



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
5 Post Office Square, Suite 100
Boston, Massachusetts 02109-3912

RECEIVED

JUL 30 2012

EPA ORC
Office of Regional Hearing Clerk

BY HAND

July 30, 2012

Wanda Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency - Region I
5 Post Office Square, Suite 100
Boston, MA 02109-3912

Re: In the Matter of: Rhodes Technologies
Docket No. RCRA-01-2011-0124

Dear Ms. Santiago:

Enclosed for filing in the above-referenced matter, please find the original and one copy of the Second Amended Complaint and Notice of Opportunity for Hearing.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in blue ink that reads "Andrea Simpson".

Andrea Simpson

Enclosures

cc: Honorable Susan L. Biro
Honorable Barbara J. Gunning
James P. Doyle, Esq.
Andrew Kolesar, Esq.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I

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JUL 30 2012

EPA ORC
Regional Hearing Clerk

In the Matter of:)

Rhodes Technologies)
498 Washington Street)
Coventry, Rhode Island 02816)

SECOND AMENDED COMPLAINT)
AND NOTICE OF OPPORTUNITY)
FOR HEARING)

Proceeding under Section 3008(a))
of the Resource Conservation and)
Recovery Act, 42 U.S.C. § 6928(a))

Docket No. RCRA-01-2011-0124)

**SECOND AMENDED COMPLAINT
AND NOTICE OF OPPORTUNITY FOR HEARING**

I. STATEMENT OF AUTHORITY

1. The U.S. Environmental Protection Agency ("EPA"), Region 1, issues this Second Amended Complaint and Notice of Opportunity for Hearing ("Second Amended Complaint") pursuant to Section 3008(a) of the Resource Conservation and Recovery Act ("RCRA"), 42 United States Code ("U.S.C.") § 6928(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits ("Consolidated Rules of Practice"), 40 Code of Federal Regulations ("C.F.R.") Part 22.

2. EPA Region 1 ("Complainant") originally issued a complaint, compliance order, and notice of opportunity for hearing ("Original Complaint") in this action to Rhodes Technologies ("Rhodes" or Respondent") on September 30, 2011. Pursuant to 40 C.F.R.

§ 22.14(c), Complainant amended the Original Complaint as of right and filed an Amended Complaint on February 27, 2012.

3. Rhodes served its Answer to the Amended Complaint on March 16, 2012.

4. On April 10, 2012, Complainant and Respondent (together, the “Parties”) accepted an offer from the Office of Administrative Law Judges for alternative dispute resolution (“ADR”) and have actively engaged in ADR since that time.

5. Pursuant to 40 C.F.R. § 22.14(c), a complaint can be amended after an answer is filed only upon motion granted by the Presiding Officer. Complainant has made an unopposed motion to amend the Amended Complaint that has been granted by the Presiding Officer.

6. This Second Amended Complaint alleges that Rhodes has violated Subtitle C of RCRA, Sections 3002 and 3004, 42 U.S.C. §§ 6922 and 6924, and federal and state hazardous waste regulations promulgated and authorized pursuant to RCRA.

7. The Notice of Opportunity for Hearing section of this Second Amended Complaint describes Respondent’s option to file an Answer to this Second Amended Complaint and to request a formal hearing.

8. Notice of commencement of this action has been given to the State of Rhode Island and Providence Plantations (“Rhode Island”) pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

9. The information requested in this Second Amended Complaint is not subject to the Paperwork Reduction Act of 1980, 44 U.S.C. § 3501, et seq.

II. NATURE OF ACTION

10. This is a federal enforcement action under RCRA, 42 U.S.C. §§ 6901-6987, to obtain civil penalties. Specifically, Complainant seeks civil penalties pursuant to Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), for Respondent's violations of regulations promulgated and authorized pursuant to RCRA.

III. RCRA STATUTORY AND REGULATORY FRAMEWORK

11. In 1976, Congress enacted RCRA, amending the Solid Waste Disposal Act, in order to regulate hazardous waste management. See RCRA Subtitle C, 42 U.S.C. § 6921, et seq. Subsequently, Congress has enacted various RCRA amendments, including the Hazardous and Solid Waste ("HSWA") Amendments of 1984. Subtitle C of RCRA establishes a comprehensive federal regulatory program for the management of hazardous wastes. Pursuant to Subtitle C of RCRA, EPA has promulgated regulations that set forth standards and requirements applicable to generators of hazardous waste and to owners and operators of facilities that treat, store or dispose of hazardous waste. These regulations are codified at 40 C.F.R. Parts 260 through 271.

12. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, EPA may authorize a state to administer the RCRA hazardous waste program in lieu of the federal program when EPA deems the state program to be substantially equivalent to the federal program.

13. On January 30, 1986, EPA granted Rhode Island final authorization to administer its base hazardous waste program. See 51 Fed. Reg. 3780 (January 30, 1986). At various later times, EPA has authorized Rhode Island to administer additional hazardous waste regulations.

14. Rhode Island administers its hazardous waste program through the Rhode Island Department of Environmental Management ("DEM"). The Rhode Island regulations implementing the hazardous waste program, promulgated pursuant to the Rhode Island General Laws of 1956, as amended, are found at Rules 1.0 through 16.0 (formerly, Rules 1.00 through 16.00) of Rhode Island DEM, Rules and Regulations for Hazardous Waste Management ("R.I. Rules"). The R.I. Rules contain various EPA-authorized hazardous waste regulations, together with certain non-federally-authorized regulations. Many of the R.I. Rules incorporate federal hazardous waste regulations by reference.

15. The HSWA Amendments of 1984 enacted various new provisions in Section 3004 of RCRA, including Section 3004(n) of RCRA, 42 U.S.C. § 6921(n). Pursuant to Section 3004(n), EPA has published final rules to establish air emission standards for equipment leaks, in order to monitor and control air emissions from equipment that contains or comes into contact with certain hazardous wastes. These regulations are codified at 40 C.F.R. Part 265, Subpart BB—Air Emissions Standards for Equipment Leaks ("Subpart BB") at 40 C.F.R. §§ 265.1050-.1079. EPA has not authorized Rhode Island to administer the Subpart BB regulations.

16. Section 3006 of RCRA, 42 U.S.C. § 6926, as amended, provides, *inter alia*, that authorized state hazardous waste programs are carried out under Subtitle C of RCRA (Sections 3001-3023), 42 U.S.C. §§ 6921-6939e. Therefore, a violation of any requirement of law under an authorized state hazardous waste program is a violation of a requirement of Subtitle C of

RCRA. Pursuant to Sections 3008(a) and 3006(g) of RCRA, 42 U.S.C. §§ 6928(a) and 6926(g), EPA may enforce violations of any requirement of Subtitle C of RCRA, including the federally-authorized Rhode Island hazardous waste program and any federal regulations promulgated pursuant to HSWA for which Rhode Island has not received authorization, by issuing an order assessing a civil penalty.

17. Sections 3008(a)(3) and 3008(g) of RCRA, 42 U.S.C. §§ 6928(a)(3) and 6928(g), provide for the assessment of a civil penalty not to exceed \$25,000 per day of noncompliance for each violation of any requirement of a federal RCRA regulation or a federally-authorized state hazardous waste program. Pursuant to the Debt Collection Improvement Act of 1996 ("DCIA"), 31 U.S.C. § 3701, and EPA's regulations implementing the DCIA, promulgated at 40 C.F.R. Part 19, the maximum civil penalty for violations occurring after January 12, 2009 has been raised to \$37,500 per day for each violation.

IV. GENERAL ALLEGATIONS

18. Rhodes is a Delaware general partnership with a place of business and manufacturing facility ("Facility") located at 498 Washington Street in Coventry, Rhode Island.

19. At its Facility, Rhodes manufactures various chemicals for the pharmaceutical industry.

20. Rhodes's manufacturing processes generate solid wastes that are hazardous wastes, including large quantities of solvent-containing wastes that are ignitable.

21. Rhodes is a “person” within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), 40 C.F.R. § 260.10, and R.I. Rule 3.0 (formerly Rule 3.00). Further, at all times relevant to this Second Amended Complaint, Rhodes has been the “owner” and/or the “operator” of the Facility as defined in 40 C.F.R. § 260.10 and in R.I. Rule 3.0.

22. At all times relevant to this Second Amended Complaint, Rhodes has generated and continues to generate wastes at the Facility that are “hazardous waste” as defined at Section 1004(5) of RCRA, 42 U.S.C. § 6903(5), R.I. Rule 3.0, and 40 C.F.R. § 261.3.

23. In various hazardous waste notifications and reports submitted to Rhode Island DEM and/or EPA, Respondent has admitted that it is a “generator” of hazardous waste at its Facility as defined at 40 C.F.R. § 260.10 and R.I. Rule 3.0.

24. Accordingly, Rhodes is subject to the federally-authorized Rhode Island hazardous waste program’s requirements for generators set forth in R.I. Rule 5.0 (formerly Rule 5.00), et seq. Further, Rhodes is subject to the federal hazardous waste regulations set forth in Subpart BB, as referenced by 40 C.F.R. § 262.34(a).

25. On September 17-18, 2009, two authorized representatives from EPA Region 1 (“EPA inspectors”) conducted an inspection (the “RCRA Inspection”) of the Facility to examine Rhodes’s compliance with federal and federally-authorized state hazardous waste regulations. Based on the RCRA Inspection, the review of documents and other information provided by Rhodes, and the review of other documents and information, Complainant has determined that

Respondent has violated RCRA and its implementing federal and federally-authorized state regulations.

V. SPECIFIC RCRA VIOLATIONS

1. **Failure to Comply with Leak Detection and Repair Standards for Equipment Associated with Hazardous Waste Tanks**

26. As a generator that routinely accumulates hazardous wastes for 90 days or less at its Facility, Rhodes is required to comply with the requirements set out in 40 C.F.R. Part 265, Subpart BB.

27. Subpart BB requirements apply to equipment associated with a hazardous waste storage tank if the equipment contains or contacts hazardous wastes with organic concentrations of at least 10% by weight and the wastes are being stored for 90 days or less. The "equipment" subject to Subpart BB is defined at 40 C.F.R. § 264.1031 as including valves, pumps, compressors, pressure relief devices, sampling connection systems, open-ended valves or lines, and flanges and other connectors. See 40 C.F.R. § 264.1051.

28. The Facility has a tank, identified by Rhodes as "Tank T0102," that is used to store wastes. Tank T0102 has a storage capacity of approximately 8,000 gallons.

29. The waste typically stored in Tank T0102 is "hazardous waste base mother liquor." This waste consists primarily of isopropyl alcohol.

30. The above-described waste is a "hazardous waste" as defined at Section 1004(5) of RCRA, 42 U.S.C. § 6903(5), R.I. Rule 3.0, and 40 C.F.R. § 261.3. Further, the waste has an organic concentration of at least 10% by weight and is stored for 90 days or less.

31. Accordingly, Rhodes is subject to Subpart BB for applicable equipment associated with Tank T0102.

32. Subpart BB requires, among other things, that each piece of equipment to which Subpart BB applies must be marked in such a manner that it can be readily distinguished from other pieces of equipment. See 40 C.F.R. § 265.1050(c). Without such markings, facility personnel and emergency responders would not know whether particular pipes, valves or flanges carried hazardous wastes.

33. In a letter dated July 23, 2009 from an environmental consulting firm to Rhodes, the firm offered to prepare a written program outlining Subpart BB monitoring requirements and leak detection and repair standards for Tank T0102. The letter also stated that it was the firm's understanding that Rhodes personnel would identify all equipment associated with Tank T0102 as being in Subpart BB service and would establish inspection procedures and schedules for the tank's compliance with 40 C.F.R. Part 265, Subpart CC. During the RCRA Inspection on September 17-18, 2009, Facility personnel informed the EPA inspectors that Rhodes had not accepted the consulting firm's offer regarding a Subpart BB compliance program.

34. At the time of the RCRA Inspection, certain equipment associated with Tank T0102 was not marked as being in Subpart BB service. In particular, associated equipment that included pipes, flanges, pumps and valves coming out from the bottom of Tank T0102 was not marked in Subpart BB service. (Associated equipment coming out from the top of Tank T0102 was marked.) A Facility representative confirmed that equipment coming out from the bottom of

Tank T0102 was not marked for Subpart BB service. Accordingly, Rhodes violated Subpart BB requirements at 40 C.F.R. § 265.1050(c).

35. Subpart BB also requires owners and operators to create, for each piece of Subpart BB equipment, an equipment identification number. This identification number, together with the approximate location and type of equipment, the percent-by-weight total organics in the hazardous waste stream at the equipment, the hazardous waste state (gas/vapor or liquid), and method of compliance with Subpart BB, must be recorded in the facility operating log. See 40 C.F.R. §§ 265.1064(b).

36. At the time of the RCRA Inspection, Rhodes's RCRA compliance records showed that Rhodes had not recorded the above-listed information required by 40 C.F.R. § 265.1064(b). Accordingly, Rhodes violated Subpart BB requirements at 40 C.F.R. § 265.1064(b).

2. Failure to Conduct Hazardous Waste Determination

37. R.I. Rule 5.8 (formerly Rule 5.08) requires generators of solid wastes to determine if their wastes are hazardous wastes pursuant to 40 C.F.R. § 262.11 and R.I. Rule 3.0. Forty C.F.R. § 262.11 requires persons generating waste to determine if it is hazardous using various criteria and procedures.

38. At the time of the RCRA Inspection, Rhodes failed to conduct an adequate hazardous waste determination regarding the Facility's palladium catalyst waste. On the fourth floor of the Facility's Building No. 7, there was a 55-gallon drum that according to Facility personnel was being used to collect and store spent palladium catalyst from an adjacent

palladium catalyst charging station. Facility personnel also stated that filters from three filter units associated with the charging station, and personal protective equipment used during charging operations, were collected and stored in this 55-gallon drum. This drum was marked as non-regulated waste.

39. In addition, on the second floor of Building No. 7, there was another 55-gallon drum labeled as containing palladium catalyst waste. This drum was marked as non-regulated waste.

40. Further, at the rear of the Facility's Hazardous Waste Storage Area, there were two 55-gallon drums marked as non-regulated waste consisting of palladium and carbon debris. These drums contained palladium catalyst waste. There was also another 55-gallon drum marked as non-regulated spent activated carbon. According to Facility personnel, this drum also contained palladium catalyst waste.

41. The Material Safety Data Sheet ("MSDS") for palladium catalyst states that "[a]fter use, all catalyst which contains absorbed hydrogen may ignite when dried in air, especially in the presence of organic materials." As such, the Facility's palladium catalyst waste was a hazardous waste because it was ignitable. See 40 C.F.R. § 262.21(a)(2). Because Rhodes improperly determined that palladium catalyst was a non-regulated waste, Rhodes violated R.I. Rule 5.8, which requires that hazardous waste determinations be made in accordance with 40 C.F.R. § 262.11.

3. Failure to Have an Adequate Contingency Plan

42. R.I. Rule 5.2 (formerly Rule 5.02) incorporates by reference 40 C.F.R. § 262.34, which in turn incorporates 40 C.F.R. Part 265, Subpart D—Contingency Plan and Emergency Procedures (“Subpart D”), set out at 40 C.F.R. §§ 265.50-.56.

43. Pursuant to Subpart D, the owner or operator of a hazardous waste facility must maintain a contingency plan. The plan “must be designed to minimize hazards to human health or to the environment from fires, explosions, spills or any other unplanned sudden or non-sudden release of hazardous wastes,” and the plan “must be carried out immediately whenever there is a fire, explosion, or release of hazardous waste ... which could threaten human health or the environment.” See 40 C.F.R. § 265.51.

44. The contingency plan must, among other things, (a) describe arrangements agreed to by local police departments, fire departments, hospitals, and local emergency response teams to coordinate emergency services; (b) contain an up-to-date list of the names, addresses and phone numbers of all the facility’s emergency coordinators; and (c) include the location of each piece of emergency equipment at the facility. See 40 C.F.R. §§ 265.52(c), (d) and (e).

45. At the time of the RCRA Inspection, Rhodes’s contingency plan failed to comply with various requirements set out in Subpart D, including the requirements listed in Paragraph 44 above. Specifically, Rhodes’s emergency contingency plan contained no information on contacting any police or fire departments, or any other entity outside of the Facility, in the event of an emergency. Further, the plan listed an emergency coordinator for the Facility who was no

longer employed there. Finally, the plan contained a description of emergency equipment in a trailer but did not provide the trailer's location at the Facility. Accordingly, Rhodes violated R.I. Rule 5.2, which incorporates by reference the contingency plan requirements of Subpart D.

VI. PROPOSED PENALTY

46. The civil penalty proposed below has been determined in accordance with Section 3008(a) of RCRA, 42 U.S.C. § 6928(a). In determining the amount of any RCRA penalty to be assessed, Section 3008(a) requires EPA to take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. To develop the proposed penalty for the violations cited in this Second Amended Complaint, Complainant has taken into account the particular facts and circumstances of this case with specific reference to EPA's RCRA Civil Penalty Policy, dated June 2003 ("Penalty Policy"). A copy of the Penalty Policy is enclosed with this Second Amended Complaint. The Penalty Policy provides a rational, consistent, and equitable calculation methodology for applying the statutory penalty factors identified above to particular cases.

47. Based on the nature, circumstances, extent, and gravity of the above-cited violations, a RCRA civil penalty in the amount of \$24,466 is hereby proposed to be assessed against Respondent. Attachment I to this Second Amended Complaint explains the reasoning for this penalty. The penalties proposed to be assessed for each count pled in Section V above are as follows:

COUNT

PROPOSED PENALTY

1. Failure to Comply with Leak Detection and Repair Standards for Equipment Associated with Hazardous Waste Tanks	\$ 9,318
2. Failure to Conduct Hazardous Waste Determination	\$ 5,938
3. Failure to Have an Adequate Emergency Contingency Plan	\$ 9,210
Total Proposed Penalty	\$ 24,466

VII. QUICK RESOLUTION

48. Under Section 22.18(a) of the Consolidated Rules of Practice, Respondent has the option of resolving the penalty portion of this Second Amended Complaint at any time by paying in full the proposed penalty amount. Payment of the penalty may be made by a bank, cashier's, or certified check, payable to the Treasurer, United States of America. The check should note the docket number of this Second Amended Complaint (EPA Docket No. RCRA-01-2011-0124) and should be forwarded to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

In addition, at the time of payment, notice of payment of the penalty and a copy of the check should also be forwarded to:

Wanda I. Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
Mail Code ORA18-1
5 Post Office Square, Suite 100
Boston, MA 02109-3912

and

Steven J. Viggiani
Senior Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
Mail Code OES04-3
5 Post Office Square, Suite 100
Boston, MA 02109-3912

VIII. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

49. As provided by Section 3008(b) of RCRA, 42 U.S.C. § 6928(b), and in accordance with 40 C.F.R. § 22.15 of the Consolidated Rules of Practice, Respondent has the right to request a hearing to contest the issues raised by this Second Amended Complaint. Any such hearing will be conducted in accordance with the Consolidated Rules of Practice, a copy of which is provided with this Second Amended Complaint. Respondent's request for a hearing must be incorporated into a written Answer filed by Respondent with the Regional Hearing Clerk at the address provided below **within twenty (20) days of receipt of this Second Amended Complaint.**

50. Respondent's Answer shall clearly and directly admit, deny or explain each of the factual allegations contained in the Second Amended Complaint with regard to which Respondent has any knowledge. See 40 C.F.R. § 22.15(b). Where Respondent has no

knowledge of a particular factual allegation and so states, the allegation will be deemed denied.

Id. Any failure of Respondent to admit, deny, or explain any material fact contained in the Second Amended Complaint constitutes an admission of that allegation. See 40 C.F.R. § 22.15(d).

51. If Respondent fails to file a timely Answer to the Second Amended Complaint, Respondent may be found to be in default pursuant to 40 C.F.R. § 22.17. Such default will constitute, for purposes of this penalty and compliance action, an admission of all the facts alleged in the Second Amended Complaint and a waiver of Respondent's right to contest such factual allegations. See 40 C.F.R. § 22.17(a).

IX. INFORMAL SETTLEMENT CONFERENCE

52. Whether or not Respondent files an Answer requesting a hearing, Respondent may confer informally with Complainant concerning the alleged violations, the amount of the penalty, and/or the possibility of settlement. An informal settlement conference would provide Respondent with an opportunity to provide new information regarding the alleged violations or other issues relevant to this matter. Complainant has the authority to adjust penalties to reflect any settlement reached through informal settlement conferences. The terms of such a settlement would be embodied in a Consent Agreement and Final Order signed by the Parties.

53. Please note that a request for an informal settlement conference does not extend the twenty (20) day period within which a written Answer must be submitted in order to avoid a

default. To request an informal settlement conference, Respondent or its representative should contact Steven J. Viggiani, Senior Enforcement Counsel, at (617) 918-1729 or at viggiani.steven@epa.gov.



Joanna Jerison, Legal Enforcement Manager
Office of Environmental Stewardship
EPA Region 1

7/18/12

Date

Attachment I (Amended)
Explanation of the RCRA Penalty
In the Matter of Rhodes Technologies
EPA Docket No. RCRA-01-2011-0124

The following is an explanation of the reasoning behind the penalty proposed in the Second Amended Complaint against Respondent, Rhodes Technologies (“Rhodes”). Based on the particular facts and circumstances of this case, a penalty has been calculated for Rhodes’s alleged violations in accordance with Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), EPA’s RCRA Civil Penalty Policy (“Policy”), dated June 2003, and the Debt Collection Improvement Act of 1996 and its implementing regulations.

1. **Failure to Comply with Leak Detection and Repair Standards for Equipment Associated with Hazardous Waste Storage Tanks**

Description: As alleged in the Complaint, Rhodes is required to comply with the requirements set out in 40 C.F.R. Part 265, Subpart BB–Air Emissions Standards for Equipment Leaks (“Subpart BB”). Tank T0102 contained wastes with VOC concentrations of at least 10% by weight, so all of Tank T0102’s “associated equipment” (pipes, pumps, valves, etc.) that contained or came into contact with the high-VOC waste were subject to Subpart BB. Rhodes violated Subpart BB by failing to mark some of Tank T0102’s associated equipment as being in Subpart BB service. Rhodes also failed to record Subpart BB compliance information in the Facility’s operating log.

Potential for Harm - Moderate: The Subpart BB regulations are designed to reduce potential air emissions from equipment such as pipes and pumps that carry or come into contact with high-VOC content wastes from hazardous waste storage tanks. This equipment has the potential to leak and cause air pollution if the equipment is not properly maintained and monitored. By violating Subpart BB requirements, Rhodes impaired RCRA’s air emissions control program for such equipment: unmarked equipment could not be properly inspected, and missing compliance records made independent compliance verification difficult. The violations are considered to pose significant harm to the environment and the regulatory program. The potential for harm is considered to be moderate.

Extent of Deviation - Moderate: At the time of the inspection, Rhodes was storing hazardous waste in Tank T0102, which has a storage capacity of approximately 8,000 gallons. Tank T0102 had numerous pieces of associated equipment that were subject to Subpart BB requirements. Some of this equipment was marked as being in Subpart BB

service, but other equipment was not marked. In addition, Subpart BB compliance information was missing for the equipment. The extent of deviation from regulatory requirements is considered to be moderate.

Penalty Assessment: EPA has determined that Rhodes's Subpart BB violations warrant a classification as Moderate/Moderate. The Policy's matrix cell range for such violations is \$7,090 - \$11,330. EPA has determined that the appropriate penalty amount is **\$9,210** (mid-point).

Adjustment for Economic Benefit: There is an upward adjustment to recoup Rhodes's economic benefit from delaying the costs of establishing and maintaining Subpart BB compliance records. The economic benefit, calculated in accordance with EPA's BEN model, is **\$108**.

Total Penalty Amount: $\$9,210 + \$108 = \mathbf{\$9,318}$

2. **Failure to Conduct Adequate Hazardous Waste Determinations**

Description: As alleged in the Complaint, Rhodes failed to conduct an adequate hazardous waste determination for a palladium catalyst waste stream.

Potential for Harm - Moderate: Rhodes's failure to conduct an adequate hazardous waste determination created significant potential risks at the Facility. Unidentified or misidentified waste could be stored in uncontrolled areas where emergency responders and facility personnel might not recognize the waste's associated hazards, increasing the likelihood for mismanagement, improper disposal, release or other events such a fire or explosion. (Rhodes's palladium catalyst waste could ignite if dried.) The violation posed a significant risk of harm to human health and the environment. The potential for harm is considered to be moderate.

Extent of Deviation - Minor: At the time of the EPA Inspection, Rhodes had failed to make an adequate hazardous waste determination for one of the Facility's many waste streams. The extent of deviation is considered to be minor.

Penalty Assessment: EPA has determined that Rhodes's hazardous waste determination violation warrants a classification as Moderate/Minor. The Policy's matrix cell range for such violations is \$4,250 - \$7,090. EPA has determined that the appropriate penalty amount is **\$5,670** (mid-point).

Adjustment for Economic Benefit: There is an upward adjustment to recoup Rhodes's economic benefit from delaying the costs of conducting an adequate hazardous waste determinations for its palladium catalyst waste stream. The economic benefit, calculated in accordance with EPA's BEN model, is \$268.

Total Penalty Amount: \$5,670 + \$268 = \$5,938

3. **Failure to Have an Adequate Contingency Plan**

Description: As alleged in the Complaint, Rhodes was required to maintain a facility contingency plan designed to minimize health and environmental hazards from fires, explosions, spills or other unplanned releases of hazardous wastes. Rhodes's contingency plan was inadequate and lacked many required elements. Among other things, the plan contained no information on contacting any police or fire departments (or any other entity outside of the Facility) in the event of an emergency, listed an emergency coordinator no longer employed at the Facility, and failed to identify the location of stockpiled emergency equipment.

Potential for Harm – Moderate: Rhodes's failure to have a complete and comprehensive contingency plan caused significant potential harm to human health and the environment, especially considering the number of wastes and the hazards posed by them at the Rhodes Facility. A spill or release, fire or explosion involving such materials could be life-threatening. Rhodes's violations increased the risk that such an emergency would not be properly coordinated with facility personnel and first responders, and that emergency equipment could not be readily located or deployed. The violations posed a significant risk of harm to human health and the environment. The potential for harm is considered to be moderate.

Extent of Deviation - Moderate: Although Rhodes did not have an adequate contingency plan, the plan did contain some required elements. The extent of deviation from regulatory requirements is considered to be moderate.

Penalty Assessment: EPA has determined that Rhodes's contingency plan violations warrant a classification as Moderate/Moderate. The Policy's matrix cell range for such violations is \$7,090 - \$11,330. EPA has determined that the appropriate penalty amount is \$9,210 (mid-point).

Total Penalty Amount: \$9,210

In the Matter of: Rhodes Technologies
Docket No. RCRA-01-2011-0124

CERTIFICATE OF SERVICE FOR SECOND AMENDED COMPLAINT

I hereby certify that on July 30, 2012, I provided the original and one copy of the foregoing Second Amended Complaint to the Regional Hearing Clerk via hand delivery, and arranged for copies of the complaint to be mailed to Chief Judge Susan L. Biro and Judge Barbara J. Gunning, and to counsel for Rhodes Technologies, at the following addresses:

Original and one copy,
via hand delivery:

Wanda I. Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region I
Mail Code ORA18-1
5 Post Office Square, Suite 100
Boston, MA 02109-3912

Copies, via express mail:

Honorable Susan L. Biro
Honorable Barbara J. Gunning
U.S. Environmental Protection Agency
Office of Administrative Law Judges
Franklin Court, Suite 350
1099 14th St. NW
Washington, DC 20005

Copy, via express mail:

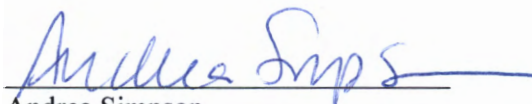
James P. Doyle
Associate General Counsel
Rhodes Technologies
498 Washington Street
Coventry, Rhode Island 02816

Copy, via express mail:

Andrew Kolesar, Esq.
Thompson Hine LLP
312 Walnut Street, 14th Floor
Cincinnati, Ohio 45202

Date:

7/30/12



Andrea Simpson
Senior Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
Mail Code OES04-2
5 Post Office Square, Suite 100
Boston, Massachusetts 02109-3912
phone: (617) 918-1738
e-mail: simpson.andrea@epa.gov