

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

COMPLAINANT'S REBUTTAL  
PREHEARING EXCHANGE

EPA Docket No. RCRA-03-200068

Proceeding under Section 3008(a)  
of the Resource Conservation and  
Recovery Act, as amended, 42 U.S.C.  
Section 6928(a)

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 PHILA. PA  
 EPA REGION III PHILA. PA

Pursuant to 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. § 22.19, and the May 31, 2011 Prehearing Order issued by the Honorable Barbara A. Gunning, Complainant, the Director of the Land and Chemicals Division of the United States Environmental Protection Agency - Region III, by the undersigned attorney, files Complainant's Rebuttal Prehearing Exchange in the above-captioned matter. Complainant respectfully reserves its right to supplement Complainant's Initial Prehearing Exchange and Rebuttal Prehearing

Exchange in accordance with 40 C.F.R. § 22.19(f) and/or to file a motion(s) to amend its Initial Prehearing Exchange and Rebuttal Prehearing Exchange in accordance with 40 C.F.R. § 22.16.

**A. Witnesses**

Complainant reserves the right to call any and/or all of the following witnesses at a hearing of the above-captioned matter. In addition, should each Respondent's Prehearing Exchange or other discovery reveal the need for further witnesses, Complainant respectfully reserves the right to supplement the list of witnesses upon adequate notice to this tribunal and to Respondents and to call such witnesses at the hearing of this matter.

1. **Joe H. Lowry, PhD** Dr. Lowry is Chief Scientist and National Technical Expert for the United States Environmental Protection Agency, in the National Enforcement Investigations Center ("NEIC") in Lakewood, Colorado. Dr. Lowry will be called as an expert witness and may be expected to testify concerning the sampling and analysis conducted by EPA at Respondents' facility. Dr. Lowry may also be expected to give expert testimony on the chemical aspects of the evidence presented by the parties. Dr. Lowry will testify concerning the representativeness of the samples taken (*i.e.*, that in order to negate the sample result for tetrachloroethene found in the pit solids on the basis of representativeness, it would be necessary to take over 653 additional samples, all with an analytical result of zero), the interpretation for the sampling results and the sampling methods employed by EPA in obtaining the samples. Dr. Lowry may also testify concerning the regulatory nature of the subgrade tank known as the Pit. Dr. Lowry's *curriculum vitae* is attached herein and marked as Complainant's Exhibit 58.

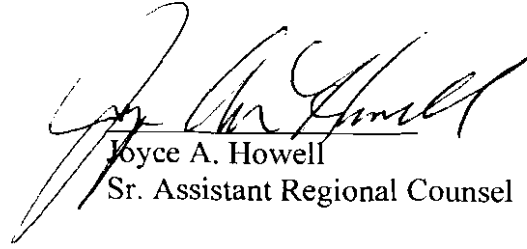
**B. Documents and Exhibits**

See **Attachment A** hereto, entitled "Complainant's Prehearing Exhibits", for a complete list of the exhibits, including those added by this Rebuttal Prehearing Exchange, that Complainant may introduce at hearing. Copies of the additional exhibits are enclosed. Each exhibit is labeled as prescribed by the Court's Prehearing Order, and the pages of each exhibit are date-stamped in sequential numerical order for ease of identification and reference.

Respectfully submitted,

Date:

Sept 23, 2011



Joyce A. Howell  
Sr. Assistant Regional Counsel

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**CERTIFICATE OF SERVICE**

I certify that I sent by UPS, next day delivery, a copy of Complainant's Rebuttal Prehearing Exchange to the addressees listed below. The original and one copy of the Complainant's Rebuttal Prehearing Exchange were hand-delivered to the Regional Hearing Clerk, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103-2029.

Hon. Barbara A. Gunning, A.L.J.  
EPA Office of Administrative Law Judges  
1099 14<sup>th</sup> Street, N.W.  
Suite 350 Franklin Court  
Washington, D.C. 20005

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

Dated

Sept 23, 2011



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

## ATTACHMENT A

### COMPLAINANT'S PREHEARING EXHIBITS

Complainant's Exhibit 1	Delegation 8-9A 5/94 [EPA 001]
Complainant's Exhibit 2	Delegation 8-9-A 9/1/1998 [EPA 002-002A]
Complainant's Exhibit 3	49 <i>Fed. Reg.</i> 47391 (December 4, 1984) [EPA 003-004]
Complainant's Exhibit 4	65 <i>Fed. Reg.</i> 46606 (July 31, 2000) [EPA 004A-010]
Complainant's Exhibit 5	68 <i>Fed. Reg.</i> 36925 (June 20, 2003) [EPA 011-013]
Complainant's Exhibit 6	71 <i>Fed. Reg.</i> 27216 (May 10, 2006) [EPA 014-015]
Complainant's Exhibit 7	73 <i>Fed. Reg.</i> 44168 (July 30, 2008) [EPA 016-018]
Complainant's Exhibit 8	VA HWMP [EPA 019-228]
Complainant's Exhibit 9	Notice to the Commonwealth of Virginia [EPA 229]
Complainant's Exhibit 10	Corporate annual report for Chemsolv [EPA 230-233]
Complainant's Exhibit 11	Entity Status for Austin Holdings [EPA 234]
Complainant's Exhibit 12	Property Records Tax parcel 4340104 [EPA 235]
Complainant's Exhibit 13	Property records 4170102 [EPA 236-239]
Complainant's Exhibit 14	Property Record 4240103 [EPA 240]
Complainant's Exhibit 15	Sample Results 8/8/2007 [EPA 241-283]
Complainant's Exhibit 16	Sample Results 9/5/2007 [EPA 284-294]
Complainant's Exhibit 17	May 15, 2007 EPA inspection report Photos 5.15.07 [EPA 295-330]
Complainant's Exhibit 18	May 23, 2007 EPA inspection report Photos 5.23.07 [EPA 331-371]
Complainant's Exhibit 19	May 15, 2007 VADEQ report Photos 5.15.01; Photos 5.18.07; Photos 5.23.07 [EPA 372-641]
Complainant's Exhibit 20	November 16, 2007 IRL [EPA 641A-649]
Complainant's Exhibit 21	Chemsolv IRL response, December 10, 2007 [EPA 650-1064]
Complainant's Exhibit 22	February 4, 2008 IRL [EPA 1065- 1074]
Complainant's Exhibit 23	Chemsolv IRL response, February 6, 2008 [EPA 1075-1139]
Complainant's Exhibit 24	April 1, 2008 IRL [EPA 1140-1144]
Complainant's Exhibit 25	Chemsolv IRL response, April 4, 2008 [EPA 1145-1164]
Complainant's Exhibit 26A	Notification of hazardous waste activity [EPA 1165-1169]
Complainant's Exhibit 26B	Form 8700-12 [EPA 1170-1175]
Complainant's Exhibit 27	RCRA Penalty Guide [EPA 1176-1198]
Complainant's Exhibit 28	Memorandum : "Amendments to EPA's Civil Penalty Policies to Implement the 2008 Civil Monetary Penalty Inflation Adjustment Rule" December 29, 2008 [EPA 1199- 1208]
Complainant's Exhibit 29	Houghton Inspection Notebook [EPA 1209-1229]
Complainant's Exhibit 30	EPA Administrative Order CAA-03-2008-0329 [EPA 1230- 1251]
Complainant's Exhibit 31	VADEQ Power Point [EPA 1252-1290]
Complainant's Exhibit 32	VADEQ photos taken 3.27.2008 [EPA 1291-1450]
Complainant's Exhibit 33	Manifest list with hand written sketch of tank arrangement [EPA 1451-1452]

Complainant's Exhibit 34	News report dated January 20, 2003 [EPA 1453]
Complainant's Exhibit 35	February 12, 2003 Huggins, Faulkner and Flynn (consultants) report of on Chemsolv Fire and Spill on January 19, 2003 [EPA 1454-1475]
Complainant's Exhibit 36	March 3, 2005 Email re: Hazardous materials incident causing injury to Chemsolv employee [EPA 1476]
Complainant's Exhibit 37	July 26, 2005 VADEQ field notes [EPA 1477-1479]
Complainant's Exhibit 38	July 27, 2005 Email re Chemsolv generator status [EPA 1480]
Complainant's Exhibit 39	July 29, 2005 VADEQ Warning Letter to Chemicals and Solvents [EPA 1481-1507]
Complainant's Exhibit 40	November 9, 2005 VADEQ Warning Letter (without attachments) [EPA 1508-1511]
Complainant's Exhibit 41	November 15, 2005 Faulkner and Flynn summary of October 31, 2005 n-butylamine release [EPA 1512-1516]
Complainant's Exhibit 42	December 16, 2005 Chemsolv response to VADEQ November 9, 2005 Warning Letter (Attachments B-D not included) [EPA 1517-1542]
Complainant's Exhibit 43	January 5, 2006 VADEQ Notice of Violation to Chemsolv [EPA 1543-1575]
Complainant's Exhibit 44	January 9, 2006 VADEQ letter to Chemsolv [EPA 1576-1577]
Complainant's Exhibit 45	March 22, 2006 VADEQ field notes [EPA 1578-1579]
Complainant's Exhibit 46	July 27, 2006 VADEQ Notice of Violation to Chemsolv [EPA 1580-1582]
Complainant's Exhibit 47	May 24, 2007 email from Elizabeth Lohman VADEQ to Ken Cox, EPA [EPA 1583]
Complainant's Exhibit 48	Chemsolv incident report release of ferric chloride July 27, 2007 [EPA 1584-1590]
Complainant's Exhibit 49	August 16, 2007 VADEQ Notice of Violation to Chemsolv [EPA 1591-1602]
Complainant's Exhibit 50	Photos of drainage at Chemsolv facility [EPA 1603-1607]
Complainant's Exhibit 51	February 19, 2008 Fire Code inspection form and violations list [EPA 1608-1612]
Complainant's Exhibit 52	March 12, 2008 Hazardous Materials Incident Report [EPA 1613-1614]
Complainant's Exhibit 53	April 18, 2008 request for information and guidance for fluorescent bulb management [EPA 1615-1616]
Complainant's Exhibit 54	May 30, 2008 VADEQ request for formal enforcement [EPA 1617- 1620]
Complainant's Exhibit 55	May 5, 2008 Chemsolv response to VADEQ information request [EPA 1621-1624]
Complainant's Exhibit 56	October 31, 2008 Chemsolv incident report for sulfuric acid spill [EPA 1625-1626]
Complainant's Exhibit 57	Laboratory Certification ID#MD004 [EPA 1627-1630]

Complainant's Exhibit 58	Curriculum Vitae of Joe H. Lowry, PhD. [EPA 1631-1637]
Complainant's Exhibit 59	RCRA Waste Sampling Technical Guidance [EPA 1638-1696]
Complainant's Exhibit 60	55 Federal Register 4440 – 4445 (February 8, 1990) [EPA 1697-1702]
Complainant's Exhibit 61	Test Methods for Evaluating Solid Waste (SW-846) Chapter 9 [EPA 1703-1780]
Complainant's Exhibit 62	Western Virginia Water Authority: Water Consumption Records 2003-2007, Chemicals and Solvents, Inc. [EPA 1781-1790]
Complainant's Exhibit 63	IRL Response, September 20, 2011 [EPA 1791-1801]
Complainant's Exhibit 64	MSDS from C.T.S. Industries, Inc. [EPA 1802-1813]