



UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

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

ORDER SCHEDULING HEARING AND  
ORDER ON COMPLAINANT'S MOTION TO STRIKE AND  
RESPONDENT'S MOTION TO WITHDRAW

This proceeding arises under the authority of Section 3008(a)(1) and (g) of the Resource Conservation and Recovery Act of 1976 and the Hazardous and Solid Waste Amendments of 1984 (collectively referred to as "RCRA"), 42 U.S.C. § 6928(a)(1) and (g). The parties are reminded that 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 (the "Rules of Practice"), 40 C.F.R. §§ 22.1-22.32.

The parties have filed their respective Initial Prehearing Exchanges in this matter pursuant to the undersigned's Prehearing Order issued on June 1, 2011. On September 23, 2011, Complainant filed a Rebuttal Prehearing Exchange in which it proposed a penalty of \$669,665 for the alleged violations. Included in its Rebuttal Prehearing Exchange was a Motion to Strike Respondents' Initial Prehearing Exchange ("Motion to Strike"), along with a supporting Memorandum of Law ("Memo"), in which Complainant asserts that certain portions of Respondents' Proposed Exhibit 20 (specifically the pages marked as Bates Nos. CS 220-223 and CS 234-238) "unambiguously contain[] settlement information as to penalty amount and the parties' positions" and requests that Exhibit 20 be stricken from Respondents' Prehearing Exchange.

Memo at 4. Complainant notes that the "document itself claims the FRE 408 settlement privilege in its very heading." *Id.*

In its Response to Complainant's Motion to Strike, submitted October 6, 2011, Respondents do not deny directly Complainant's assertions regarding the content of Exhibit 20 and state that having conferred with Complainant's counsel, Respondents seek leave to withdraw Exhibit 20 in its entirety (Bates Nos. 220-238). Under Section 22.22(a)(1) of the Rules of Practice, 40 C.F.R. § 22.22(a)(1), evidence relating to settlement, which would be excluded in the federal courts under Rule 408 of the Federal Rules of Evidence, FED. R. EVID. 408, is not admissible. Any reference to the substance of the parties' settlement discussions is not properly before me. Respondents' request to withdraw Exhibit 20 is **GRANTED**. Complainant's initial Motion to Strike is **DENIED AS MOOT**. The parties should refrain from disclosing to this tribunal any confidential settlement matters in future filings.

The file before me reflects that the parties have engaged in settlement negotiations, but no settlement has been reached. 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 benefits of a negotiated settlement may far outweigh the uncertainty, time, and expense associated with a litigated proceeding. However, the pursuit of settlement negotiations or an averment that a settlement in principle has been reached **will not** constitute good cause for failure to comply with the requirements or schedule set forth in this Order.

The parties retain the right to make a motion to supplement their prehearing exchanges no later than fifteen (15) days before the hearing date. Sections 22.19(a) and 22.22(a) of the Rules of Practice, 40 C.F.R. §§ 22.19(a), 22.22(a), provide that documents or exhibits that have not been exchanged and witnesses who have not been properly identified at least fifteen (15) days before the hearing date shall not be admitted into evidence or allowed to testify unless good cause is shown for failing to exchange the required information. The parties are hereby notified that the undersigned will not entertain last minute motions to amend or supplement the prehearing exchange absent extraordinary circumstances.

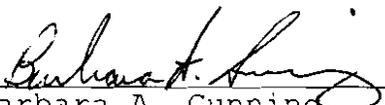
Further, the parties are advised that all non-dispositive prehearing motions, such as motions for subpoenas and motions in limine, must be filed on or before **December 9, 2011**. On or before

limine, must be filed on or before **December 9, 2011**. On or before **December 16, 2011**, the parties shall file a Joint Set of Stipulated Facts, Exhibits, and Testimony. The time allotted for hearing is limited. Therefore, the parties must make a good faith effort to stipulate as much as possible to matters that cannot reasonably be contested so that the hearing can be concise and focused solely on those matters that can only be resolved after a hearing.

The parties may, if they wish, file prehearing briefs by **January 6, 2012**. A copy of the briefs should be e-mailed or hand-delivered to the undersigned by that date in addition to the official copy filed with the Regional Hearing Clerk. If filed, Complainant's brief should specifically state each count of the Complaint and each claim therein that will be tried at the hearing and indicate which counts and claims will not. If filed, Respondents' brief should identify each of the defenses Respondents intend to pursue at the hearing.

The Hearing in this matter will be held beginning at 9:30 a.m. on Wednesday, January 18, 2012, in or around Roanoke, Virginia, continuing as necessary through January 27, 2012. The Regional Hearing Clerk will make appropriate arrangements for a courtroom and retain a stenographic reporter. The parties will be notified of the exact location and other procedures pertinent to the hearing when those arrangements are complete. Individuals requiring special accommodation at this hearing, including wheelchair access, should contact the Regional Hearing Clerk at least ten business days prior to the hearing so that appropriate arrangements can be made.

IF ANY PARTY DOES NOT INTEND TO ATTEND THE HEARING OR HAS GOOD CAUSE FOR NOT BEING ABLE TO ATTEND THE HEARING AS SCHEDULED, IT SHALL NOTIFY THE UNDERSIGNED AT THE EARLIEST POSSIBLE MOMENT.

  
Barbara A. Gunning  
Administrative Law Judge

Dated: November 16, 2011  
Washington, DC

**In the Matter of *Chemsoiv, 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 copy of this **Order Scheduling Hearing and Order on Complainant's Motion to Strike and Respondent's Motion to Withdraw**, issued by Barbara A. Gunning, Administrative Law Judge, dated November 16, 2011, in Docket No. RCRA-03-2011-0068, were sent to the following parties on this 16<sup>th</sup> day of November 2011, in the manner indicated:



Mary Angeles  
Legal Staff Assistant

Original and One Copy by Pouch Mail to:

Lydia Guy  
Regional Hearing Clerk  
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**Dated: November 16, 2011  
Washington, DC**