BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III

In the Matter of:	MEMORANDUM OF LAW IN SUPPORT OF RESPONDENTS' MOTION TO TAKE DEPOSITIONS UPON ORAL QUESTIONS
CHEM-SOLV, INC., formerly trading as Chemicals and Solvents, Inc. and AUSTIN HOLDINGS-VA, L.L.C. Respondents. Chem-Solv, Inc. 1111 Industry Avenue, S.E. 1140 Industry Avenue, S.E. Roanoke, VA 24013, Facility.	U.S. EPA Docket Number 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)

MEMORANDUM OF LAW IN SUPPORT OF RESPONDENTS' MOTION TO TAKE DEPOSITIONS UPON ORAL QUESTIONS

COME NOW Respondents Chem-Solv, Inc. ("Chem-Solv") and Austin Holdings-VA, L.L.C. ("Austin Holdings") (collectively, the "Respondents"), by counsel, pursuant to Rule 22.16 (a)(4) of the Consolidated Rules of Practice (40 C.F.R. § 22.16 (a)(4)), and respectfully submit this Memorandum of Law in support of their Motion to Take Depositions Upon Oral Questions of three witnesses identified by the Complainant in its Initial Prehearing Exchange, Kenneth J. Cox, Elizabeth A. Lohman, and Jose Reyna (collectively, the "Complainant's Witnesses").

I. SUMMARY OF ARGUMENT

Certain statements made by the Complainant's Witnesses in declarations filed by the Complainant in support of its Motion for Partial Accelerated Decision are in direct conflict with certain statements made by witnesses identified by the Respondents in their Initial Prehearing Exchange in affidavits submitted to the Court by the Respondents in opposition to the Complainant's Motion for Partial Accelerated Decision. The Respondents seek information concerning the Complainant's Witnesses' mental impressions and their understanding of the facts at issue and the basis therefor that is most reasonably obtained from the Complainant's Witnesses. This information cannot reasonably be obtained by alternative methods of discovery.

The information sought by the Respondents has significant probative value on certain disputed issues of material fact relevant to the issue of liability. The documentation accessible to the Respondents does not fully convey the Complainant's Witnesses mental impressions or their understanding of the facts at issue. The requested depositions will not unreasonably delay this proceeding or unreasonably burden the Complainant.

The Complainant alleges numerous violations in the Complaint and asks the Court to issue immense civil penalties against the Respondent. Consequently, under these circumstances, it would be patently unfair and inconsistent with the requirements of due process to deprive the Respondents of an opportunity to adequately prepare their defense to the Complainant's claims by requiring them to proceed to hearing without deposing the Complainant's Witnesses. Thus, in accordance with the requirements of due process and Rule 22.19(e) of the Consolidated Rules of Practice (40 C.F.R. § 22.19(e)), this Court should permit the Respondents to take depositions upon oral questions of the Complainant's Witnesses.

II. STATEMENT OF THE CASE

A. The Complainant's Complaint and the Respondents' Answer

The Complainant, the Director of the Land and Chemicals Division of the United States Environmental Protection Agency – Region III (the "Complainant"), filed an Administrative Complaint, Compliance Order and Notice of Opportunity for a Hearing (the "Complaint") against the Respondents on March 31, 2011. In the Complaint, the Complainant alleges that the Respondents violated Subtitle C of RCRA, 42 U.S.C. §§ 6921-6939e. Specifically, the Complainant's alleges: (1) that the Respondents owned and operated a hazardous waste storage facility without a permit or interim status (Count I); (2) that Chem-Solv failed to perform Hazardous Waste Determinations (Count II); (3) that Chem-Solv failed to have secondary containment for a hazardous waste storage tank (Count III); (4) that Chem-Solv failed to obtain a tank assessment for a hazardous waste storage tank (Count IV); (5) that Chem-Solv failed to conduct and/or document inspections of a hazardous waste storage tank in facility operating records (Count V); (6) that Chem-Solv failed to comply with Subpart CC standards for hazardous waste storage tanks (Count VI); and (7) that Chem-Solv failed to comply with the closure requirements for a hazardous waste storage tank (Count VII). The Respondents filed a timely Answer to the Complaint denying the substantive allegations set forth therein on May 2, 2011.

B. The Complainant's Initial Prehearing Exchange

Under the terms of the Prehearing Order issued in this proceeding by the Honorable Barbara A. Gunning on May 31, 2011 (the "Prehearing Order"), the Complainant filed its Initial Prehearing Exchange on July 21, 2011. In its Initial Prehearing Exchange, the Complainant

identified Kenneth J. Cox ("Mr. Cox"), Elizabeth A. Lohman ("Ms. Lohman") and Jose Reyna, III ("Mr. Reyna") as potential witnesses at the hearing in this matter.

C. The Respondents' Initial Prehearing Exchange

On September 9, 2011, in accordance with the terms of the Prehearing Order, the Respondents field their Initial Prehearing Exchange. In their Initial Prehearing Exchange, the Respondents identified Jamison G. Austin ("Mr. Austin") as a potential witness at the hearing in this matter. Moreover, attached to its Initial Prehearing Exchange as Respondents' Exhibit 2 (CS 002-006), the Respondents produced an Affidavit executed by Mr. Austin. For ease of reference, a true and correct copy of Mr. Austin's Affidavit is attached hereto as **Exhibit A**.

D. The Affidavit of Jamison G. Austin

In his Affidavit, Mr. Austin describes the rinsewater flow process at Chem-Solv's facility. (See Respondents' Exhibit 2, ¶¶ 12-15, CS 004). Specifically, Mr. Austin states that Chem-Solv stopped washing the inside of its containers in 2001 and that, at the time of the inspection and sampling conducted by the United States Environmental Protection Agency (the "EPA") and the Virginia Department of Environmental Quality (the "DEQ") in May, 2007 (the "Sampling Event"), it only rinsed off the outside of its containers. (See Respondents' Exhibit 2, ¶¶ 12, 15, CS 004).

Mr. Austin further states in his Affidavit that he "personally observed the EPA's inspector collect samples of risewater and settled solids from Rinsewater Tank No.1 during the Sampling Event." (Respondents' Exhibit 2, ¶ 16, CS 004). Based on his personal observations, Mr. Austin describes in detail the flawed sampling methods used by the EPA's inspectors during the Sampling Event. (See Respondents' Exhibit 2, ¶¶ 17-22, CS 004-005).

E. Complainant's Motion for Accelerated Decision

On November 29, 2011, the Complainant filed a Motion for Partial Accelerated Decision seeking entry of an Order finding Chem-Solv liable for the allegations contained in Counts III – VII of the Complaint. In support of its Motion for Partial Accelerated Decision, the Complainant submitted a declaration by Mr. Cox. For ease of reference, a true and correct copy of the Mr. Cox's Declaration is attached hereto as **Exhibit B**.

F. The Declaration of Kenneth J. Cox

In his Declaration, Mr. Cox states that, "[a]ccording to Chemsolv, the Pit was used to accumulate rinsewater generated when hoses and equipment at the Facility acid transfer site are flushed between uses." (Declaration of Kenneth J. Cox, ¶ 11). Mr. Cox further states in his Declaration that, on May 15, 2007, he observed a grated trench drain located below the floor in the blend room located at Chem-Solv's facility. (See Declaration of Kenneth J. Cox, ¶ 14). Mr. Cox goes on to state that "Jamie Austin ... stated that trench inside the blend room was connected to the Pit." (Declaration of Kenneth J. Cox, ¶ 14).

G. Respondents' Opposition to Complainant's Motion for Partial Accelerated Decision

Respondents filed their Response to the Complainant's Motion for Partial Accelerated Decision on December 14, 2011. Attached to their Response, the Respondents submitted a second affidavit by Mr. Austin to the Court. For ease of reference, a true and correct copy of Mr. Austin's Second Affidavit is attached hereto as **Exhibit C**.

In of his Second Affidavit, Mr. Austin states that "[t]he description of the process by which rinsewater accumulated and was managed set forth in Paragraph 11 of Mr. Cox's declaration is inaccurate." (Second Affidavit of Jamison G. Austin, ¶ 7). Mr. Austin goes on to explain the

inaccuracies in Mr. Cox's description of the rinsewater flow process in Paragraph 7 of his Second Affidavit. (Second Affidavit of Jamison G. Austin, ¶ 7).

In Paragraph 9 of his Second Affidavit, Mr. Austin states that he "never told Mr. Cox that the 'trench drain' he observed in the 'Blend Room' was connected to Rinsewater Tank No. 1." (Second Affidavit of Jamison G. Austin, ¶ 9). Mr. Austin further states that he explained the purpose, function, and history of the "trench drain" in detail to Mr. Cox, including the fact that the "trench drain" identified by Mr. Cox was disconnected from Rinsewater Tank No. 1 many years prior to the EPA's inspection in May, 2007. (Second Affidavit of Jamison G. Austin, ¶ 9).

H. Complainant's Reply Brief in Support of its Motion for Accelerated Decision

The Complainant filed its Reply Brief in further support of Complainant's Motion for Partial Accelerated Decision on December 22, 2011. With its reply brief, the Complainant filed declarations of Ms. Lohman and Mr. Reyna. For ease of reference, true and correct copies of the Declaration of Elizabeth A. Lohman and the Declaration of Jose Reyna, III are attached hereto as **Exhibits D and E**, respectively.

1. The Declarations of Elizabeth A. Lohman and Jose Reyna

The Declarations of Ms. Lohman and Mr. Reyna contain many statements that directly conflict statements made by Mr. Austin in his affidavits. For example, in her declaration, Ms. Lohman states that, she encountered Jamie Austin "[o]n the way to the Pit," between 5:00 p.m. and 5:30 p.m. during the Sampling Event on May 23, 2007. (Declaration of Elizabeth A. Lohman, ¶ 8). She further states that, "[t]his encounter, lasting a few minutes at most, was the only time Mr. Austin was in the presence of the sampling inspection team on May 23, 2007. (Declaration of Elizabeth A. Lohman, ¶ 10). This statement directly conflicts Mr. Austin's claim to have "personally observed the EPA's inspector collect samples of risewater and settled solids

from Rinsewater Tank No.1 during the Sampling Event" set forth in Paragraph 16 of his Affidavit. (See Respondents' Exhibit 2, ¶ 16, CS 004).

Similarly, in his Affidavit, Mr. Reyna describes the sampling methods he used in collecting samples of the rinsewater and settled solids contained in Rinsewater Tank No. 1. (See Declaration of Jose Reyna, III, ¶¶ 5-19.) Mr. Reyna's statements are in direct conflict with Mr. Austin's statements concerning the flawed sampling methods used by the EPA's inspectors set forth in Paragraphs 17-22 of his Affidavit. (See Respondents' Exhibit 2, ¶¶ 17-22, CS 004-005)

The Complainant's Motion for Accelerated decision remains pending. The hearing in this proceeding is presently scheduled to begin on March 20, 2012.

III. ARGUMENT

A. Standard for Taking Depositions Upon Oral Questions

Under Rule 22.19(e) of the Consolidated Rules of Practice, a party may move for additional discovery after the parties' information exchange. 40 C.F.R. § 22.19(e)(1). A motion for additional discovery must:

(1) specify the method of discovery sought;

(2) provide the proposed discovery instruments; and

(3) describe in detail the nature of the information sought.

Id. The Court may exercise its discretion to grant a motion for additional discovery, if the requested discovery:

(i) Will neither unreasonably delay the proceeding nor unreasonably burden the nonmoving party;

(ii) Seeks information that is most reasonably obtained from the non-moving party, and which the non-moving party has refused to provide voluntarily; and

(iii) Seeks information that has significant probative value on a disputed issue of material fact relevant to liability or the relief sought.

40 ..F.R. § 22.19(e)(1).

Here, the Respondents seek to obtain certain information concerning the Complainant's witnesses' mental impressions and their understanding of certain facts concerning the Sampling Event and Chem-Solv's operations by taking depositions upon oral questions of the Complainant's Witnesses. Under Rule 22.19(e)(3) of the Consolidated Rules of Practice (40 C.F.R. § 22.19(e)(3)), the Court may order depositions upon oral questions in accordance with 40 C.F.R. § 22.19(e)(1) and upon an additional finding that "[t]he information sought cannot reasonably be obtained by alternative methods of discovery." 40 C.F.R. § 22.19(e)(3). For the following reasons, the should grant the Respondents leave to take depositions upon oral questions of the Complainant's Witnesses.

B. The Requested Depositions Upon Oral Questions Will Neither Unreasonably Delay this Proceeding Nor Unreasonably Burden the Complainant.

Under the terms of the Order Rescheduling Hearing and Prehearing Deadlines issued in this proceeding by the Honorable Barbara A. Gunning on December 6, 2011 (the "Rescheduling Order"), the hearing of this matter was rescheduled for March 20, 2012 and the deadline for all non-dispositive pre-hearing motions was moved to February 3, 2012. Accordingly, the Respondents' Motion is timely.

In spite of a potential delay, this Court granted a respondent's motion for leave to take the deposition of an identified witness in the case of In re: United Refining Co. of Pennsylvania, 1997 EPA ALJ LEXIS 63, *8 (1997). In United Refining of Pennsylvania, this Court found that, although some delay may occur, it would not be an unreasonable delay, because the Respondent sought to depose an EPA inspector on the crucial issue of whether or not an inspection actually took place. Id. In that case, the Respondent initially admitted that an inspection at its facility did

take place on a date certain alleged in the complaint. In re: United Refining Co. of Pennsylvania, 1997 EPA ALJ LEXIS 63, *1 (1997). However, after a subsequent investigation, the Respondent found that none of its employees recalled an inspection on that date. Id. By letter to the Complainant, the Respondent asked for permission to interview the inspector who allegedly performed the inspection "either informally or under oath." Id. at * 3. The complainant declined the respondent's request, and the respondent filed a motion for leave to take the inspector's deposition. Id. at *3-4.

In opposition to the respondent's motion, the complainant argued that the requested deposition would unduly delay the proceeding and that it had given the respondent sufficient documentation – i.e. an inspection report from the day in question, and an affidavit from the inspector affirming the allegations set forth in the complaint. Id. at *5. Because the issue of whether the inspection took place went "to the heart of the complaint," despite the fact that the complainant had submitted an affidavit executed by the person to be deposed, the Court granted the respondents' motion, since the requested deposition was the only way to develop evidence to determine whether or not the inspection actually took place. Id. at * 7-8.

In the case at bar, the allegation that Mr. Austin did not observe the Sampling Event is a serious one that goes to the heart of the Respondents' defenses to the alleged violations set forth in the Complaint. Moreover, the apparent conflicts in the statements made by the Complainant's Witnesses concerning what Mr. Austin allegedly told them about Chem-Solv's operations and the sampling methods used by the EPA's inspectors similarly go to the heart of the Respondents' defenses to the violations alleged in the Complaint. Thus, like in United Refining of Pennsylvania, "while some delay in this case may occur, it will not be unreasonable, particularly in light of the issue to be resolved." Id. at * 8. Moreover, the Respondents believe that there is

sufficient time before the hearing in this matter for the Court to rule on the Respondents' Motion and for the Respondents to take the Complainant's Witnesses' depositions upon oral examination without continuing the hearing or otherwise delaying this proceeding.

Two of the Complainant's Witnesses are EPA employees. The third is an employee of the DEQ. It would not be unreasonably burdensome to require the Complainant to make two of its employees available for depositions. It further would not be unreasonably burdensome to require the Complainant to participate in the deposition of a DEQ employee, particularly in light of the issues to be resolved.

C. The Respondents Seek Information That Is Most Reasonably Obtained from the Complainant's Witnesses and the Complainant Has Refused to Make the Complainant's Witnesses Available for Depositions Voluntarily.

As set forth above, the Respondents seek information concerning the Complainant's Witnesses' mental impressions and understanding of certain disputed material facts relevant to the issue of liability. The documents produced by the Complainant in its Initial Prehearing Exchange and in support of its Motion for Partial Accelerated Decision – i.e. the inspection reports and field notes prepared by the Complainant's Witnesses and the Declarations made by the Complainant's witnesses – do not fully convey the Complainant's Witnesses' mental impressions or their understanding of the disputed facts described above. Thus, the information sought by the Respondents is most reasonably obtained from the Complainant's Witnesses.

In the case of In re: Easterday Janitorial Supply Co., 2001 EPA ALJ LEXIS 19 (2001) this Court found that "[r]elevant documentation, even if accessible by Respondent, might not fully convey the inspectors' mental impressions or understanding of the facts in issue." Id. at * 15. In Easterday Janitorial Supply Co., this Court rejected the complainant's argument that the respondent would be able to glean what witnesses would testify to based on the fact that the

respondent possessed all the documentation that the witnesses would rely on for their testimony. Id. at *15.

Like in Easterday Janitorial Supply Co., the documents accessible to the Respondents do not fully convey the Complainant's Witnesses' mental impressions or understanding of the disputed material facts at issue in this case. Thus, under these circumstances, the most reasonable source of the information sought by the Respondents is the Complainant's Witnesses themselves.

Prior to filing this Motion, the Respondents asked the Complaint to make the Complainant's Witnesses available for depositions voluntarily. The Complainant refused to do so.

D. The Respondents Seek Information That Has Significant Probative Value on a Disputed Issue of Material Fact Relevant to Liability.

The Information sought by the Respondents has significant probative value on disputed issues of material fact relevant to the Respondents' alleged liability. The Environmental Appeals Board has defined the term "probative value" as the "tendency of a piece of information to prove a fact that is of consequence in the case." See e.g. In re: Chautauqua Hardware Corp., 3 E.A.D. 616, 622 (1991) (denying respondent's discovery into EPA policymaking, where such discovery would have no tendency to prove a fact that would bear on the appropriateness of the proposed penalty but could only be used to attack the legal or policy decisions underlying that penalty).

In the instant case, the Complainant's Witnesses' mental impressions concerning whether or not Mr. Austin was present during the Sampling Event tend to prove or disprove a fact that is of consequence to the case. If Mr. Austin were present during the Sampling Event and he observed the EPA's inspectors' flawed sampling methods, then his testimony provides the foundation for the Respondents' challenge to the validity of the analytical data upon which a majority of the violations alleged in the Complaint are based. If, however, Mr. Austin was not present during the Sampling Event, as Ms. Lohman alleges, such information would undermine the

Respondents' challenge to the validity of the Complainant's analytical data. Thus, like the information sought by the respondent in United Refining Co. of Pennsylvania, the information sought concerning the Complainant's Witnesses' mental impressions on this subject goes to the heart of the Respondents' defense to the issue of liability. See In re: United Refining Co. of Pennsylvania, 1997 EPA ALJ LEXIS 63, *8 (1997). Therefore, such mental impressions have significant probative value on a disputed issue of material fact relevant to the issue of liability.

The information sought from Mr. Reyna and Ms. Lohman concerning the apparent conflicts between the Complainant's Witnesses statements concerning the sampling methods used by the EPA's inspectors and Mr. Austin's statements concerning the same subject are similarly of significant probative value on a disputed issue of material fact relevant to the issue of liability. If, as Mr. Austin claims, the EPA's inspectors used flawed sampling methods, the analytical data upon which the violations alleged in the Complaint are based is invalid. The pleadings filed by the parties and the declarations and affidavits submitted to the Court in connection with the Complainant's Motion for Partial Accelerated Decision establish that the validity of the Complainant's analytical data is a disputed issue of material fact relevant to the issue of liability. Therefore, the information sought concerning the EPA's inspectors' flawed sampling methods is of significant probative value to a disputed issue of material fact relevant to Chem-Solv's alleged liability.

Similarly, Mr. Austin's alleged statements to Complainant's Witnesses concerning Chem-Solv's operations tend to prove several facts that are of consequence to Chem-Solv's alleged liability for several of the violations alleged in the Complaint. Specifically, these alleged statements tend to prove that Rinsewater Tank No. 1 held solid waste. Thus, the information sought concerning statements allegedly made by Mr. Austin concerning the nature of Chem-

Solv's operations have significant probative value on a disputed issue of material fact relevant to the issue of liability.

E. The Information Sought by the Respondents Cannot Reasonably Be Obtained By Alternative Methods of Discovery.

As set forth above, the documents accessible to the Respondents, including inspection reports, field notes, and declarations, do not fully convey the Complainant's Witnesses' mental impressions or their understanding of the disputed facts described herein. Accordingly, it is unlikely that any additional documents produced by the Complainant, to the extent such any documents exist, or any responses to interrogatories submitted to the Complainant would fully convey the Complainant's witnesses mental impressions or their understanding of such disputed facts. The best source of information sought by the Respondents concerning the Complainant's Witnesses' mental impressions is the Complainant's Witnesses themselves.

For these reasons, the information sought by the Respondents cannon reasonably be obtained by alternative methods of discovery. Under such circumstances, the requested depositions upon oral examination of the Complainant's Witnesses are appropriate. See In re: StanChem, Inc., 1998 EPA ALJ LEXIS 117, *18 (1998) (granting respondent's request to depose an engineer involved in the permitting of respondent's facility, who may have had information suggesting that the complainant allowed the respondent's exceedances – information not otherwise obtainable by respondent that could support its estoppel defense).

F. Denying the Respondents' Motion Would Be Inconsistent with the Requirements of Due Process

Under the circumstances set forth above, it would be patently unfair and inconsistent with the requirements of due process to deprive the Respondents of an opportunity to adequately prepare

their defense to the alleged violations by requiring them to proceed to hearing without granting them the opportunity to take the depositions upon oral questions of the Complainant's Witnesses.

In the case of In re: Easterday Janitorial Supply Co., 2001 EPA ALJ LEXIS 19 (2001), this Court recognized that "[a]lthough federal courts acknowledge that no constitutional right to discovery exists, they realize that the constitutional requirements of due process may be denied in the absence of discovery." Id. at * 11 (*citing* Housing Auth. of County of King v. Pierce, 711 F. Supp. 19, 22 (D.D.C. 1989). Consequently, "the specific facts of the case must govern, such that 'discovery must be granted if in the particular situation a refusal to do so would so prejudice a party as to deny him due process.'" Id. at *11 (*quoting* McClelland v. Andrus, 606 F.2d 1278, 1286 (D.C. Cir. 1979)).

This court has further held that "it is evident that an agency must always ensure that its procedures satisfy the requirements of due process." Id. at *11-12 (citing Withrow v. Larkin, 421 U.S. 35, 46 (1975) ("Concededly, a 'fair trial in a fair tribunal is a basic requirement of due process.' ... This applies to administrative agencies which adjudicate as well as to courts."); and Swift & Co. v. United States, 308 F.2d 849, 851 (7th Cir. 1962) ("Due Process in an administrative hearing, of course, includes a fair trial, conducted in accordance with fundamental principles of fair play and applicable procedural standards established by law.")

In the case of In re: Coleman Trucking, Inc., 1997 EPA ALJ LEXIS 123 (1997), this Court stated that "[t]he way is now clear ... for the parties to obtain the fullest possible knowledge of the issue of fact before trial." Id. at *10. In Coleman Trucking, Inc., the Court went on to say that "modern instruments of discovery serve a useful purpose ... They together with pretrial procedures make a trial less a game of blindman's bluff and more a fair contest with the basic issues and facts disclosed to the fullest practicable extent." Id. at *10-11.

Given this history of this Court's recognition that the requirements of due process may be denied in the absence of discovery, it would be patently unfair and inconsistent with the requirements of due process to deprive the Respondents of the opportunity to adequately prepare their defense to the violations alleged in the Complaint by requiring them to proceed to hearing without the opportunity to depose Complainant's Witnesses. See In re: Easterday Janitorial Supply Co., 2001 EPA ALJ LEXIS 19, * 14 (2001). In light of the numerous violations alleged in the Complaint and the immense proposed civil penalty, Respondents are entitled to depose the Complainant's Witnesses, consistent with the requirements of due process and the notions of fundamental fairness.

IV. CONCLUSION

For the foregoing reasons, Respondents Chem-Solv, Inc. and Austin Holdings-VA, L.L.C. respectfully request that this Court enter an Order granting them leave to take depositions upon oral questions of Kenneth J. Cox, Elizabeth A. Lohman, and Jose Reyna, III, and any further relief as this Court deems just and proper.

Dated: January 27, 2012

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

By Maxwell H Wiegard
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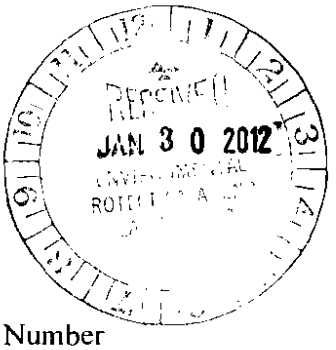
BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III



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

CERTIFICATE OF SERVICE

I certify that I sent by FedEx, next day delivery, a copy of Memorandum of Law in Support of Respondents' Motion for Leave to Take Depositions to the addressees listed below. The original and one copy of the Respondents' Motion for Depositions to the Regional Hearing Clerk, U.S. EPA Region 3, 1650 Arch Street, Philadelphia, PA19103-2029.

The Honorable Barbara A. Gunning, A.L.J.
EPA Office of Administrative Law Judges
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Date: January 27, 2012

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