



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

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## VIRGINIA WASTE MANAGEMENT BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO CHEM-SOLV, INC. EPA ID No. VAD980721088

### SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 10.1-1455, between the Virginia Waste Management Board, and Chem-Solv, Inc., for the purpose of resolving certain violations of the Virginia Waste Management Act and the applicable regulations.

### SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Administrative Process Act" or "APA" means Chapter 40 (§ 2.2-4000 *et seq.*) of Title 2.2 of the Va. Code.
2. "Board" means the Virginia Waste Management Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1401.
3. "BRRO" means the Blue Ridge Regional Office of DEQ, located in Roanoke, Virginia.
4. "CFR" means the Code of Federal Regulations, as incorporated into the Regulations.
5. "Chem-Solv" means the Chem-Solv, Inc., a company authorized to do business in Virginia, and its affiliates, partners, and subsidiaries. Chem-Solv, Inc. is a "person" within the meaning of Va. Code § 10.1-1400.

6. "Container" means any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled, as defined by 40 CFR § 260.10.
7. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
8. "Designated Facility" means (1) A hazardous waste treatment, storage, or disposal facility which: (i) has received a permit (or interim status) in accordance with the requirements of 40 CFR Parts 270 and 124; (ii) has received a permit (or interim status) from a State authorized in accordance with 40 CFR Part 271; or (iii) is regulated under 40 CFR § 261.6(c)(2) or 40 CFR § 266, Subpart F; and (iv) that has been designated on the manifest by the generator pursuant to 40 CFR § 262.20.
9. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
10. "Facility" or "Site" means the Chem-Solv, Inc. industrial facility, located at 1140 Industry Avenue in Roanoke, Virginia.
11. "Generator" means person who is a hazardous waste generator, as defined by 40 CFR § 260.10.
12. "Hazardous Waste" means any solid waste meeting the definition and criteria provided in 40 CFR § 261.3.
13. "LQG" means large quantity generator, a hazardous waste generator that generates 1000 kilograms (2200 pounds) or greater of hazardous waste in a calendar month and meets other restrictions. *See* 40 CFR § 262.34(a)-(b) and (g)-(l).
14. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1455.
15. "Order" means this document, also known as a Consent Order.
16. "Regulations" or "VHWMR" means the Virginia Hazardous Waste Management Regulations, 9 VAC 20-60-12 *et seq.* Sections 20-60-14, -124, -260 through -266, -268, -270, -273, and -279 of the VHWMR incorporate by reference corresponding parts and sections of the federal Code of Federal Regulations (CFR), with the effective date as stated in 9 VAC 20-60-18, and with independent requirements, changes, and exceptions as noted. In this Order, when reference is made to a part or section of the CFR, unless otherwise specified, it means that part or section of the CFR as incorporated by the corresponding section of the VHWMR. Citations to independent Virginia requirements are made directly to the VHWMR.
17. "Solid Waste" means any discarded material meeting the definition provided in 40 CFR § 261.2.

18. "Storage" means the holding of solid or hazardous waste for a temporary period, at the end of which the waste is treated, disposed of, or stored elsewhere, as defined by 40 CFR § 260.10 and 9 VAC 20-81-10, as applicable.
19. "Va. Code" means the Code of Virginia (1950), as amended.
20. "VAC" means the Virginia Administrative Code.
21. "Virginia Waste Management Act" means Chapter 14 (§ 10.1-1400 *et seq.*) of Title 10.1 of the Va. Code. Article 4 (Va. Code §§ 10.1-1426 through 10.1-1429) of the Virginia Waste Management Act addresses Hazardous Waste Management.

### **SECTION C: Findings of Fact and Conclusions of Law**

1. Chem-Solv owns and operates the Facility, at which Chem-Solv handles, processes, and distributes solvents and petroleum products. Operations at this site are subject to the Virginia Waste Management Act and the Regulations.
2. Chem-Solv submitted a RCRA Subtitle C Site Identification Form dated August 9, 2012 that gave notice of regulated waste activity at the Facility as a LQG of hazardous waste. Chem-Solv was issued EPA ID No. VAD980721088 for the Facility.
3. Hazardous wastes generated at the Facility include wastes with the following waste codes: D001, D002, D006, D007, as described in 40 CFR §§ 261.21-24. These hazardous wastes are accumulated in containers at the Facility after generation.
4. On the afternoon of Tuesday, June 12, 2012, Chem-Solv accidentally released ferric chloride solution (37-45%) from a container at the Facility. In a letter dated July 25, 2012, Charles Williams, an attorney representing Chem-Solv, stated that the spill occurred "when there was a container valve failure and ferric chloride product leaked and became mixed with existing rain water." Chem-Solv contracted with WEL, Inc. ("WEL"), a local emergency response contractor, to conduct the cleanup of the spilled ferric chloride solution. Information verbally reported to DEQ on June 14, 2012 by WEL personnel indicated that the volume of the ferric chloride release was approximately 1,100 gallons. Based on a subsequent report written by WEL, Chem-Solv estimated that approximately 100 gallons of 38.56% ferric chloride solution (a virgin product) was released from the tote. As a result of cleanup activities, Chem-Solv generated five 275-gallon totes of waste with total liquid contents of approximately 1,100 gallons including ferric chloride solution, standing water and rinsewater. These were subsequently disposed of as described below.
5. On June 13, 2012, WEL or its subcontractor, Environmental Options, prepared a Facility Profile Form. On the form, WEL or its subcontractor described the waste ferric chloride solution as having a pH between 5 and 9; <2% halogens, and no applicable EPA waste

codes. This report was based on pH readings taken in the field by WEL agents on the day of the event together with generator knowledge. On June 28, 2012, WEL arranged for the transport of the five totes for transportation as "Non-hazardous Diluted Ferric Chloride Solution" to WEL's facility in Roanoke, Virginia, and subsequently to Environmental Options, Inc., in Franklin County, Virginia. A Chem-Solv representative signed the waste manifest. Chem-Solv has indicated that as a part of its assigned duties, WEL made all waste determinations including pH analysis and testing, and made all shipping-related decisions and prepared all shipping documents relating to the initial transport of the five totes.

6. After the five totes arrived at Environmental Options' 10-day transfer facility, the totes were resampled. On July 9, 2012, Environmental Options collected samples for pH. Sample results indicated that three of the five totes exhibited the characteristic for corrosivity (D002).
7. On July 26, 2012, the environmental consulting firm Faulkner & Flynn collected samples from the five totes for pH and TCLP constituents. The sample results indicated that three of the five totes exhibited the characteristic for corrosivity (D002). Additionally, two of the three totes exhibiting the corrosivity characteristic also failed the TCLP test for cadmium (D006) and chromium (D007).
8. On August 3, 2012 and based on more recent data, Chem-Solv prepared new Material Characterization Forms for the waste ferric chloride solution. On August 7, 2012, Chem-Solv prepared a Non-hazardous Waste Manifest (Document No. 081215) for two totes containing "Non-Regulated Material" weighing 4,500 pounds and a Uniform Hazardous Waste Manifest (Tracking Number 002795537 FLE) for two totes containing "Waste Ferric Chloride Solution" with hazardous waste codes D002, D006 and D007 assigned and one tote containing "Waste Ferric Chloride Solution" with hazardous waste code D002 assigned. According to the manifest, the total weight of the three hazardous waste totes equaled 6,500 pounds.
9. On August 7, 2012, the five containers were properly shipped from Environmental Options, under the new manifests, to ECOFLO, Inc., a Designated Facility, in Greensboro, North Carolina.
10. On January 3, 2013, based on a review of the administrative file, including documents related to the release, the Department issued Notice of Violation No. NOV-13-01-BRRO-002 to Chem-Solv. The NOV listed the following observations:
  - a. Prior to shipping the waste ferric chloride solution off-site, Chem-Solv did not determine whether any of the solid waste generated during the ferric chloride spill response met the definition of a hazardous waste.
  - b. Prior to shipping the waste ferric chloride solution off-site, Chem-Solv did not use a pH meter and Method 9040C to measure pH in making a waste determination.

- c. Chem-Solv shipped three 275-gallon totes containing a total of 6,500 pounds of hazardous ferric chloride solution without preparing a Uniform Hazardous Waste Manifest (EPA Form 8700-12) to accompany the shipment.
  - d. Chem-Solv did not date the three totes containing hazardous ferric chloride solution with the accumulation start date.
  - e. Chem-Solv did not label the three totes containing hazardous ferric chloride solution with the words "Hazardous Waste".
  - f. Chem-Solv did not determine whether the hazardous waste ferric chloride solution had to be treated before it can be land disposed.
  - g. Chem-Solv did not prepare a one-time written notice, including information that the D002, D006 and D007 hazardous waste is subject to LDR requirements.
  - h. Chem-Solv did not identify the underlying hazardous constituents in the hazardous waste ferric chloride solution.
  - i. Chem-Solv did not immediately notify DEQ of its generator status after generating greater than 2,200 pounds of hazardous waste during its response to the ferric chloride solution spill.
11. 40 CFR § 262.11 requires that a person who generates a solid waste, as defined in 40 CFR § 261.2, determine if that waste is a hazardous waste.
  12. 40 CFR § 261.22(a)(1) states that a solid waste exhibits the characteristic of corrosivity if a representative sample of the waste is aqueous and has a pH less than or equal to 2 or greater than or equal to 12.5, as determined by a pH meter using Method 9040C in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", EPA Publication SW-846.
  13. 40 CFR § 262.20(a)(1) requires that a generator who transports, or offers for transport a hazardous waste for offsite treatment, storage, or disposal, prepare a Manifest on EPA Form 8700-22.
  14. 40 CFR § 262.34(a)(2) requires generators to mark each hazardous waste container with the date upon which each period of accumulation begins.
  15. 40 CFR § 262.34(a)(3) requires generators to mark each hazardous waste container with the words "Hazardous Waste".
  16. 40 CFR § 268.7(a)(1) requires generators to determine if the waste has to be treated before it can be land disposed.
  17. 40 CFR § 268.7(a)(2) requires generators to send a one-time written notice to each treatment or storage facility receiving the waste if the waste does not meet the treatment

standards.

18. 40 CFR § 268.9(a) requires that if a generator determines that their waste displays a hazardous characteristic, the generator must determine the underlying hazardous constituents in the characteristic waste.
19. 9 VAC 20-60-315(D) requires anyone who becomes a large quantity generator to notify the Department in writing immediately of this change in status and document the change in the operating record.
20. In meetings on March 11 and November 14, 2013, Department staff discussed the violations with representatives of Chem-Solv.
21. On March 22, 2013, Chem-Solv submitted a written response to the NOV.
22. Based on the results of the March 11, 2013 meeting and the documentation submitted by Chem-Solv and its contractors, the Board concludes that Chem-Solv has violated 40 CFR § 262.11, 40 CFR § 262.20(a)(1), 40 CFR § 262.34(a)(2), 40 CFR § 262.34(a)(3), 40 CFR § 268.7(a)(1), 40 CFR 268.7(a)(2), 40 CFR § 268.9(a), and 9 VAC 20-60-315(D), as described in paragraph C(10), above.
23. Chem-Solv has submitted documentation that verifies that the violations described in paragraph C(10), above, have been corrected.

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code § 10.1-1455, the Board orders Chem-Solv, and Chem-Solv agrees to pay a civil charge of \$28,560.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

Chem-Solv shall include its Federal Employer Identification Number (FEIN) (54-1122488) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF).

**SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of Chem-Solv for good cause shown by Chem-Solv, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Chem-Solv admits to the jurisdictional allegations, and agrees not to contest, but does not admit, the findings of fact and conclusions of law in this Order.
4. Chem-Solv consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Chem-Solv declares that it has received fair and due process under the Administrative Process Act and the Virginia Waste Management Act and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Chem-Solv to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Chem-Solv shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Chem-Solv shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Chem-Solv shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which Chem-Solv intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Chem-Solv.
12. This Order shall continue in effect until:
  - a. The Director or his designee terminates the Order after Chem-Solv has completed all of the requirements of the Order;
  - b. Chem-Solv petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
  - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Chem-Solv.

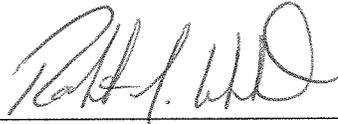
Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Chem-Solv from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

13. Any plans, reports, schedules or specifications attached hereto or submitted by Chem-Solv and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
14. The undersigned representative of Chem-Solv certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Chem-Solv to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Chem-Solv.

15. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.

16. By its signature below, Chem-Solv voluntarily agrees to the issuance of this Order.

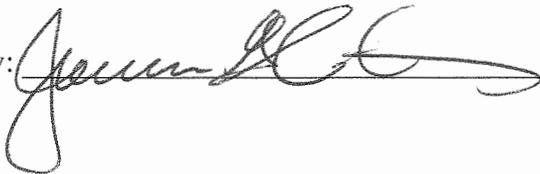
And it is so ORDERED this 7<sup>th</sup> day of October, 2014.



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Robert J. Weld, Regional Director  
Department of Environmental Quality

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Chem-Solv, Inc. voluntarily agrees to the issuance of this Order.

Date: 8/27/2014 By: 

Commonwealth of Virginia

City/County of Roanoke

The foregoing document was signed and acknowledged before me this 27<sup>th</sup> day of

August, 2014, by Jamison G. Austin

  
Notary Public

364846  
Registration No.

My commission expires: 3/31/17

