

FILED IN OPEN COURT
DATE 12-22-15
BY Susan Mery
Roanoke DEPUTY CLERK
DIVISION, W.D. of VA

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

UNITED STATES OF AMERICA :
 :
 v. : Criminal No. 7:15CR106
 :
CHEM-SOLV, INC. :

PLEA AGREEMENT

Pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure, the United States and defendant, **CHEM-SOLV, INC.** (“CHEM-SOLV”), enter into the following plea agreement:

THE CHARGES, STATUTORY PUNISHMENT, AND PLEA

1. **CHEM-SOLV**, being fully cognizant of its rights, by resolution of its Board of Directors, a copy of which is attached hereto, and in exchange for the considerations to be made by the United States¹ as set forth in this Agreement, will knowingly and voluntarily enter a plea of **guilty** to a two-count Information charging it with the following:

A. **Count One** – knowingly transporting hazardous waste without a manifest, to wit: transporting three totes containing hazardous waste ferric chloride solution without a hazardous waste manifest on June 12, 2012, in violation of 42 U.S.C. Section 6928(d)(5).

¹ For the purposes of this agreement, the United States is represented by the United States Attorney’s Office for the Western District of Virginia and the Environmental Crimes Section of the United States Department of Justice.

B. **Count Two** – knowingly storing hazardous waste without a permit, to wit: one drum of hazardous waste that was stored on a trailer to avoid detection by EPA inspectors and stored there from December 13, 2013, to November 19, 2014, in violation of 42 U.S.C. Section 6928(d)(2)(A).

2. The United States and **CHEM-SOLV** agree that the provisions of Chapter 8 of the United States Sentencing Guidelines, which pertain to fines imposed on organizational defendants such as **CHEM-SOLV**, do not apply to environmental offenses, including violations of the Resource Conservation and Recovery Act (RCRA). See 18 U.S.C. Sections 3553 and 3572 and U.S.S.G. Sections 8C2.1, Commentary, and 8C2.10. The United States and **CHEM-SOLV** further agree that the remaining provisions of Chapter 8 of the Sentencing Guidelines, including community service and probation, apply to **CHEM-SOLV**.

3. The United States and **CHEM-SOLV** agree that the maximum fine for a RCRA violation is \$50,000 per day of violation pursuant to Title 42, United States Code, Section 6928(d).

The United States and **CHEM-SOLV** agree that a special assessment of \$400 per count of conviction must be imposed pursuant to Title 18, United States Code, Section 3013(a)(2)(B), and that a period of probation of up to five years per count may be imposed pursuant to Title 18, United States Code, Section 3561.

ACKNOWLEDGMENT AND WAIVER OF RIGHTS

4. **CHEM-SOLV** is represented in this matter by E. Scott Austin, Esquire, and Justin M. Lugar, Esquire. **CHEM-SOLV** acknowledges its right to assistance of counsel, which it has exercised, as evidenced by the signature of **CHEM-SOLV's** attorneys indicating that they have witnessed and approved this Plea Agreement.

5. **CHEM-SOLV** understands that it has an absolute right to be tried by a jury. **CHEM-SOLV** understands that, at such trial, it would have the right to require the United States to prove the charged case against **CHEM-SOLV** beyond a reasonable doubt, and that **CHEM-SOLV** would have the right to confront and cross-examine the United States' witnesses and to present witnesses on its own behalf. **CHEM-SOLV** understands that by pleading guilty, **CHEM-SOLV** expressly waives those rights, acknowledges its guilt, and acknowledges that no trial will in fact occur. **CHEM-SOLV** understands that, by pleading guilty, the only action remaining to be taken in this case is the imposition of the sentence.

6. **CHEM-SOLV** acknowledges that it has reviewed and discussed the pending Information against it in this matter with its attorneys and that its attorneys have explained to **CHEM-SOLV** their understanding of the Government's evidence.

7. **CHEM-SOLV** agrees that there is a legal and factual basis to support each and every element of the offenses charged in the Information for the Court.

8. **CHEM-SOLV** agrees and understands that this agreement is intended to bind **CHEM-SOLV** and its affiliates for purposes of agreeing to and implementing the

Environmental Compliance Plan for all of the facilities owned, operated, or managed by **CHEM-SOLV**. If **CHEM-SOLV** changes names, reorganizes, merges, or otherwise ceases operations in its current form, the person or entity acquiring the assets or taking over the operation of the **CHEM-SOLV** business shall take over the obligations of this agreement, except that this provision shall not apply to a sale of assets to an unrelated third-party that is not intended to circumvent the obligations of this agreement.

9. **CHEM-SOLV** understands and agrees that it shall not engage in any action that seeks to avoid the obligations and conditions set forth in this Plea Agreement. **CHEM-SOLV** further agrees to provide the United States Attorney's Office for the Western District of Virginia and the United States Probation Office for the Western District of Virginia with immediate notice of any name change, business reorganization, change of control or ownership, or similar action that significantly impacts the operation of its business or the implementation and fulfillment of this Plea Agreement.

10. No change in name, change in corporate or individual control, business reorganization, change in ownership, merger, change of legal status, sale or purchase of assets, or similar action shall alter **CHEM-SOLV's** responsibilities under this agreement, except that this provision shall not apply to a sale of assets to an unrelated third-party that is not intended to circumvent the obligations of this agreement. **CHEM-SOLV** shall not engage in any action that seeks to avoid the obligations and conditions set forth in this agreement. This agreement, together with all of the obligations and terms hereof, shall

inure to the benefit and shall bind assignees, parent corporations, subsidiaries, affiliates, successors-in-interest, and transferees of **CHEM-SOLV**.

11. **CHEM-SOLV** agrees that this Plea Agreement will be executed and signed by a person authorized by law, and by **CHEM-SOLV**, to enter into this agreement and to plead guilty on behalf of **CHEM-SOLV**. **CHEM-SOLV** further agrees that it will provide the United States Attorney's Office for the Western District of Virginia an original written resolution signed by the Board of Directors certifying that **CHEM-SOLV** is authorized to plead guilty to the Information, and to enter into and comply with all provisions of this Agreement, and an appropriate resolution certifying that **CHEM-SOLV** is authorized to undertake the Environmental Compliance Plan obligations under this agreement. The resolution shall further certify that an identified individual is authorized to sign this agreement and to take these actions and that all corporate formalities, including but not limited to approval by **CHEM-SOLV**'s directors, required for such authorization have been observed.

THE AGREED SENTENCE

12. The parties agree pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C) to recommend that **CHEM-SOLV** be sentenced as follows:

- A. **CHEM-SOLV** will pay a criminal fine in the amount \$1,000,000.00.
- B. **CHEM-SOLV** will be placed on probation for five years on the terms and conditions contained in paragraph 13.

C. During probation, **CHEM-SOLV** will initiate and complete community service projects, as described in paragraph 13(A), at a cost which shall amount to not less than \$250,000.

CONDITIONS OF PROBATION

13. **CHEM-SOLV** agrees to the following terms and conditions of probation:

A. **COMMUNITY SERVICE PROJECTS** - **CHEM-SOLV** will spend not less than \$250,000 during probation on community service projects approved by the United States prior to sentencing. **CHEM-SOLV** will submit a proposed list of projects to the United States Attorney's Office for review within 30 days of entry of the guilty plea. Because the community service payment is designated as community service by an organization, **CHEM-SOLV** agrees that it will not seek any reduction in its tax obligations as a result of this payment. In addition, since the payment constitutes community service, **CHEM-SOLV** will not characterize, publicize, or refer to the payment as a voluntary donation or contribution. **CHEM-SOLV** agrees that the fine and community service will be non-dischargeable in any bankruptcy proceeding and that **CHEM-SOLV** will not seek or cause to be sought a discharge or a finding of dischargeability as to this obligation.

was agreed by the parties,
JM
PMW

B. **ENVIRONMENTAL COMPLIANCE PROGRAM** – As a condition of probation, **CHEM-SOLV** will develop, fund, and implement a comprehensive Environmental and Safety Compliance Plan (“ECP”) to prevent future violations at any facility at which **CHEM-SOLV** and/or any of its owners, principals, or officers have an

interest consistent with U.S.S.G. § 8D1.4(c). The ECP will be prepared by an outside and independent environmental consultant acceptable to the United States. CHEM-SOLV shall submit a proposed ECP to the United States for review within 30 days of the entry of this Plea Agreement; the United States shall review any such submission and provide comment to CHEM-SOLV within 30 days of receipt; and CHEM-SOLV shall submit a final proposed ECP to the Court within 30 days of receipt of the United States' comments and at least 30 days prior to sentencing. A failure to fully fund and fully implement the ECP will constitute a violation of probation and will constitute a material breach of this Plea Agreement. CHEM-SOLV shall pay whatever costs are necessary to develop, fund, and implement the ECP. The ECP shall be implemented and remain in full force and effect throughout the term of probation.

was agreed by the parties,
JMS
JMS

C. ENVIRONMENTAL AUDITS - CHEM-SOLV will conduct an audit of each of its facilities at least once per calendar year to determine whether they are in compliance with the ECP and all applicable environmental and worker safety regulations. The audits will be conducted by an outside and independent environmental consultant acceptable to the United States. The first audit will be performed no later than 180 days after the Court imposes sentence in this case. A failure to perform an environmental audit pursuant to this section will constitute a violation of probation and will constitute a material breach of this Plea Agreement. CHEM-SOLV shall bear all costs associated with the required, environmental audits.

i. **CHEM-SOLV** will submit within 90 days of entry of the guilty plea documentation identifying the consultant, and providing a copy of the contract between **CHEM-SOLV** and the consultant which details the scope of the audit to be performed and a schedule of interim and final deadlines for the first annual audit. Similar information will be submitted at least 45 days prior to performance of successive annual audits.

ii. The consultant will follow generally accepted environmental auditing techniques, procedures and policies in designing and executing the audits, including the reporting of deficiencies and corrective measures. The audits will cover all regulated environmental matters at **CHEM-SOLV's** facilities regardless of whether regulation occurs at the federal or state level.

iii. **CHEM-SOLV** will notify the U.S. Probation Office, U.S. Attorney's Office, the EPA and the VADEQ at least 10 days prior to commencement of each annual audit. Each agency will have the right to have personnel accompany the consultant during all or part of each annual audit.

iv. **CHEM-SOLV** will have the consultant prepare a draft report of its findings and recommendations which will be furnished to the Probation Office, the U.S. Attorney's Office, the EPA and the VADEQ at the same time the consultant gives it to the **CHEM-SOLV**.

v. **CHEM-SOLV** will have the consultant prepare and furnish to the Probation Office, the U.S. Attorney's Office, the EPA and the VADEQ a final report on its findings and recommendations at the same time the consultant provides it to the **CHEM-SOLV**.

vi. **CHEM-SOLV** will submit a written report to the Probation Office, the United States Attorney's Office, the EPA and the VADEQ no later than 30 days after receiving the final consultant's report for each audit, detailing what action **CHEM-SOLV** will or has taken to correct any noted deficiencies and regulatory violations.

D. DEDUCTIONS – **CHEM-SOLV** shall not seek nor take a tax deduction for any monies paid as a fine under this plea agreement, including monies that are spent preparing the ECP or performing environmental audits.

AGREEMENTS BY CHEM-SOLV AND THE UNITED STATES

14. As part of this Agreement, **CHEM-SOLV** agrees that:

A. REMEDIES FOR BREACH OF PLEA AGREEMENT - **CHEM-SOLV** understands and agrees that if it ~~breaches any provision of this agreement,~~ ^{violates any term of its probation} at any time, the United States Attorney's Office may, at its election, pursue any or all of the following remedies: (a) ~~declare this Plea Agreement void and proceed to trial on all violations known to the United States as of the date of this Plea Agreement without regard to any statute of limitations which may have run at the time of the breach;~~ (b) ~~refuse to be bound by the terms of this Agreement;~~ and (c) move the Court to impose an additional monetary penalty up to the original statutory maximum. The remedies set forth above are cumulative, and not mutually exclusive.

JM
JMS
JMS

B. WAIVER OF APPEAL AND COLLATERAL CHALLENGES – In exchange for the concessions made by the United States in this plea agreement, **CHEM-SOLV** knowingly and expressly waives the right to appeal any sentence that is imposed within the applicable Sentencing Guideline range as determined by the parties, further waives the right to appeal the manner in which that sentence was determined on the grounds set forth in Title 18, United States Code, Section 3742, and further waives the right to appeal any other aspect of the conviction or sentence, including any order of restitution. **CHEM-SOLV** reserves only the right to appeal any portion of the sentence that is an upward departure. **CHEM-SOLV** also waives all collateral challenges to its conviction, sentence, and the procedure by which the court adjudicated guilt and imposed sentence, except non-waivable claims of ineffective assistance of counsel.

~~C. WAIVER OF STATUTE OF LIMITATIONS - If, for any reason, this Plea Agreement is withdrawn, or otherwise not consummated by the entry of the convictions and sentences provided for under this Plea Agreement, or if this Agreement is breached by **CHEM-SOLV**, or set aside by any Court, **CHEM-SOLV** hereby waives its right to raise the defense of the statute of limitations as to any charges which could have been brought as of the date this agreement is signed but were not charged as a result of this Plea Agreement.~~

Handwritten initials:
JMK
JMK
JMK

15. As part of this Agreement, the United States agrees that it will accept the pleas of guilty by **CHEM-SOLV** as provided above, in full satisfaction of all possible federal criminal charges that might have been brought against **CHEM-SOLV**.

16. The United States and **CHEM-SOLV** further agree to the following:

A. Nothing in this Plea Agreement limits the right of the United States to prosecute criminal charges for any false statements made in connection with the plea or sentencing proceedings in this case.

B. Nothing in this Plea Agreement limits the right of any agency of the United States to seek and take civil or administrative action against **CHEM-SOLV**, including but not limited to any action relating to suspension, debarment or listing.

C. The United States and **CHEM-SOLV** may comment on the evidence and circumstances of this case and bring to the Court's attention all facts relevant to sentencing. The United States reserves the right to rebut any statement made by or on behalf of **CHEM-SOLV** at sentencing.

D. All notices and written submissions required to be sent to the EPA shall be sent to Martin Harrell, Office of Regional Counsel (3RC00), U.S. Environmental Protection Agency, 1650 Arch St., Philadelphia, Pennsylvania 19103. All notices and written submissions required to be sent to the VADEQ shall be sent to the Director, West Central Regional Office, VADEQ, 3019 Peters Creek Road, Roanoke, Virginia 24019. All notices and written submissions required to be sent to the United States Attorney's Office shall be sent to Jennie L. M. Waering, Assistant United States Attorney, P.O. Box 1709, Roanoke, Virginia 24008.

E. The United States and **CHEM-SOLV** agree that no additional promises, agreements or conditions have been entered into other than those set forth in this document, and none will be entered into unless in writing.


ACCEPTANCE OF THE TERMS OF THIS PLEA AGREEMENT

17. I, the authorized representative for **CHEM-SOLV**, affirm that this document contains all of the agreements made between **CHEM-SOLV** – with the assistance of counsel – and the United States regarding this plea. There are no other promises, assurances, or agreements the United States has made or entered into with **CHEM-SOLV** that have affected the decision to enter any plea of guilty or to enter into this agreement. If there are any additional promises, assurances, or agreements, I and the United States will jointly inform the Court in writing before I enter the guilty pleas on behalf of **CHEM-SOLV**. I enter into this agreement knowingly and voluntarily. I understand that anything that I discuss with **CHEM-SOLV's** attorneys is privileged and confidential, and cannot be revealed without **CHEM-SOLV's** permission. Knowing this, I agree that this document will be filed with the Court.

CHEM-SOLV is satisfied with the representation given **CHEM-SOLV** by its attorneys and I am prepared to repeat this statement at the time I stand before the Court and enter **CHEM-SOLV's** guilty pleas. **CHEM-SOLV's** attorneys and I have discussed all possible defenses to the charges to which **CHEM-SOLV** is pleading guilty. **CHEM-SOLV's** attorneys have investigated **CHEM-SOLV's** case and followed up on any information and issues **CHEM-SOLV** has raised to **CHEM-SOLV's** satisfaction. **CHEM-SOLV's** attorneys have taken the time to fully explain the legal and factual issues involved in this case to **CHEM-SOLV's** satisfaction. The attorneys and **CHEM-SOLV** have discussed the statutes applicable to **CHEM-SOLV's** offense and sentence as well as

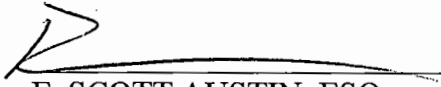
the possible effect that the United States Sentencing Guidelines may have on **CHEM-SOLV's** sentence.

Based on **CHEM-SOLV's** complete understanding of this Plea Agreement, **CHEM-SOLV** therefore wishes to enter a plea of guilty to Counts 1 and 2 of the Information filed in this case.

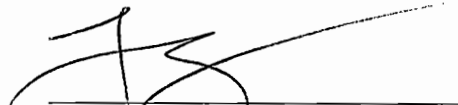

CHEM-SOLV, INC.
Jamison G. Austin
Vice President
Authorized Representative of Defendant

Date: 11/11/2015

As counsel for **CHEM-SOLV**, I have discussed all plea offers and the terms of this plea agreement with **CHEM-SOLV**, have fully explained the charges to which **CHEM-SOLV** is pleading guilty and the necessary elements, all possible defenses, and the consequences of a guilty plea to a felony. Based on these discussions, I have no reason to doubt that **CHEM-SOLV** is knowingly and voluntarily entering into this agreement and entering a plea of guilty. I know of no reason to question **CHEM-SOLV's** competency to make these decisions. If, prior to the imposition of sentence, I become aware of any reason to question **CHEM-SOLV's** competency to enter into this plea agreement or to enter a plea of guilty, I will immediately inform the Court.



E. SCOTT AUSTIN, ESQ.
Gentry Locke
Attorney for **CHEM-SOLV**


Date: 11/13/15



JUSTIN M. LUGAR, ESQ.
Gentry Locke
Attorney for **CHEM-SOLV**

Date: 11/13/15

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By:  Date: November 13, 2015
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