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

MAR 3 1 2011

VIA UPS, Next Day Air

Mr. Jamison Austin
Vice President and General Manager
Chemsolv, Inc., formerly trading as
Chemicals and Solvents, Inc.
1140 Industry Avenue, S.E.
Roanoke, VA 24013

G. Harris Warner, Jr.
Registered Agent for
Austin Holdings-VA, L.L.C.
4648 Brambleton Ave., SW
Roanoke, Va. 24018

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

Re: IMO Chemsolv, Inc.
EPA ID No. VAD980721088

Dear Sirs:

Enclosed please find an Administrative Complaint filed by the United States Environmental Protection Agency, Region III (EPA) against Chemsolv, Inc., formerly trading as Chemicals and Solvents, Inc., and Austin Holdings-VA, L.L.C. (collectively "Respondents") under the authority of 3008(a)(1) and (g) of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6928(a)(1) and (g).

Respondents must each file an Answer to the Administrative Complaint within thirty (30) days of receipt of the Administrative Complaint in accordance with the *"Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits,"* 40 C.F.R. Part 22.

Each Respondent may choose to request a hearing to contest any matter set forth in the Administrative Complaint. Whether or not a hearing is requested, each Respondent may request an informal settlement conference to discuss resolution of any of these cases. A request for a settlement conference may be included in each Respondent's Answer or each Respondent may contact the staff attorney assigned to this case:

Joyce A. Howell (3EC00)
Senior Counsel
Office of Regional Counsel
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

With regard to Small Business Regulatory Enforcement and Fairness Act (SBREFA) please see the "Information for Small Businesses" memo, enclosed, which might be applicable to either Respondent's company. This enclosure provides information on contacting the SBREFA Ombudsman to comment on federal enforcement and compliance activities and also provides information on compliance assistance. As noted in the enclosure, any decision to participate in such program or to seek compliance assistance does not relieve either Respondent of its obligation to respond in a timely manner to an EPA request or other enforcement action, create any rights or defenses under law, and will not affect EPA's decision to pursue this enforcement action. In order for each Respondent to preserve its legal rights, it must comply with all the rules governing the administrative enforcement process. The Ombudsman and fairness boards do not participate in the resolution of EPA's enforcement action. EPA has not made a determination as to whether or not either Respondent is covered by SBREFA. A Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Procedures is also enclosed.

We urge your prompt attention to this matter. If you have any questions, please contact Joyce Howell, the attorney assigned to this matter, at (215) 814-2644.

Sincerely,

Wayne S. Naylor

for Abraham Ferdas
Director
Land and Chemicals Division
U.S. EPA Region III

Enclosures

cc: Lydia Guy, Regional Hearing Clerk
Joyce A. Howell, Esq., EPA

BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III

In the Matter of:	
CHEMSOLV, INC., formerly trading as Chemicals and Solvents, Inc.	
and	
AUSTIN HOLDINGS-VA, L.L.C.	ADMINISTRATIVE COMPLAINT, COMPLIANCE ORDER AND NOTICE OF OPPORTUNITY FOR A HEARING
Respondents.	EPA Docket No. RCRA-03-2011-0068
Chemsolv, Inc. 1111 Industrial Avenue, S.E 1140 Industrial Avenue, S.E Roanoke, Virginia 24013	
	Proceeding under Section 3008(a) of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6928(a)
Facility	

I. INTRODUCTION

This Administrative Complaint, Compliance Order and Notice of Opportunity for Hearing ("Complaint") is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA" or the "Agency") by Section 3008(a)(1) and (g) of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6928(a)(1) and (g), as amended by, *inter alia*, the Hazardous and Solid Waste Amendments of 1984 ("RCRA"), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance and Corrective Action Orders and the Revocation, Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22. The Administrator of EPA has delegated this authority under RCRA to the Regional Administrators of EPA, and this authority has been further delegated in U.S. EPA - Region III to, *inter alia*, the Director of the Land and Chemicals Division, U.S. EPA - Region III ("Complainant"). The Respondents in this

matter are Chemsolv, Inc., formerly trading as Chemicals and Solvents, Inc., ("Chemsolv") and Austin Holdings - VA, L.L.C. ("Austin Holdings"). This action concerns Chemsolv's and Austin Holdings' facility located in Roanoke, Virginia.

EPA hereby notifies Respondents that EPA has determined that Respondents have violated certain provisions of Subtitle C of RCRA, 42 U.S.C. §§ 6921-6939e, and the Commonwealth of Virginia's federally authorized hazardous waste management program.

On December 18, 1984, pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), and 40 C.F.R. Part 271, Subpart A, Virginia was granted final authorization to administer a state hazardous waste management program *in lieu* of the federal hazardous waste management program established under RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e. The authorized Virginia hazardous waste management program ("VHWMP") was revised, effective September 29, 2000 (*see* 65 *Fed. Reg.* 46606 (July 31, 2000)), June 20, 2003 (*see* 68 *Fed. Reg.* 36925 (June 20, 2003)), July 10, 2006 (*see* 71 *Fed. Reg.* 27216 (May 10, 2006)) and July 30, 2008 (*see* 73 *Fed. Reg.* 44168 (July 30, 2008)). The current provisions of the VHWMP ("2003 VHWMP") are enforceable by EPA pursuant to Section 3008(a) of RCRA, 42 U.S.C. Section 6928(a).

The 2003 VHWMP, with exceptions not relevant to this matter, incorporates by reference the federal hazardous waste regulations as set forth in the July 1, 2001 Code of Federal Regulations. Citations in this Complaint to the 2003 VHWMP will set forth the appropriate federal regulation as well as the Virginia provision which incorporates such federal regulation by reference.

EPA has given the Commonwealth of Virginia prior notice of the issuance of this Complaint in accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

II. ADMINISTRATIVE COMPLAINT

Findings of Facts and Conclusions of Law

1. The United States Environmental Protection Agency ("EPA") and EPA's Office of Administrative Law Judges have jurisdiction over this matter pursuant to RCRA Section 3008, 42 U.S.C. § 6928, and the Consolidated Rules of Practice (40 C.F.R. §§ 22.1(a)(4) and 22.4(c)).

2. Respondents are "persons" as defined in Section 1004(15) of RCRA, 42 U.S.C. Section 6903(15), and 9 VAC 20-60-260.A, which incorporates by reference 40 C.F.R. § 260.10 with exceptions not relevant herein.

3. Respondent Chemsolv is and, at all times relevant to the violations alleged in this Complaint, was the "owner" and "operator" of a "facility" located on Tax Parcel 4240104 of the City of Roanoke which constitutes a portion of the Facility located at 1111 and 1140 Industry Avenue, S.E., in Roanoke, Virginia ("the Facility"), as those terms are defined in 9 VAC 20-60-

260.A, which incorporates by reference 40 C.F.R. § 260.10 with exceptions not relevant herein.

4. Respondent Austin Holdings is and, at all times relevant to the violations alleged in this Complaint, was the "owner" of a "facility" located on Tax Parcels 4170102 and 4240103 of the City of Roanoke which constitutes a portion of the Facility, as those terms are defined in 9 VAC 20-60-260.A, which incorporates by reference 40 C.F.R. § 260.10 with exceptions not relevant herein.

5. Respondent Chemsolv is, and was at all times relevant to this Complaint, a "generator" of "hazardous waste," as described below, at the Facility, as those terms are defined at 9 VAC 20-60-260.A which incorporates by reference 40 C.F.R. § 260.10 with exceptions not relevant herein.

6. On May 15, 2007, EPA, accompanied by representatives of the Virginia Department of Environmental Quality ("VADEQ"), conducted an inspection at the Facility.

7. On May 23, 2007, EPA took samples at certain locations within the Facility.

8. On May 15, 18, and 23, 2007 representatives of VADEQ conducted inspections at the Facility.

9. On November 16, 2007, EPA sent Respondent Chemsolv an information request letter pursuant to Section 3007(a) of RCRA, 42 U.S.C. § 6927(a). Respondent Chemsolv replied to this information request by letter dated December 10, 2007.

10. On February 4, 2008, EPA sent Respondent Chemsolv an information request letter pursuant to Section 3007(a) of RCRA, 42 U.S.C. § 6927(a). Respondent Chemsolv replied to this information request by letter February 6, 2008.

11. On April 1, 2008, EPA sent Respondent Chemsolv an information request letter pursuant to Section 3007(a) of RCRA, 42 U.S.C. § 6927(a). Respondent Chemsolv replied to this information request by letter dated April 4, 2008.

12. Respondent Chemsolv purchases and repackages chemicals, and also blends chemicals at the Facility which are subsequently packaged. Respondent Chemsolv then sells and distributes chemicals, chemical intermediaries, and solvents.

13. The Facility is assigned EPA ID No. VAD980721088.

14. At the time of the May 23, 2007 EPA inspection, EPA took samples of water contained in a subgrade "tank," located on the Tax Parcel 4240104 portion of the Facility, which, at the time of the relevant violations alleged herein, was a "new tank system" as that term is defined at 9 VAC 20-60-260A, which incorporates by reference 40 C.F.R § 2601.10, identified by Respondent

Chemsolv as the "Pit" ("Pit"). The analysis of the May 23, 2007 Pit water sample, using the TCLP described in 40 C.F.R. § 261.24 (incorporated by reference in 9 VAC 20-60-261), indicated the Pit water contained 6.1 mg/L chloroform.

15. Solid waste with a concentration of 6.0 mg/L chloroform or greater is a hazardous waste (D022) pursuant to 9 VAC 20-60-261, which incorporates by reference 40 C.F.R. § 261.24 with exceptions not relevant herein, because it exhibits the characteristic of "toxicity" for chloroform.

16. At the time of the May 23, 2007 EPA inspection, EPA took samples of sludge from the Pit. The analysis of the May 23, 2007 Pit sludge sample, using the TCLP described in 40 C.F.R. § 261.24 (incorporated by reference in 9 VAC 20-60-261), indicated the Pit sludge contained 457 mg/L tetrachloroethene and 15.5 mg/L trichloroethene.

17. Solid waste with a concentration of .7 mg/L tetrachloroethene or greater is a hazardous waste (D039) pursuant to 9 VAC 20-60-261.A, which incorporates by reference 40 C.F.R. § 261.24 with exceptions not relevant herein, because it exhibits the characteristic of "toxicity" for tetrachloroethene.

18. Solid waste with a concentration of .5 mg/L or greater trichloroethene is a hazardous waste (D040) pursuant to 9 VAC 20-60-261.A, which incorporates by reference 40 C.F.R. § 261.24 with exceptions not relevant herein, because it exhibits the characteristic of "toxicity" for trichloroethene.

19. At the time of the May 23, 2007 EPA inspection, EPA took samples of the sludge from the Pit. The analysis of the May 23, 2007 Pit sludge sample indicated the Pit sludge contained a volatile organic ("VO") concentration of greater than 500 parts per million by weight.

20. Respondent Chemsolv cleaned out the Pit on or around February 1, 2008, removed the Pit, a single-walled subgrade tank constructed of carbon steel with a ceramic interior coating, and filled the opening with gravel on or about March 27, 2008.

21. The Pit water and Pit sludge referred to above, are and were, at the time of the EPA and VADEQ inspections referred to above, "solid wastes" as that term is defined at 9 VAC 20-60-260.A, which incorporates by reference 40 C.F.R. § 260.10, and thus "hazardous wastes" as that term is defined at 9 VAC 20-60-260.A, which incorporates by reference 40 C.F.R. § 260.10.

22. 9 VAC 20-60-261.A, which incorporates by reference 40 C.F.R. § 261.5 with exceptions not relevant herein, provides in relevant part, that a generator is a conditionally exempt small quantity generator in a calendar month if he generates no more than 100 kilograms of hazardous waste in that month.

23. 9 VAC 20-60-261.A, which incorporates by reference 40 C.F.R. § 261.5(g)(1) and (2), provides, in pertinent part, that in order for hazardous waste generated by a conditionally exempt

small quantity generator in quantities of 100 kilograms or less of hazardous waste during a calendar month to be excluded from full regulation under 9 VAC 20-60-262.A, the generator must comply with 9 VAC 20-60-261.A, which incorporates 40 C.F.R. § 262.11 by reference.

24. 9 VAC 20-60-261.A, which incorporates by reference 40 C.F.R. § 261.5(g)(2), provides that if a conditionally exempt small quantity generator accumulates at any time 1,000 kilograms or greater of his hazardous wastes, all of those accumulated wastes are subject to regulation under the special provisions of 40 C.F.R Part 262 applicable to generators of greater than 100 kg and less than 1000 kg of hazardous waste in a calendar month (herein referred to as a "small quantity generator") as well as the requirements of 40 C.F.R. Parts 263 through 268, and 40 C.F.R. Parts 270 and 124, and the applicable notification requirements of to Section 3010 of RCRA, 42 U.S.C. § 6930. The time period of 40 C.F.R. § 262.34(d) for accumulation of wastes on-site begins for a conditionally exempt small quantity generator when the accumulated wastes equal or exceed 1000 kilograms.

25. Upon information and belief, Respondent accumulated 1,000 kilograms (2,200 lbs.) of hazardous waste or more at the Facility at one time from March 15, 2007 through and including February 20, 2008.

COUNT I

(Owning and/or operating a hazardous waste storage facility without a permit or interim status)

26. The preceding paragraphs are incorporated by reference.

27. Pursuant to 9 VAC 20-60-270.A, which incorporates by reference 40 C.F.R. Part 270 with exceptions not relevant herein, and Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e), a person may not own or operate a hazardous waste storage, treatment or disposal facility unless such person has first obtained a permit for the facility or has qualified for interim status for the facility.

28. 9 VAC 20-60-262.A, which incorporates by reference 40 C.F.R. § 262.34(d) with exceptions not relevant herein, provides in relevant part, that a small quantity generator of hazardous waste may accumulate hazardous waste on-site for 180 days or less without a permit or without interim status, provided that the small quantity generator meets a number of conditions, including in relevant part:

> (1) when the waste is placed in tanks, the generator complies with 40 C.F.R. § 265.201, which is incorporated by reference into 9 VAC 20-60-262.A;
>
> (2) the date upon which each period of accumulation begins is clearly marked and visible for inspection on each container; and
>
> (3) while being accumulated on-site each container and tank is labeled or marked

clearly with the words "Hazardous Waste."

29. 40 C.F.R. § 265.201, with exceptions not applicable to this matter, provides that small quantity generators who accumulate hazardous waste in tanks must inspect, where present: (1) Discharge control equipment (e.g., waste feed cutoff systems, by-pass systems, and drainage systems) at least once each operating day, to ensure that it is in good working order; (2) Data gathered from monitoring equipment (e.g., pressure and temperature gauges) at least once each operating day to ensure that the tank is being operated according to its design; (3) The level of waste in the tank at least once each operating day to ensure compliance with Sec. 265.201(b)(3); (4) The construction materials of the tank at least weekly to detect corrosion or leaking of fixtures or seams; and (5) The construction materials of, and the area immediately surrounding, discharge confinement structures (e.g., dikes) at least weekly to detect erosion or obvious signs of leakage (e.g., wet spots or dead vegetation).

30. From at least May 23, 2007 until February 20, 2008, Respondents stored a drum of waste sodium hydrosulfide at the Tax Parcel 4170102 portion Facility. Respondents shipped this sodium hydrosulfite off-site for disposal after 273 days of storage. The waste sodium hydrosulfide was a solid waste which exhibited the characteristics of corrosivity and reactivity and was therefore a hazardous waste (EPA Hazardous Waste Number D002 and D003) pursuant to 9 VAC 20-60-261.A, which incorporates by reference 40 C.F.R. § 261.22(b) and 23(b).

31. From at least May 23, 2007 until February 20, 2008, Respondent Chemsolv stored Pit sludge, described above, in the Pit. Respondent Chemsolv shipped this Pit sludge off-site for disposal after storing it on site for 273 days.

32. From at least May 23, 2007 until February 20, 2008, Respondent Chemsolv stored hazardous waste in a tank located on Tax Parcel 4240104 of the Facility, identified by Respondent Chemsolv as the Pit, without a label or marked with the words "Hazardous Waste."

33. From at least May 23, 2007 until February 1, 2008, Respondent Chemsolv did not inspect the Pit's: 1) Discharge control equipment at least once each operating day; (2) Data gathered from monitoring equipment at least once each operating day; (3) The level of waste in the tank at least once each operating day; (4) The construction materials of the tank at least weekly; and (5) The construction materials of, and the area immediately surrounding, discharge confinement structures at least weekly.

34. Respondents have never had a permit or interim status for the Facility pursuant to 9 VAC 20-60-270.A, which incorporates by reference 40 C.F.R. Part 270 with exceptions not relevant herein, and Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e).

35. At all times relevant to this Complaint, Respondents engaged in the "storage" of the hazardous wastes referred to above at the Facility, as that term is defined in 9 VAC-20-60-260.A, which incorporates by reference 40 C.F.R. § 260.10 with exceptions not relevant herein.

36. From at least May 23, 2007 until February 1, 2008, Respondents failed to qualify for the "less than 180 day" generator accumulation exemption of 9 VAC 20-60-262.A, which incorporates by reference 40 C.F.R. § 262.34(d) with exceptions not relevant herein, with respect to the storage of the 55 gallon drum of sodium hydrosulfide and the waste stored in the Pit by failing to satisfy the conditions for the exemption as set forth in 9 VAC 20-60-262.A.

37. From at least May 23, 2007 until February 1, 2008, Respondents owned and operated a hazardous waste storage facility without a permit or interim status, in violation of 9 VAC 20-60-270.A, which incorporates by reference 40 C.F.R. Part 270 with exceptions not relevant herein, and Section 3005(a) of RCRA, 42 U.S.C. § 6925(a) for which a penalty may be assessed pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928.

COUNT II
(Failure to Make Waste Determinations)

38. The preceding paragraphs are incorporated by reference.

39. 9 VAC 20-60-262.A, which incorporates by reference 40 C.F.R. § 262.11 with exceptions not relevant herein, provides that a person who generates a solid waste as defined in 9 VAC 20-60-260.A, which incorporates by reference 40 C.F.R. § 260.10, with exceptions not relevant herein, shall determine if that waste is a hazardous waste, using the methods set forth in 9 VAC 20-60-262.A, which incorporates by reference 40 C.F.R. § 262.11 with exceptions not relevant herein.

40. As the person who generated the solid wastes described in this Count, Respondent Chemsolv was required by 9 VAC 20-60-262.A, which incorporates by reference 40 C.F.R. § 262.11 with exceptions not relevant herein, to determine if the solid waste it generated was hazardous waste using the method prescribed by 40 C.F.R. § 261.11, incorporated by reference into 9 VAC 20-60-262.

41. From at least May 23, 2007 until approximately February 1, 2008, Respondent Chemsolv treated, stored and/or disposed of a solid waste, i.e., Pit water with a concentration of greater than 6.0 mg/L chloroform and thus exhibiting the hazardous waste characteristic of "toxicity" (D022), without performing a hazardous waste determination on such solid waste.

42. From May 23, 2007 until approximately February 1, 2008, Respondent Chemsolv treated, stored and/or disposed of a solid waste, i.e., Pit sludge with a concentration of greater than .7 mg/L tetrachloroethene, and greater than .5 mg/L trichloroethene, and thus exhibiting the hazardous waste characteristic of "toxicity" (D039 and D040) without performing a hazardous waste determination on such solid waste.

43. On May 18, 2007 and again on May 23, 2007 used aerosol cans were in storage for

disposal with regular trash at the Facility.

44. From at least January 1, 2006 until May 23, 2007, Respondent Chemsolv treated, stored and/or disposed of a solid waste, i.e., used aerosol cans, without performing a hazardous waste determination on such solid waste.

45. Respondent Chemsolv failed to perform a hazardous waste determination, as required by 9 VAC 20-60-262.A, which incorporates by reference 40 C.F.R. § 262.11 with exceptions not relevant herein, on solid waste it generated at the Facility as described in this Count II.

46. Respondent Chemsolv violated 9 VAC 20-60-262.A, which incorporates by reference 40 C.F.R. § 262.11 with exceptions not relevant herein, by failing to perform a hazardous waste determination on solid waste generated at the Facility and treated, stored and/or disposed at the Facility, for which a penalty may be assessed pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928.

COUNT III

(Failure to Have Secondary Containment)

47. The preceding paragraphs are incorporated by reference.

48. 9 VAC 20-60-264.A, which incorporates by reference 40 C.F.R. § 264.193(a) with exceptions not relevant herein, provides that secondary containment that meets the requirements of 40 C.F.R.§ 264.193(a) must be provided for new and existing tank systems.

49. 9 VAC 20-60-264.A, which incorporates by reference 40 C.F.R. § 264.193(d) with exceptions not relevant herein, provides that secondary containment for tanks must include one or more of the following devices: 1) a liner eternal to the tank; 2) a vault; 3) a double-walled tank; or 4) an equivalent device as approved by the Director, VADEQ.

50. 9 VAC-20-60-264.A, which incorporates by reference 40 C.F.R. § 264.193(e)(1) with exceptions not relevant herein, provides that an external liner system must, *inter alia*, be designed and installed to completely surround the tank and to cover all surrounding earth likely to come into contact with the waste if released from the tank(s) (i.e., capable of preventing lateral as well as vertical migration of the waste).

51. From at least May 23, 2007 until approximately February 1, 2008, Respondent Chemsolv had not designed and installed the external liner secondary containment for the Pit to completely surround the Pit and to cover all surrounding earth likely to come into contact with the waste if released from the Pit (i.e., capable of preventing lateral as well as vertical migration of waste). Moreover, Respondents did not provide any other type of secondary containment device for the Pit allowed by 40 C.F.R. § 264.193(d).

52. From at least May 23, 2007 until approximately February 1, 2008, Respondent Chemsolv violated 9 VAC 20-60-264.A, which incorporates by reference 40 C.F.R. § 264.193(a), (d) and (e), with exceptions not relevant herein, by failing to provide secondary containment for the Pit which met the requirements of 40 C.F.R. § 264. 193(1)(a), (d) and (e), for which a penalty may be assessed pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928.

COUNT IV

(Failure to Obtain a Tank Assessment)

53. The preceding paragraphs are incorporated by reference.

54. The Pit was installed at the Facility after July 14, 1986.

55. Respondent Chemsolv's Pit is a "new tank system" within the meaning of 9 VAC 20-60-260.A, which incorporates by reference 40 C.F.R. § 260.10 and § 264.192(a), with exceptions not relevant herein.

56. Pursuant to 9 VAC 20-60-264.A which incorporates by reference 40 C.F.R. § 264.192(g), with exceptions not relevant herein, owners and operators of new tank systems and components must obtain and keep on file at the facility written statements by those persons required to certify the design of the tank system and supervise the installation of the tank system in accordance with the requirements of 40 C.F.R. § 264.192(b) - (f) that attest that the tank system was properly designed and installed and that repairs, pursuant to 40 C.F.R. § 264.192(b) - (f) were performed. These written statements must also include the certification statement as required in 40 C.F.R. § 270.11(d).

57. From at least May 23, 2007 until approximately February 1, 2008, Respondent Chemsolv did not obtain and/or keep on file at the Facility written statements by those persons required to certify the design of the tank system and supervise the installation of the tank system in accordance with the requirements of 40 C.F.R. § 264.192(b) - (f) for the Pit, as required by 9 VAC 20-60-264.A which incorporates by reference 40 C.F.R.§ 264. 192(a) and (g), for which a penalty may be assessed pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928.

COUNT V

(Failure to Conduct and/or Document Inspections in the Facility Operating Record)

58. The preceding paragraphs are incorporated by reference.

59. Pursuant to 9 VAC 20-60-264.A, which incorporates by reference 40 C.F.R. § 264.195(d), with exceptions not relevant herein, owners or operators of tanks must document in the facility operating record inspections of the aboveground portions of the tank system, if any, to detect corrosion or releases, and the construction materials and the area immediately surrounding the

externally accessible portion of the tank system, including secondary containment structures to detect erosion or signs of releases of hazardous waste.

60. Pursuant to 9 VAC 20-60-264.A, which incorporates by reference 40 C.F.R. § 264.195(b), with exceptions not relevant herein, the inspections described in Paragraph 59, above, shall be conducted at least once each operating day.

61. From at least May 23, 2007 until February 1, 2008, including all "operating days" within the meaning of 9 VAC 20-60-264.A, which incorporates by reference 40 C.F.R. § 264.195(b) and (d) with exceptions not relevant herein, Respondent Chemsolv did not inspect and/or document the inspections of the aboveground portions of the Pit.

62. Respondent Chemsolv's failure to inspect and/or document the inspections of the aboveground portions of the Pit each operating day constitutes a violation of the requirements of 9 VAC 20-60-264.A, which incorporates by reference 40 C.F.R. § 264.195(b) and (d), for which a penalty may be assessed pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928.

COUNT VI

(Failure to Comply with Subpart CC Standards for Tanks)

63. The preceding paragraphs are incorporated by reference.

64. 9 VAC 20-60-264.A, which incorporates by reference 40 C.F.R. § 264.1080(a), provides that the requirements of 40 C.F.R. § 264.1080 apply to owners and operators of all facilities that treat, store, or dispose of hazardous waste in tanks, surface impoundments, or containers subject to either subpart I, J, or K of 40 C.F.R. Part 264 except as 40 C.F.R. § 264.1 and 40 C.F.R. § 264.1080(b) provide otherwise.

65. At the time of the May 23, 2007 EPA inspection, and at all times relative to this Complaint, the hazardous waste storage tank known as the "Pit" was subject to the requirements of 9 VAC 20-60-264.A, which incorporates by reference 40 C.F.R. Part 264, Subpart J, with exceptions not relevant herein.

66. At no time was the Pit a unit excepted from regulation under 40 C.F.R. § 264.1080 pursuant to 40 C.F.R. § 264.1060(b) or exempt from the standards in 40 C.F.R. § 264.1084 through .1087 pursuant to 40 C.F.R. § 1084(c).

67. At the time of the May 23, 2007 EPA inspection, EPA took samples of the sludge from the Pit. The analysis of the May 23, 2007 Pit sludge sample indicated the Pit sludge contained a volatile organic ("VO") concentration of greater than the regulatory threshold 500 parts per million by weight. The May 23, 2007 Pit sludge sample indicated the Pit sludge contained a VO concentration of greater than 38,000 parts per million by weight.

68. 9 VAC 20-60-264.A, which incorporates by reference 40 C.F.R. § 264.1082(b), provides that the owner and operator of a tank shall control air pollutant emissions from such unit in accordance with the standards specified in 40 C.F.R. § 264.1084 - .1087, with exceptions not relevant to this matter.

69. 9 VAC 20-60-264.A, which incorporates by reference 40 C.F.R. § 264.1084(b)(1), provides that the owner and operator of a tank that meets the conditions specified in 40 C.F.R. § 264.1084(b)(i) – (iii) shall control air pollutant emissions from such tank in accordance with Tank Level 1 controls specified in 40 C.F.R. § 264.1084(c) or Tank Level 2 controls specified in 40 C.F.R. § 264.1084(d). Pursuant to 9 VAC 20-60-264.A, which incorporates by reference 40 C.F.R. § 264.1084(b)(2), owners and operators of tanks which do not meet all of the conditions specified in 40 C.F.R. § 264.1084(b)(i) – (iii), and thus do not qualify for the use of Tank Level 1 controls, must control air pollutant emissions from such tanks in accordance with Tank Level 2 controls.

70. Respondent Chemsolv did not implement either Tank Level 1 or Tank Level 2 controls for the Pit because Respondent Chemsolv failed to:

a. determine the maximum organic vapor pressure for a hazardous waste to be managed in such tank before the first time the hazardous waste is placed in the tank, using the procedures set forth in 40 C.F.R. § 264.1083(c), as required by 9 VAC 20-60-264.A, which incorporates by reference 40 C.F.R. § 264.1084(c)(1) (40 C.F.R. § 264.1084(c)(1)-Tank Level 1);

b. equip the Pit with a fixed roof designed and operated to meet Tank Level 1 required specifications set forth in 40 C.F.R. § 264.1084(c)(2) and (3) (40 C.F.R. § 264.1084(c)(2) and (3)- Tank Level 1);

c. inspect the air emission control equipment in accordance with the requirements set forth in VAC 20-60-264.A, which incorporates by reference 40 C.F.R. § 264.1084 (c)(4), and to document such inspections in accordance with the requirements specified in VAC 20-60-264.A, which incorporates by reference 40 C.F.R. § 264. 1089(b) (40 C.F.R. § 264.1084 (c)(4)-Tank Level 1);

d. utilize and operate a fixed roof tank equipped with an internal floating roof in accordance with 40 C.F.R. § 264.1084(e), or a tank equipped with an external floating roof in accordance with 40 C.F.R. § 264.1084(f), or a tank vented through a closed-vent system in accordance with 40 C.F.R. § 264.1084(g), or a pressure tank designed and operated in accordance with 40 C.F.R. § 264.1084(h), or a tank located in an enclosure that is vented through a closed-vent system to an enclosed combustion control device in accordance with 40 C.F.R. § 264.1084(i) (40 C.F.R. § 264.1084(d)-Tank Level 2);

e. inspect air emission control equipment for the Pit and maintain records of such inspections as specified in 40 C.F.R. 1084(e) – (h). (40 C.F.R. §264.1084(d) - Tank Level 2).

71. Respondent Chemsolv violated 9 VAC 20-60-264.A, which incorporates by reference 40 C.F.R. § 264.1082(b) and.1084(b), by failing to control air pollutant emissions from the Pit in accordance with the Tank Level 1 or 2 controls specified in 40 C.F.R. § 264.1084(c) or (d), for which a penalty may be assessed pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928.

COUNT VII

(Failure to Properly Close a Regulated Tank)

72. The preceding paragraphs are incorporated by reference.

73. 9 VAC 20-60-264.A, which incorporates by reference 40 C.F.R. § 264.111, provides that the owner or operator of a hazardous waste transfer, storage, or disposal facility must close the facility in a manner that: (a) minimizes the need for further maintenance; and (b) controls, minimizes or eliminates, to the extent necessary to protect human health and the environment, post-closure escape of hazardous waste, hazardous constituents, leachate, contaminated run-off, or hazardous waste decomposition products to the ground or surface waters or to the atmosphere; and (c) complies with the closure requirements of 40 C.F.R. Part 264 Subpart G, including, but not limited to, the requirements of 40 C.F.R. 264.197 for tanks.

74. 9 VAC 20-60-264.A, which incorporates by reference 40 C.F.R. § 264.112(a) and (b), provides that the owner or operator of a hazardous waste management facility must have a written closure plan, and that the plan must include at least the information described in 40 C.F.R. § 264.112(b).

75. 9 VAC 20-60-264.A, which incorporates by reference 40 C.F.R. § 264.197(a), provides *inter alia* ,that at closure of a tank system, the owner or operator must remove or decontaminate all waste residues, contaminated containment system components (liners, etc.), contaminated soils, and structures and equipment contaminated with waste, and manage them as hazardous waste, unless 40 C.F.R. § 261.3(d) applies. The closure plan and closure activities for tank systems must meet all of the requirements specified in 40 C.F.R Part 264 Subpart G.

76. 9 VAC 20-60-264.A, which incorporates by reference 40 C.F.R. § 264.197(b), provides that if the owner or operator demonstrates that not all contaminated soils can be practicably removed or decontaminated as required in 40 C.F.R. § 264.197(a), then the owner or operator must close the tank system and perform post-closure care in accordance with the closure and post-closure care requirements that apply to landfills (40 C.F.R. § 264.310). In addition, for the purposes of closure, post-closure, and financial responsibility, such a tank system is then considered to be a landfill, and the owner or operator must meet all of the requirements for

landfills specified in subparts G and H of this part.

77. 9 VAC 20-60-264.A, which incorporates by reference 40 C.F.R. § 264.197(c), provides that if an owner or operator has a tank system that does not have secondary containment that meets the requirements of §264.193(b) through (f) and has not been granted a variance from the secondary containment requirements in accordance with 40 C.F.R. § 264.193(g), then: (1) the closure plan for the tank system must include both a plan for complying with 40 C.F.R. § 264. 197(a) and a contingent plan for complying with paragraph 40 C.F.R. § 264.197(b).

78. The Pit was a hazardous waste storage tank system which did not have secondary containment that met the requirements of 40 C.F.R. § 264.193(b) and (c) and had not been granted a variance pursuant to 40 C.F.R. § 264.193(g).

79. Respondent Chemsolv has never had a closure plan for the Pit or any other hazardous waste management unit at the Facility in accordance with the requirements of 40 C.F.R. § 264.112.

80. Respondent Chemsolv closed the Pit and removed the carbon steel tank which constituted the "Pit" from the ground on or about February 1, 2008.

81. Respondent Chemsolv took samples of the soil surrounding the Pit, but did not obtain an analysis of such samples.

82. Respondent Chemsolv did not remove or decontaminate all waste residues, contaminated containment system components (liners, etc.), contaminated soils, and structures and equipment contaminated with waste, and manage them as hazardous waste with respect to the closure of the pit.

83. Respondent Chemsolv did not have a closure plan with closure activities, cost estimates for closure, and financial responsibility for tank systems meeting all of the requirements specified in 40 C.F.R. Part 264 Subparts G and H.

84. Respondent Chemsolv violated 9 VAC 20-60-264.A, which incorporates by reference 40 C.F.R. § 264.197, by failing to comply with the closure requirements of 40 C.F.R. Part 264, Subparts G and H.

III. COMPLIANCE ORDER

85. Pursuant to the authority of Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), Respondents are hereby ordered to perform the Compliance Tasks listed in this Section III, below, upon the effective date of this Compliance Order. Pursuant to Section 22.37 of the Consolidated Rules of Practice, this Compliance Order shall automatically become a Final Order unless, no later than 30

days after this Compliance Order has been served, Respondents request a hearing as described in Section V of this Complaint. Respondents shall certify completion of all Compliance Tasks in accordance with Paragraph 90 below. "Days" as used herein shall mean calendar days unless specified otherwise.

86. Respondents shall immediately cease storing hazardous waste at the Facility except in accordance with a permit or interim status obtained pursuant to RCRA Section 3005, 42 U.S.C. § 6925, 9 VAC 20-60-270.A, which incorporates by reference 40 C.F.R. Part 270 with exceptions not relevant herein, or in accordance with a valid permit exemption under the 2003 VHWMP.

87. Respondent Chemsolv shall immediately perform waste determinations on every solid waste generated at the Facility in accordance with 9 VAC 20-60-262.A, which incorporates by reference 40 C.F.R. § 262.11 with exceptions not relevant herein, and submit a report of each such determination to EPA, stating the waste determination method used and the result of such waste determination.

88. Respondents shall immediately obtain a waste analysis for every hazardous waste treated, stored or disposed of at the Facility in accordance with 9 VAC 20-60-264.A, which incorporates by reference 40 C.F.R. § 264.13(a)(1), and submit a report of each such analysis to EPA, stating the waste determination method used and the result of such waste determination.

89. Respondent Chemsolv shall, within sixty (60) days of the date of this Complaint, submit a closure plan prepared pursuant to 9 VAC 20-60-264.A, which incorporates by reference 40 C.F.R. § 264.112 and .197 with exceptions not relevant herein, for the area where the Pit was located at the Facility and submit such plan to the Virginia Department of Environmental Quality.

90. Any notice, report, certification, data presentation, or other document submitted by either Respondent pursuant to this Compliance Order which discusses, describes, demonstrates, supports any finding or makes any representation concerning such Respondent's compliance or noncompliance with any requirements of this Compliance Order shall be certified by a responsible corporate officer of such Respondent. A responsible corporate officer means: (1) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or (2) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

The certification of the responsible corporate officer required above shall be in the following form:

> I certify that the information contained in or accompanying this [type of submission] is true, accurate and complete. As to [the/those] identified portions of

this [type of submission] for which I cannot personally verify [its/their] accuracy, I certify under penalty of law that this [type of submission] and all attachments were prepared in accordance with a system designed to assure the qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

Signature: _____
Name: _____
Title: _____

Any notifications or submissions required by this Compliance Order to be submitted to EPA, including, but not limited to, the aforementioned certification, shall be sent via certified mail/return receipt requested or overnight mail commercial delivery service to the attention of the following persons:

Kenneth J. Cox (3LC70)
Land and Chemicals Division
United States Environmental Protection Agency - Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029; and

Joyce A. Howell, Esq. (3RC30)
Senior Assistant Regional Counsel
Land and Chemicals Division
United States Environmental Protection Agency - Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Any violation of the Compliance Order or further violation of RCRA Subtitle C may subject Respondents to further administrative, civil and/or criminal enforcement action, including the imposition of civil penalties, criminal fines and/or imprisonment, as provided in RCRA Section 3008, 42 U.S.C. § 6928.

IV. PROPOSED CIVIL PENALTY

91. Based on the foregoing allegations, and pursuant to the authority of Section 3008(a)(1) and (3) and (g) of RCRA, 42 U.S.C. § 6928(a)(1) and (3), and (g), Complainant proposes the assessment a civil penalty against each Respondent per day of non-compliance for each violation. The Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, increased the

maximum amount of civil penalties which can be assessed by EPA for each day of a violation of RCRA Subtitle C occurring on or after January 30, 1997 and on or before March 15, 2004 from $25,000 to $27,000, after March 15, 2004 and or before January 12, 2009 to $32,500, and after January 12, 2009, to $37,600.

92. For the purpose of determining the amount of a civil penalty to be assessed under RCRA, RCRA Section 3008(a)(3), 42 U.S.C. § 6928(a)(3), requires EPA to take into account the seriousness of the violation and any good faith efforts by each Respondent to comply with applicable requirements (i.e., the "statutory factors"). In developing a civil penalty, Complainant will take into account the particular facts and circumstances of this case with specific reference to the aforementioned statutory factors and EPA's June 2003 RCRA Civil Penalty Policy ("RCRA Penalty Policy"), a copy of which is enclosed with this Complaint (Enclosure A). This RCRA Penalty Policy provides a rational, consistent and equitable methodology for applying the statutory factors enumerated above to particular cases. As a basis for calculating a specific penalty pursuant to 40 C.F.R. § 22.14(a)(4), Complainant will also consider, among other factors, Respondents' inability to pay a civil penalty. The burden of raising and demonstrating an inability to pay rests with the Respondents. In addition, to the extent that the facts and circumstances unknown to Complainant at the time of the issuance of the Complaint become known after the Complaint is issued, such facts and circumstances may also be considered as a basis for increasing or decreasing the civil penalty, as appropriate.

93. The proposed penalty does not constitute a "demand" as that term is defined in the Equal Access to Justice Act, 28 U.S.C. § 2412. Pursuant to Section 22.14(a)(4)(ii) of the Consolidated Rules of Practice, an explanation of the number and severity of violations is given below concerning the aforesaid Counts alleged in this Complaint.

94. Pursuant to 40 C.F.R. § 22.14(a)(4)(ii), Complainant is not proposing a specific penalty at this time, but will do so at a later date after an exchange of information has occurred. *See* 40 C.F.R. § 22.19(a)(4).

COUNT I - Owning and/or operating a hazardous waste storage facility without a permit or interim status as to Respondent Chemsolv

The "potential for harm" arising from Respondent Chemsolv's storage of hazardous waste without a permit is "moderate." Respondent Chemsolv's failure to comply with the permitting requirements of RCRA and the authorized VAWHP constitutes a moderate potential for harm to human health, the environment and the RCRA program. The permitting process is the backbone of the RCRA program and ensures that facilities that manage hazardous wastes handle them in a manner so as to minimize their risk to human health and the environment. Failure to obtain a permit or interim status prior to the treatment, storage and/or disposal of hazardous waste is evidence indicating that a facility is not instituting those practices and procedures required by RCRA for the safe management and handling of these waste, thereby, posing a risk to human

health and the environment. Failure to obtain a permit and interim status also impedes EPA's ability to regulate hazardous waste activities by members of the regulated community, like Respondent Chemsolv, due to the fact that the RCRA regulatory program and Complainant rely upon the self-reporting of members of the regulated community.

Respondent Chemsolv's deviation from the regulatory requirements presented by Respondent Chemsolv's activities is "moderate." Respondent Chemsolv met some, but not all, of the conditions which they needed to meet in order to be exempt from permitting requirements.

Economic Benefit of Non-compliance: In addition to a gravity-based penalty for Count I, Complainant shall also seek assessment of a penalty that takes into account the economic benefit of non-compliance gained by Respondent as a result of its failure to obtain a permit or interim status prior to storing hazardous waste at the Facility. This component includes the cost savings of not disposing of hazardous wastes at appropriate intervals.

COUNT I - Owning and/or operating a hazardous waste storage facility without a permit or interim status as to Respondent Austin Holdings

The "potential for harm" arising from Respondent Austin Holdings' storage of hazardous waste without a permit is "minor." Respondent Austin Holdings' failure to comply with the permitting requirements of RCRA and the authorized VAWHP with respect to a single container of hazardous waste constitutes a minor potential for harm to human health, the environment and the RCRA program. The permitting process is the backbone of the RCRA program and ensures that facilities that manage hazardous wastes handle them in a manner so as to minimize their risk to human health and the environment. Failure to obtain a permit or interim status prior to the treatment, storage and/or disposal of hazardous waste is evidence indicating that a facility is not instituting those practices and procedures required by RCRA for the safe management and handling of these waste, thereby, posing a risk to human health and the environment. Failure to obtain a permit and interim status also impedes EPA's ability to regulate hazardous waste activities by members of the regulated community, like Respondent Austin Holdings, due to the fact that the RCRA regulatory program and Complainant rely upon the self-reporting of members of the regulated community.

Respondent Austin Holdings' deviation from the regulatory requirements presented by such Respondent's activities is "minor." Respondent Austin Holdings owns a portion of the Facility on which a relatively small amount of hazardous waste was stored or contained, and had no involvement in the daily operation of the Facility.

Economic Benefit of Non-compliance: In addition to a gravity-based penalty for Count I, Complainant shall also seek assessment of a penalty that takes into account the economic benefit of non-compliance gained by Respondent Austin Holdings as a result of its failure to obtain a permit or interim status prior to storing hazardous waste at the Facility. This component includes the cost savings of not disposing of hazardous wastes at appropriate intervals.

COUNT II - Failure to perform Hazardous Waste Determinations (Respondent Chemsolv)

Gravity-Based Penalty Component: The "potential for harm" arising from Respondent Chemsolv's failure to perform hazardous waste determinations on solid wastes generated at the Facility is moderate. The performance of hazardous waste determinations is the initial trigger for the implementation of the RCRA regulations and the authorized VAWHP at a facility for the safe handling and management of hazardous wastes. Respondent Chemsolv's failure to perform such determinations resulted in hazardous wastes not being identified as such and not being properly managed and handled at the Facility, thereby, posing a significant risk to human health and the environment. Additionally, the failure to perform such determinations poses a significant potential for harm to the RCRA program which relies upon members of the regulated community, like Respondent Chemsolv, to identify hazardous wastes and institute those practices and procedures deemed necessary under RCRA for their safe handling, storage, treatment and/or disposal.

Respondent Chemsolv failed to perform waste determinations on at least six separate waste streams. Accordingly, the extent of deviation from the regulatory requirements presented by Respondent Chemsolv 's activities is "major."

Economic Benefit of Non-Compliance: In addition to a gravity-based penalty for this Count, Complainant shall also seek assessment of a penalty that takes into account the economic benefit gained by Respondent Chemsolv as a result of its failure to perform hazardous waste determinations.

COUNT III Failure to Have Secondary Containment (Respondent Chemsolv)

Gravity-Based Penalty Component: The "potential for harm" arising from Respondent Chemsolv's failure to have secondary containment on the subgrade hazardous waste storage tank known as the "Pit" is "major." The Subpart J requirements regulate the management of hazardous waste in tanks. The failure to properly manage a tank being utilized for hazardous waste storage can result in an injury or a release to the environment. Respondent Chemsolv completely failed to comply with this secondary containment requirement.

Respondent Chemsolv's deviation from the regulatory requirements is also "major" since there was no attempt to meet the regulatory requirements to provide secondary containment for this tank.

Economic Benefit of Non-compliance: In addition to a gravity-based penalty for this Count, Complainant shall also seek assessment of a penalty that takes into account the economic benefit gained by Respondent Chemsolv as a result of its failure to provide secondary containment for the Pit.

COUNT IV Failure to Obtain a Tank Assessment (Respondent Chemsolv)

Gravity-Based Penalty Component: The "potential for harm" arising from Respondent Chemsolv's failure to obtain and keep on file at the facility written statements by those persons required to certify the design of the tank system and supervise the installation of the tank system in accordance with the requirements of 40 C.F.R. § 264.192(b) - (f) that attest that the tank system was properly designed and installed and that repairs, pursuant to 40 C.F.R. § 264.192(b) - (f), were performed and the failure to obtain a certification statement as required in 40 C.F.R. § 270.11(d) for the subgrade hazardous waste storage tank known as the "Pit" is "major." Respondent Chemsolv's attempt to prove compliance with this requirement constituted a statement that the tank plans had been stamped by an engineer. This falls far short of meeting the regulatory requirement. The failure of a tank being used to store hazardous waste can result in an injury or a release to the environment. Respondent Chemsolv completely failed to comply with this requirement.

Respondent Chemsolv's deviation from the regulatory requirements is also "major" since there was no substantial attempt to meet the regulatory requirements to ensure proper design and installation of the Pit.

Economic Benefit of Non-compliance: In addition to a gravity-based penalty for this Count, Complainant shall also seek assessment of a penalty that takes into account the economic benefit gained by Respondent Chemsolv as a result of its failure to comply with this requirement.

COUNT V Failure to Conduct and/or Document Inspections in the Facility Operating Record (Respondent Chemsolv)

Gravity-Based Penalty Component: The "potential for harm" arising from Respondent Chemsolv's failure to conduct and or document daily tank inspections in the Facility operating record for the "Pit" is "major." Respondent Chemsolv stated that the Pit was visually inspected when material was placed into or taken from the Pit. Such observations fail to satisfy the "each operating day" requirement of the regulation and fail to create the written record that the regulations require. The failure to properly manage a tank being utilized for hazardous waste storage can result in an injury or a release to the environment. Respondent Chemsolv completely failed to comply with this requirement.

Respondent Chemsolv's deviation from the regulatory requirements is also "major" since there was no attempt to meet the regulatory requirements, only, at best, the sporadic visual observation by employees adding material to or removing material from the Pit.

Economic Benefit of Non-compliance: In addition to a gravity-based penalty for this Count, Complainant shall also seek assessment of a penalty that takes into account the economic benefit gained by Respondent Chemsolv as a result of its failure to document daily inspections of the Pit.

COUNT VI Failure to Comply with Subpart CC Standards for Tanks as required by 40 C.F.R. § 264. Subpart CC. (Respondent Chemsolv)

Gravity-Based Penalty Component: The "potential for harm" arising from Respondent Chemsolv's failure to comply with the Subpart CC regulation is "major." The Subpart CC requirements regulate air emissions from volatile organic compounds in hazardous waste. Respondent Chemsolv had an open top tank subject to the Subpart CC regulations. The Subpart CC requirements would require Respondent Chemsolv, at a minimum, to maintain air emission equipment and structural controls, inspect such equipment and document all inspections. There was no attempt to comply with this requirement, and therefore other important regulatory requirements were also violated as a result. Respondent Chemsolv's failure in this regard resulted in the prohibited release of VOCs into the atmosphere. The release of VOCs to the atmosphere presents a substantial potential from harm both to human health and the environment. VOCs are a suspected carcinogen, can pose a risk of fire and are implicated in the deterioration of the atmospheric ozone.

The extent of deviation from the regulatory requirements presented by Respondent Chemsolv's activities is "major" since Respondent Chemsolv completely failed to comply with this requirement.

Economic Benefit of Non-compliance: In addition to a gravity-based penalty for this Count, Complainant shall also seek assessment of a penalty that takes into account the economic benefit gained by Respondent Chemsolv as a result of its failure to comply with the Subpart CC regulations, including the requirement that the subject tank be covered, inspected and the requirement that records be maintained of such inspections.

COUNT VII Failure to Comply with the Closure Requirements for a Hazardous Waste Tank (Respondent Chemsolv)

Gravity-Based Penalty Component: The "potential for harm" arising from Respondent Chemsolv's failure to comply with the requirements for removal of the subgrade hazardous waste storage tank known as the "Pit" is "major." The tank closure requirements ensure that the tank is removed properly and that any hazardous waste generated by the removal of the tank is properly managed. Moreover, closure requirements ensure that any remaining contamination is addressed. Inexplicably, Respondent Chemsolv took samples and did not have them analyzed. Absent proper closure in accordance with the regulations, the potential for harm to the environment is substantial.

The extent of deviation from the regulatory requirements presented by Respondent Chemsolv's activities is "major" since Respondent Chemsolv failed to comply with regulations

for closure of a hazardous waste storage tank, thus failing to ensure that any potential for harm to human health and the environment was abated.

Economic Benefit of Non-compliance: In addition to a gravity-based penalty for this Count, Complainant shall also seek assessment of a penalty that takes into account the economic benefit gained by Respondent Chemsolv as a result of its failure to comply with the hazardous waste tank closure regulations.

V. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

Within thirty (30) days of receipt of this Complaint, each Respondent may request a hearing before an EPA Administrative Law Judge and at such hearing may contest any material fact, conclusion of law and/or the appropriateness of any penalty amount proposed to be assessed for the violations alleged in this Complaint. To request a hearing, a Respondent must file a written answer ("Answer") within thirty (30) days of receipt of this Complaint. The Answer should comply with the requirements of 40 C.F.R. § 22.15. The Answer should clearly and directly admit, deny or explain each of the factual allegations contained in this Complaint of which such Respondent has any knowledge. Where a Respondent has no knowledge of a particular factual allegation, the Answer should so state. The Answer should contain: (1) the circumstances or arguments which are alleged to constitute the grounds of any defense; (2) the facts which such Respondent disputes; (3) the basis for opposing any proposed relief; and (4) a statement of whether a hearing is requested. All material facts not denied in the Answer will be considered to be admitted.

If a Respondent fails to file a written Answer within thirty (30) days of receipt of this Complaint, such failure shall constitute an admission by such Respondent of all facts alleged in the Complaint and a waiver by such Respondent of the right to a hearing. Failure to Answer may result in the filing of a Motion for Default Order and the possible issuance of a Default Order imposing the penalties proposed herein against such Respondnt without further proceedings.

Any hearing requested and granted will be conducted in accordance with the Consolidated Rules of Practice. Hearings will be held at a location to be determined at a later date pursuant to the Consolidated Rules of Practice.

Each Respondent's Answer and all other documents that a Respondent files in this action should be sent to:

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

In addition, a copy of each Respondent's Answer should be sent to Joyce A. Howell, Esq., the

attorney assigned to represent EPA in this matter, at:

Joyce A. Howell, Esq. (3RC30)
Senior Assistant Regional Counsel
Land and Chemicals Division
United States Environmental Protection Agency - Region III
1650 Arch Street
Philadelphia, PA 19103-2029

VI. SETTLEMENT CONFERENCE

Complainant encourages settlement of the proceedings at any time after issuance of the Complaint if such settlement is consistent with the provisions and objectives of RCRA. Whether or not a hearing is requested, a Respondent may request a settlement conference with the Complainant to discuss the allegations of the Complaint and the amount of the proposed civil penalty. A request for a settlement conference does not relieve a Respondent of its responsibility to file a timely Answer.

In the event settlement is reached, the terms shall be expressed in a written Final Agreement prepared by Complainant, signed by the parties, and incorporated into a Final Order signed by the Regional Administrator or his designee. The execution of such a Consent Agreement shall constitute a waiver of the settling Respondent's right to contest the allegation in the Complaint and its right to appeal the proposed Final Order accompanying the Consent Agreement.

If you wish to arrange a settlement conference or have legal questions concerning this matter, please contact Joyce A. Howell, Senior Assistant Regional Counsel, at (215) 814-2644. Once again, however, such a request for a settlement conference does not relieve a Respondent of its responsibility to file an Answer within thirty (30) days following its receipt of this Complaint.

The Quick Resolution settlement procedures set forth at 40 C.F.R.§ 22.18 of the Consolidated Rules of Practice do not apply because the Complaint seeks a Compliance or Corrective Action Order or permit action and does not propose assessment of a specific penalty.

VII. SEPARATION OF FUNCTIONS AND *EX PARTE* COMMUNICATIONS

The following Agency officers, and the staffs thereof, are designated as the trial staff to represent the Agency as the party in this case: the Region III Office of Regional Counsel, the Region III Land and Chemicals Division, and the Office of the EPA Assistant Administrator for Enforcement and Compliance Assurance. Commencing from the date of issuance of this Complaint until issuance of a final agency decision in this case, neither the Administrator, members of the Environmental Appeals Board, Presiding Officer, Regional Administrator, nor Regional Judicial Officer, may have an *ex parte* communication with the trial staff or the merits of

any issue involved in this proceeding. Please be advised that the Consolidated Rules prohibit any *ex parte* discussion of the merits of a case with, among others the Administrator, members of the Environmental Appeals Board, the Presiding Officer, the Regional Administrator, and the Regional Judicial Officer.

Date: 3/31/11

Abraham Ferdas
Director
Land and Chemical Division

REFERENCES AND ENCLOSURES

A. June 2003 - RCRA Civil Penalty Policy (enclosed).

B. Consolidated Rules of Practice - 40 C.F.R. Part 22 (enclosed).

C. 40 C.F.R. § 19.4 (chart) (enclosed)

D. Virginia Regulations Governing Hazardous Waste, 9 VAC 2-60-12 *et seq.*, authorized by EPA pursuant to RCRA Section 3006, 42 U.S.C. § 6926 (enclosed).

THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III

In the Matter of:	
CHEMSOLV, INC., formerly trading as Chemicals and Solvents, Inc.	
and	
AUSTIN HOLDINGS-VA, L.L.C.	
Respondents.	
	EPA Docket No. RCRA-03-2011-0068
Chemsolv, Inc. 1111 Industrial Avenue, S.E 1140 Industrial Avenue, S.E Roanoke, Virginia 24013	
	Proceeding under Section 3008(a) of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6928(a)
Facility	

CERTIFICATE OF SERVICE

I certify that, I sent by UPS, next day delivery, a copy of the Complaint, Consolidated Rules of Practice - 40 C.F.R. Part 22 and the Virginia Regulations Governing Hazardous Waste authorized by EPA pursuant to RCRA Section 3006, 42 U.S.C. § 6926 to the addressees listed below. The original and one copy of the Complaint were hand-delivered to the Regional Hearing Clerk, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103-2029.

Mr. Jamison Austin
Vice President and General Manager
Chemsolv, Inc., formerly trading as
Chemicals and Solvents, Inc.
1140 Industry Avenue, S.E.
Roanoke, VA 24013

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

G. Harris Warner, Jr.
Registered Agent for
Austin Holdings-VA, L.L.C.
4648 Brambleton Ave., SW
Roanoke, Va. 24018

Dated March 31, 2011

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