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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

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Philadelphia, Pennsylvania 19103-~~2000~~ REGIONAL HEARING CLERK
EPA REGION III, PHILA. PA

Benjamin D. Fields
Senior Assistant Regional Counsel

Direct dial: (215) 814-2629
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VIA UPS NEXT DAY AIR

Hon. Barbara A. Gunning
U.S. Environmental Protection Agency
Office of Administrative Law Judges
1099 14th Street, N.W.
Suite 350 Franklin Court
Washington, D.C. 20005

Re: In the Matter of: Chem-Solv, Inc. and Austin Holdings-VA, L.L.C.
U.S. EPA Docket No. RCRA-03-2011-0068
Joint Stipulation of Facts, Exhibits and Testimony

Dear Judge Gunning:

Please find enclosed: (1) a copy of the parties' *Joint Stipulation of Facts, Exhibits and Testimony*. The original and one copy of this document was filed with the U.S. EPA Regional Hearing Clerk on today's date.

The parties worked hard to reach as many stipulations as possible by the Court's deadline for the parties to file a set of stipulations. The parties, however, believe that they may be able to reach additional stipulations after today. It is our understanding that your deadline required the parties to make a serious effort to reach stipulations and file at least an initial set by the deadline. However, further stipulations, if they can be reached, would only assist the Court in this matter, and therefore the parties are continuing to discuss further potential stipulations under the assumption that it will be acceptable to any such additional stipulations at a later date.

Sincerely,



Benjamin D. Fields
Senior Assistant Regional Counsel

Enclosures

cc: Ms. Lydia Guy (3RC00) (via Hand Delivery)

Charles L. Williams, Esq. (via UPS Next Day Air)

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REGIONAL HEARING CLERK
EPA REGION III, PHILA. PA

**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III**

In the Matter of:

Chem-Solv, Inc.
formerly trading as
Chemical and Solvents, Inc.
1111 Industrial Avenue, S.E
1140 Industrial Avenue, S.E
Roanoke, Virginia 24013

EPA Docket No. 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)

and

AUSTIN HOLDINGS-VA, L.L.C.,
Respondents.

Chemsolv, Inc.
1111 Industrial Avenue, S.E
1140 Industrial Avenue, S.E
Roanoke, Virginia 24013

Facility

JOINT STIPULATION OF FACTS, EXHIBITS AND TESTIMONY

In accordance with the Consolidated Rules of Practice, 40 C.F.R. Part 22, and the Court's Pretrial Order dated November 16, 2011, Complainant, the Division Director of the Land and Chemicals Division of the United States Environmental Protection Agency, Region III ("EPA"), and Respondents, Chem-Solv,-Inc ("Chem-Solv"), and Austin Holdings, L.L.C. ("Austin Holdings") present the following joint stipulations.¹

I. JOINT STIPULATION OF FACTS

1. This Administrative Complaint, Compliance Order and Notice of Opportunity for Hearing ("Complaint") was 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.

¹ The parties have made minor changes to the caption to reflect what is believed to be the correct names of the Respondents. The parties request the Presiding Officer's approval for this modified caption.

2. 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").
3. The Respondents in this matter are Chem-Solv, Inc and Austin Holdings - VA, L.L.C. (collectively referred to as "Respondents"). This action concerns Chem-Solv's and Austin Holdings' chemical distribution business located at a facility in Roanoke, Virginia.
4. 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. § 6928(a).
5. 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.
6. EPA gave 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).
7. 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)).
8. 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.
9. Chem-Solv is, and was at all times relevant to the violations alleged in the Complaint, the operator of a facility located at 1111 and 1140 Industry Avenue, S.E., in Roanoke, Virginia (the "Chem-Solv Facility" or "Facility"). The Facility is spread over parts of several tax parcels.
10. Chem-Solv, Inc., is and, at all times relevant to the violations alleged in the Complaint, was the owner of a portion of the Chemsolv Facility, although the named owner on the property records is and was Chemicals and Solvents, Inc., a fictitious name used by Chem-Solv, Inc.
11. Respondent Austin Holdings is and, at all times relevant to the violations alleged in the Complaint, was the owner of a portion of the real property on which the Chem-Solv Facility is located.
12. Chem-Solv is the owner and operator of a facility within the meaning of VHWMP and RCRA.
13. Austin Holdings is the owner of a facility within the meaning of VHWMP and RCRA.

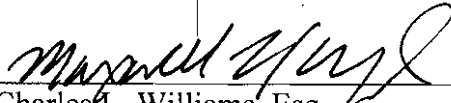
14. On May 15, 2007, EPA, accompanied by representatives of the Virginia Department of Environmental Quality ("VADEQ"), conducted an inspection at the Facility.
15. On May 23, 2007, EPA took samples at certain locations within the Facility.
16. On May 15, 18, and 23, 2007 representatives of VADEQ conducted inspections at the Facility.
17. On November 16, 2007, EPA sent Respondent Chem-Solv an information request letter pursuant to Section 3007(a) of RCRA, 42 U.S.C. § 6927(a). Respondent received such letter shortly after that date. Complainant's Exhibit 20 is a true and correct copy of such letter sent by EPA and received by Chem-Solv.
18. Respondent Chem-Solv replied to the November 16, 2007 EPA information request by letter dated December 10, 2007. Complainant's Exhibit 21 is a true and correct copy of such reply sent by Chem-Solv and received by EPA.
19. On February 4, 2008, EPA sent Respondent Chem-Solv an information request letter pursuant to Section 3007(a) of RCRA, 42 U.S.C. § 6927(a). Respondent received such letter shortly after that date. Complainant's Exhibit 22 is a true and correct copy of such letter sent by EPA and received by Chem-Solv.
20. Respondent Chem-Solv replied to the February 4, 2008 EPA information request by letter dated February 6, 2008. Complainant's Exhibit 23 is a true and correct copy of such reply sent by Chem-Solv and received by EPA.
21. On April 1, 2008, EPA sent Respondent Chem-Solv an information request letter pursuant to Section 3007(a) of RCRA, 42 U.S.C. § 6927(a). Respondent received such letter shortly after that date. Complainant's Exhibit 24 is a true and correct copy of such letter sent by EPA and received by Chem-Solv.
22. Respondent Chem-Solv replied to the April 1, 2008 EPA information request by letter dated April 4, 2008. Complainant's Exhibit 25 is a true and correct copy of such reply sent by Chem-Solv and received by EPA.
23. The Facility is assigned EPA ID No. VAD 980721088.
24. At the time of the May 23, 2007 EPA inspection, EPA took samples of water and settled solids contained in a subgrade tank located on a portion of the Facility.
25. The subgrade tank was sometimes referred to by Chem-Solv as the "Pit." The subgrade tank is the only structure at the Facility which is referred to by this name.
26. The Pit was installed at some point after November 1985.

27. The Pit was constructed of carbon steel with a ceramic interior lining, and had a maximum potential holding capacity of approximately 1,900 gallons by liquid measure.
28. In June, 2007, Respondent Chem-Solv removed some of the settled solids from the Pit. The settled solids removed from the Pit at this time were stored in containers at the Facility until February 20, 2008.
29. Any remaining settled solids and other solid material in the Pit were removed on January 30, 31, and February 1, 2008, and stored at the Facility until February 20, 2008.
30. Complainant's Exhibit 23, Attachment 17(e) (pages EPA 1126-1137) is a true and correct copy of a shipping manifest showing the shipment of thirty-five containers of hazardous waste from the Pit for disposal to the Michigan Disposal Waste Treatment Plant on February 20, 2008.
31. The manifest for the thirty-five containers of hazardous waste from the Pit shipped to the Michigan Disposal Waste Treatment Plant indicated that the total weight shipped was 17,500 pounds.
32. Respondent Chem-Solv removed the Pit from the ground at some point between February 1, 2008 and March 27, 2008.

For Respondent:

2-16-12

Date



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

For Complainant:

2-17-12

Date



Benjamin D. Fields, Esq.
Senior Assistant Regional Counsel (3RC60)
A.J. D'Angelo, Esq.
Senior Assistant Regional Counsel (3RC30)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

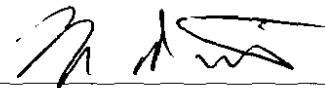
CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below, I caused to be hand-delivered to Ms. Lydia Guy, Regional Hearing Clerk (3RC00), U.S. EPA Region III, 1650 Arch Street, 5th Floor, Philadelphia, PA 19103-2029, the original and one copy of the foregoing Joint Stipulation of Facts, Exhibits and Testimony. I further certify that on the date set forth below, I caused true and correct copies of the same to be mailed via UPS, next day delivery, to the following persons at the following addresses:

Hon. Barbara A. Gunning
U.S. Environmental Protection Agency
EPA Office of Administrative Law Judges
1099 14th Street, N.W.
Suite 350 Franklin Court
Washington, D.C. 20005

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

Date: 2-17-12



Benjamin D. Fields
Senior Assistant Regional Counsel