

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

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 EPA REGION III PHILA, PA

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| In the Matter of:   | ) | RESPONDENTS' INITIAL<br>PREHEARING EXCHANGE   |
|   | ) |   |
| CHEM-SOLV, INC., formerly trading as<br>Chemicals and Solvents, Inc.                                  | ) |   |
|   | ) |   |
| and   | ) |   |
|   | ) |   |
| AUSTIN HOLDINGS-VA, L.L.C.  | ) | U.S. EPA Docket Number<br>RCRA-03-2011-0068   |
|   | ) |   |
|   | ) |   |
| Respondents.  | ) | Proceeding Under Section 3008(a) of<br>the Resource Conservation and<br>Recovery Act, as amended 42 U.S.C.<br>Section 6928(a) |
|   | ) |   |
| Chem-Solv, Inc.<br>1111 Industrial Avenue, S.E.<br>1140 Industrial Avenue, S.E.<br>Roanoke, VA 24013, | ) |   |
|   | ) |   |
| Facility.   | ) |   |

COME NOW Respondents, Chem-Solv, Inc. ("Chem-Solv") and Austin Holdings-VA, L.L.C. ("Austin Holdings") (collectively, "Respondents"), by counsel, 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 (the "Consolidated Rules of Practice"), 40 C.F.R. Part 22, and the Prehearing Order issued May 31, 2011 by the Honorable Barbara A. Gunning, and file their Initial Prehearing Exchange in the above-styled matter. Respondents hereby expressly reserve their rights under 40 C.F.R. § 22.19(f) to supplement their Initial Prehearing Exchange and their rights under 40 C.F.R. § 22.16 to file motions to amend their Initial Prehearing Exchange.

**A. Witnesses:**

Respondents may call any of the following witnesses at the hearing held in the above-styled matter. In the event that the penalty proposed by the Complainant in accordance with 40 C.F.R. § 22.19(a)(4), or other discovery conducted in this matter in accordance with 40 C.F.R. § 22.19(e) reveals the need for the Respondents to designate further witnesses, the Respondents hereby reserve their rights to supplement the list of witnesses set forth herein, in accordance with 40 C.F.R. § 22.19(f), and call such additional witnesses at any hearing held in this matter, upon adequate notice to the tribunal and the Complainant. Moreover, the Respondents hereby reserve their rights to call any of the witnesses identified in the Complainant's Initial Prehearing Exchange at the hearing held in the above-styled matter.

1. Glenn Austin. Glenn Austin is the President, a shareholder of, and founder of Chem-Solv, Inc., and Austin Holdings-VA, L.L.C. Mr. Austin is expected to testify concerning the history of the businesses and the corporate relationship between the Respondents. He will further explain the history of Chem-Solv with respect to regulatory compliance and he will describe the third-party compliance examination results through which Chem-Solv was found to be compliant with applicable industry standards and regulations.
2. Jamison G. Austin. Jamie Austin is Vice President and General Manager of Chem-Solv. As Vice President and General Manager of Chem-Solv, Mr. Austin is responsible for overseeing Chem-Solv's operations. Mr. Austin was present for portions of the United States Environmental Protection Agency's (the "EPA") May 15, 2007 inspection (the "Inspection") and the EPA's May 23, 2007 sampling event (the "Sampling Event") and he is expected to testify about his observations, including the observations concerning the flawed sampling techniques employed by the EPA inspector. Mr. Austin generally is expected to testify about Chem-Solv's operations and give testimony rebutting the allegations in the Complaint.

Specifically, Mr. Austin is expected to testify concerning Chem-Solv's sale of a portion of the sodium hydrosulfide in inventory during the Inspection and the Sampling Event to C.H. Patrick & Co., Inc. ("C.H. Patrick") in October, 2008 and its decision to ship the remainder of its inventory of sodium hydrosulfide off site for disposal in February of 2008 in order to avoid further criticism by the regulators.

Mr. Austin is also expected to testify concerning the rinsewater flow process at the Facility, including the collection, filtration, storage, use and reuse of rinsewater. Specifically, Mr. Austin is expected to testify about Chem-Solv's use and reuse of rinsewater, in lieu of tap water, for the purpose of rinsing off the exterior of drums in preparation for shipment or in the preparation of batches of a coal freeze conditioning agent product ("FreezeCon") that it sold to customers, in order to reduce its water consumption. Mr. Austin may further be expected to testify about Chem-Solv's policy concerning the disposal of spent aerosol cans.

Mr. Austin is further expected to testify in opposition of the civil penalty proposed by the Complainant. For more information concerning Mr. Austin's anticipated testimony, please see the Affidavit of Jamison G. Austin attached to the Respondents' Initial Prehearing Exchange as Respondents' Exhibit 2.

3. Robert Weld. Robert Weld is the Regional Director of the Virginia Department of Environmental Quality (the "DEQ"). He will testify regarding the enforcement histories of Chem-Solv, Inc., and Austin Holdings-VA, L.L.C., including the final resolutions of any enforcement actions or notices.
4. Scott Perkins, P.E. Scott Perkins is a professional engineer and senior consultant with Faulkner & Flynn, Inc. ("F2"). A copy of Mr. Perkins' curriculum vitae is attached to the Respondents' Initial Prehearing Exchange as Respondent's Exhibit 31. Mr. Perkins was retained by Chem-Solv in 2008 to assist in addressing environmental compliance issues under the Resource Conservation and Recovery Act ("RCRA"). He generally is expected to give testimony rebutting the allegations in the Complaint. Specifically, Mr. Perkins is expected to testify that the allegations against Chem-Solv were premised on certain incorrect base assumptions or conclusions by the Complainant, including the following: (1) Rinsewater in the 1,800 gallon holding tank was a regulated waste; (2) settled solids in the 1,800 holding tank were regulated wastes; (3) drums of sodium hydrosulfide in inventory at Chem-Solv's facility was a regulated waste; (4) empty aerosol cans in a solid waste receptacle had not been characterized; and (5) rinsewater and settled solids samples collected by the EPA improperly characterized these materials. Mr. Perkins additionally is expected to testify concerning the basis for his conclusions that the EPA's base assumptions are incorrect. Mr. Perkins also is expected to testify concerning the flawed sampling techniques employed by the EPA inspector, Chem-Solv's policy for disposal of spent aerosol cans, Chem-Solv's management of its inventory of sodium hydrosulfide and the rinsewater flow process in place at the Facility at the time of the Inspection and the Sampling Event. Mr. Perkins may further be expected to testify in opposition to the civil penalty proposed by the Complainant and as to how the specific facts and circumstances of the above-styled matter should be applied to the applicable provisions of the EPA's June 2003 RCRA Civil Penalty Policy (the "RCRA Penalty Policy"). For a more detailed summary of Mr. Perkins' anticipated testimony, please see the report prepared by Mr. Perkins dated September 8, 2011 attached to the Respondents' Initial Prehearing Exchange as Respondents' Exhibit 30.

5. N. Lee Faulkner, P.E. Lee Faulkner is a professional engineer and a senior environmental consultant with F2. A copy of Mr. Faulkner's curriculum vitae is attached to the Respondents' Initial Prehearing Exchange as Respondents' Exhibit 32. Mr. Faulkner is expected to testify as to the waste management practices and procedures of the Respondents. He is further expected to testify concerning why the management of rinsewater and aerosol cans by the Respondents was not conducted in a way to violate applicable waste management laws and regulations.
6. J.P. O'Connor. J. P. O'Connor is an environmental consultant with F2. A copy of Mr. O'Connor's curriculum vitae is attached to the Respondents' Initial Prehearing Exchange as Respondents' Exhibit 33. Mr. O'Connor is expected to testify concerning the flawed nature of the sampling procedures and methodologies involved in this enforcement proceeding and why such flawed sampling procedures and methodologies produced unreliable analytical results and data.
7. Daniel Rakes. Daniel Rakes is a fire official with the City of Roanoke, Virginia. Mr. Rakes is expected to testify concerning the history of the relationship between the Respondents and the Roanoke City Fire Department. He is further expected to testify concerning the character and nature of the Respondents' compliance with applicable local fire regulations. In summary, Mr. Rakes' testimony is expected to reveal that records of fire inspections do not accurately describe the level of the Respondents' compliance or non-compliance with applicable fire codes and regulations.
8. Ronnie Campbell. Ronnie Campbell is a fire official with the City of Roanoke, Virginia. Mr. Campbell is expected to testify concerning the history of the relationship between the Respondents and the Roanoke City Fire Department. He is further expected to testify concerning the character and nature of the Respondents' compliance with applicable local fire regulations. In summary, Mr. Campbell's testimony is expected to reveal that records of fire inspections do not accurately describe the level of the Respondents' compliance or non-compliance with applicable fire codes and regulations.
9. Bill Braxton. Bill Braxton is an Assistant Commonwealth's Attorney for the City of Roanoke, Virginia. Mr. Braxton is expected to testify concerning the history of the relationship between the Respondents and the Roanoke City Fire Department. Mr. Braxton is further expected to testify concerning the character and nature of the Respondents' compliance with applicable local fire regulations. In summary, his testimony will reveal that records of fire inspections do not accurately describe the level of the Respondents' compliance or non-compliance with applicable fire codes and regulations.
10. Jeremy Daniel Clark. Mr. Clark was employed by Chem-Solv at the time of the Inspection and the Sampling Event. Mr. Clark is expected to testify concerning Chem-Solv's management of its inventory of sodium hydrosulfide in 2008. He is further expected to testify concerning the rinsewater management process at the time of the Inspection and the Sampling Event, including Chem-Solv's reuse of rinsewater

for the purpose of rinsing off the exterior of containers in preparation for shipment to customers and Chem-Solv's use of rinsewater in the preparation of batches of FreezeCon.

11. Clay Vance Conner. Mr. Conner was employed by Chem-Solv at the time of the Inspection and the Sampling Event. Mr. Conner is expected to testify concerning Chem-Solv's preparation of containers for shipment to customers.
12. Jeffrey Sharver. Mr. Sharver is a building inspector with the City of Roanoke, Virginia. He is expected to testify as to Chem-Solv's efforts to comply with all legal and regulatory requirements including the voluntary reconstruction of its Roanoke, Virginia Facility.
13. Donald Wayne Tickle. Mr. Tickle was employed by Chem-Solv as a Maintenance Manager at the time of the Inspection and the Sampling Event. Mr. Tickle is expected to testify concerning Chem-Solv's management of its inventory of sodium hydrosulfide in 2008. He is further expected to testify concerning Chem-Solv's rinsewater management process at the time of the Inspection and the Sampling Event, including Chem-Solv's reuse of rinsewater for the purpose of rinsing off the exterior of containers in preparation for shipment to customers and Chem-Solv's use of rinsewater in the preparation of batches of FreezeCon.

**B. Documents and Exhibits:**

For a complete list of the documents and exhibits that the Respondents may introduce at the hearing held in this matter, please see the list entitled "Respondent's Initial Prehearing Exhibits" attached hereto as Exhibit A. True and correct copies of such exhibits are included in the 3-ring binders filed with the Respondents' Initial Prehearing Exchange. Each of the Respondents' Initial Prehearing Exhibits is labeled in accordance with the instructions set forth in the Prehearing Order issued May 31, 2011 by the Honorable Barbara A. Gunning, and, for ease of reference, the pages of each such exhibit are bates-stamped in sequential numerical order. The Respondents hereby reserve their rights to introduce into evidence, and otherwise use at the hearing held in the above-styled matter, any of the exhibits identified in, and provided with, the Complainant's Initial Prehearing Exchange.

**C. Location of the Hearing.**

Respondents concur with the Complainant and, under 40 C.F.R. §§ 22.19(d) and 22.21(d), hereby request that any hearing in this matter be held in the City of Roanoke, Virginia for the following reasons:

1. The Respondents conduct the business at issue in the above-styled matter in the City of Roanoke, Virginia;
2. The Respondents' Facility is located in the City of Roanoke, Virginia;
3. The conduct upon which the alleged violations are based occurred in the City of Roanoke, Virginia; and
4. Most of the witnesses identified by the Respondents work and/or reside in the City of Roanoke, Virginia, or neighboring jurisdictions, including the County of Roanoke, Virginia and the County of Botetourt, Virginia.

**D. Amount of Time Required for Respondents to Present Their Case:**

Respondents estimate that they will need approximately three (3) days to present their case in chief, if all of the witnesses identified herein should be called to testify at the hearing held in this matter. In the event that they learn certain additional relevant information following their receipt of the Complainant's penalty proposal, or in the course of discovery in this matter, that would result in an increase of the complexity and duration of the Respondents' presentation of evidence at the hearing held in the above-styled matter, Respondents hereby reserve their rights to amend their estimate of the amount of time needed to present their case in chief.

**E. Factual Information Relevant to the Proposed Penalty:**

Respondents respectfully submit that the Complainant's proposed testimony and exhibits, even when viewed in the light most favorable to the Complainant, will not meet the Complainant's burden to establish that the alleged violations occurred and that the Respondents are liable for any civil penalties. Instead, the Respondents submit that the testimony of the witnesses identified by the Complainants and the Respondents and the exhibits identified by the

Complainants and the Respondents will establish that the Respondents made good faith efforts to comply and did comply with applicable statutory and regulatory requirements.

Respondents believe that the testimony of the witnesses identified by the Complainant and the exhibits identified by the Complainant will not establish any deviation by the Respondents from applicable statutory and regulatory requirements or any actual or potential harm to human health or the environment resulting from the facts and circumstances underlying the allegations against the Respondents. Accordingly, the Respondents submit that the Complainant's evidence will not meet its burden to establish a gravity-based component of any assessed penalty. Moreover, the Respondents submit that the evidence identified by the Complainant will not meet the Complainant's burden to establish the duration of the alleged violation. Thus, under such circumstances and under the RCRA Penalty Policy, it would be inappropriate for any civil penalty assessed to include a multi-day component.

Respondents further submit that such witnesses' testimony and such exhibits will establish that the Respondents cooperated with the Complainant's investigation and enforcement of the alleged violations in the above-styled matter and compromised and settled related enforcement matters brought by the Complainant. The Respondents respectfully request that any civil penalty assessed against the Respondents be adjusted accordingly.

Dated: September 8, 2011

Chem-Solv, Inc. and Austin Holdings-VA, L.L.C.

By   
Of Counsel

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