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IN THE UNITED STATES DISTRICT COURT FILE DIVISION, W.D. of VA
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

UNITED STATES OF AMERICA :
 :
 v. : Criminal No. 715CR106
 :
 CHEM-SOLV, INC. :

UNITED STATES' STATEMENT OF FACTS

In support of Defendant CHEM-SOLV, INC.'s plea of guilty to Counts One and Two of the Information filed in this case, the parties agree that, had this case proceeded to trial, the Government would have proven the following facts beyond a reasonable doubt.

Background Facts

1. CHEM-SOLV, INC. ("CHEM-SOLV") operated a chemical blending and distribution facility located at 1111 and 1140 Industry Avenue, S.E., Roanoke, Virginia. CHEM-SOLV primarily purchased unblended substances from producers or wholesalers and then resold those substances to customers, either directly or after repackaging. CHEM-SOLV also blended substances to make products meeting customer requests.

2. Due to the nature of its business, CHEM-SOLV was subject to periodic inspections by the Environmental Protection Agency (EPA), Virginia Department of Environmental Quality (VADEQ), and other regulatory agencies. As a result of such inspections, CHEM-SOLV was aware of the procedures surrounding these inspections and its obligation to maintain compliance with EPA and VADEQ regulations.

3. At various points, CHEM-SOLV has been found to be in violation of certain permitting and statutory requirements by EPA and VADEQ. As a result of those violations, CHEM-SOLV was required to pay monetary fines. CHEM-SOLV was also required to bring its facility into compliance with the regulations that it had violated.

Facts Supporting Count One

4. One of the chemicals that CHEM-SOLV purchased and resold was ferric chloride, a water soluble, corrosive chemical which has numerous industrial uses. Given its low acidic pH, ferric chloride is a hazardous substance which has the potential to pose a hazard to human health or the environment.

5. On June 12, 2012, CHEM-SOLV employees spilled several hundred gallons of ferric chloride when a container ruptured on the CHEM-SOLV property. The ferric chloride pooled on the CHEM-SOLV property, in a drainage ditch used by CHEM-SOLV as secondary containment. Some of the ferric chloride mixture flowed off of CHEM-SOLV's property via the drainage ditch and onto a neighboring property. A rain event added to the flow of the ferric chloride mixture offsite. The neighboring property owner was not notified of the spill.

6. CHEM-SOLV contacted an environmental cleanup company, which vacuumed most of the ferric chloride mixture onto a truck for transport. All told, approximately 4,500 pounds of ferric chloride mixture were vacuumed onto the truck and subsequently into five 275-gallon containers. The ferric chloride mixture was not properly tested to determine if it exhibited hazardous characteristics. The ferric chloride mixture in the five 275-gallon totes was stored on site for approximately two weeks. At

the direction of CHEM-SOLV employees, the material was then classified as non-hazardous and transported to a waste disposal facility which was not permitted to handle hazardous wastes. As a result of the lack of appropriate characterization, the totes and the transporting vehicle were not properly placarded as containing hazardous waste.

7. After the totes containing the ferric chloride mixture arrived at the waste disposal facility, EPA personnel sampled the totes. The samples were analyzed by EPA technical personnel. The tests results revealed that some of the ferric chloride mixture exhibited the corrosivity characteristic as that term is defined in 40 C.F.R. § 261.22. The test results further showed that some of the ferric chloride mixture also exhibited the toxicity characteristic, as that term is defined in in 40 C.F.R. § 261.24. As such, the mixture constituted hazardous waste as that term is defined at 42 U.S.C. § 6903(5)(B).

8. Hazardous wastes, such as the above-referenced ferric chloride mixture, must be transported by a permitted hazardous waste transporter, and must be accompanied by a Uniform Hazardous Waste Manifest and appropriate placarding. 40 C.F.R. §§ 262.11, 262.20(a)(1), 262.34(a). The hazardous ferric chloride mixture was transported from the Chem-solv facility to waste disposal facility without the required manifest or proper placarding. The hazardous waste regulations are in place to protect human health and the environment, and to ensure the proper treatment, storage, or disposal of hazardous waste from "cradle to grave" -- that is, from its generation to its storage, transportation, treatment, and ultimate disposal.

Facts Supporting Count Two

9. As a matter of course, EPA and VADEQ regularly provide advance notice of the date and time that they conduct inspections.

10. In or around December 2013, CHEM-SOLV was notified that the EPA would conduct an inspection of CHEM-SOLV's Roanoke facility on December 17, 2013.

11. At the time the advance notice was given, CHEM-SOLV was storing numerous containers of chemical waste on its facility that should have been properly disposed of previously. CHEM-SOLV had been told during previous inspections that it was a violation to continue to store these particular chemical wastes on its facility.

12. In December 2013, CHEM-SOLV directed its employees to load three trailers with the chemical waste so that they could be taken offsite in order to prevent EPA inspectors from discovering these containers and determining their nature and content. Two of the three trailers were taken offsite. The third trailer, which was not road-worthy, was stored on the CHEM-SOLV property. The trailer was backed up to a chain-link fence which formed the boundary of CHEM-SOLV's property so that the trailer could not be opened.

13. Information obtained from witnesses, and observation by law enforcement officers, confirmed that the third trailer remained on CHEM-SOLV's property from December, 2013 until November, 2014. On November 19, 2014, law enforcement officers executed a search warrant on the third trailer and found numerous containers stored inside the trailer. EPA personnel sampled some of the containers stored on that

trailer. The contents of at least one container tested positive for corrosivity, which is a hazardous characteristic. 40 C.F.R. § 261.22. The corrosive material stored in the trailer for approximately eleven months constituted a hazardous waste as that term is defined at 42 U.S.C. § 6903(5)(B).

14. At no time between December 2013, and November, 19, 2014, did CHEM-SOLV have a permit to store hazardous waste at its Roanoke facility. Chem-Solv was required to obtain a permit in order to store hazardous wastes and was also required to properly store and label the hazardous wastes but failed to do so. These requirements are in place to protect human health and the environment. Further, these requirements provide notification to first responders of what chemicals they may encounter when responding to an emergency, such as a chemical spill or burn.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 21, 2015, I electronically filed the
STATEMENT OF FACTS with the Clerk of the Court using the CM/ECF system, which
will send notification of such filing to counsel of record.

s/Jennie L. M. Waering
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