USPS"):
EPA Office of Administrative Law Judges
1200 Pennsylvania Avenue, NW
Mail Code 1900L
Washington, DC 20460-2001

If sending by a non-USPS courier, such as UPS or Federal Express:

EPA Office of Administrative Law Judges
1099 14th Street, NW
Suite 350, Franklin Court
Washington, DC 20005

Telephone contact may be made with my legal staff assistant, Mary Angeles, at (202) 564-6281. The facsimile number is (202) 565-0044.



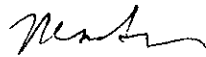
Barbara A. Gunning
Administrative Law Judge

Dated: May 31, 2011
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 copies of this **Prehearing Order**, issued by Barbara A. Gunning, Administrative Law Judge, in Docket No. RCRA-03-2011-0068, were sent to the following parties on this 1st day of June 2011, in the manner indicated:



Mary Angeles
Legal Staff Assistant

Original and One Copy by Pouch Mail to:

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

Copy by Pouch Mail to:

Joyce A. Howell, Esq.
ORC, MC 3RC30
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Copy by Regular Mail to:

Charles L. Williams, Esq.
Maxwell H. Wiegard, Esq.
Gentry Locke Rakes & Moore, LLP
10 Franklin Road, SE Suite 800
P.O. Box 40013
Roanoke, VA 24011

Dated: June 1, 2011
Washington, DC