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

September 27, 2012

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

Re: In the Matter of: Rynel, Inc.
Docket Number: CAA-01-2012-0105

Dear Ms. Santiago:

Please find enclosed for filing an original and one copy of an ~~Administrative Penalty Order~~ Complaint and Certificate of Service regarding the above-matter.

Please do not hesitate to contact me at (617) 918-1171 should you have any questions regarding the enclosed.

Sincerely,

Yen Hoang

cc: Jim Detert, President, Rynel, Inc.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1 – NEW ENGLAND

IN THE MATTER OF	Docket Number: CAA-01-2012-0105
Rynel, Inc. 11 Twin Rivers Drive Wiscasset, Maine 04578	**COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING**
Proceeding under Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d)	

I. STATEMENT OF AUTHORITY

1. The United States Environmental Protection Agency ("EPA") issues this administrative Complaint and Notice of Opportunity for Hearing pursuant to Section 113(d) of the Clean Air Act ("CAA"), 42 U.S.C. § 7413(d). This action is subject to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, 40 C.F.R. §§ 22.1-22.52. The authority to issue this Complaint has been delegated to the Director of the Office of Environmental Stewardship, Region 1 ("Complainant").

2. The Complaint notifies Rynel, Inc. ("Respondent" or "Rynel"), that EPA intends to assess civil penalties for Respondent's failure to submit a risk management plan ("RMP") for 2,4-toluene diisocyanate ("2,4-TDI") and 2,6-diisocyanate ("2,6-TDI") before storing these substances in amounts that exceeded the regulatory threshold, in violation of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and its implementing regulations at 40 C.F.R. Part 68.

3. The Notice of Opportunity for Hearing describes Respondent's option to file an Answer to the Complaint and to request a formal hearing.

II. STATUTORY AND REGULATORY AUTHORITY

1. Section 112(r) of the CAA, 42 U.S.C. § 7412(r), authorizes EPA to promulgate regulations and programs in order to prevent and minimize the consequences of accidental releases of certain regulated substances. Specifically, Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), mandates that EPA promulgate a list of substances that are known to cause or may reasonably be anticipated to cause death, injury or serious adverse effects to human health or the environment if accidentally released. Section 112(r)(5) of the CAA, 42 U.S.C. § 7412(r)(5), requires that EPA establish for each regulated substance the threshold quantity over which an accidental release is known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health. Finally, Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), requires EPA to promulgate requirements for the prevention, detection and correction of accidental releases of regulated substances. One of the requirements of Section 112(r)(7), 42 U.S.C. § 7412(r)(7), is that owners or operators of certain stationary sources prepare and implement an RMP.

2. Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E), renders it unlawful for any person to operate a stationary source subject to the regulations promulgated under the authority of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), in violation of such regulations.

3. The regulations promulgated pursuant to Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), are found at 40 C.F.R. Part 68.

4. Forty C.F.R. § 68.130 lists the substances regulated under Part 68 and their associated threshold quantities ("RMP chemicals" or "regulated substances") in accordance with the requirements of Sections 112(r)(3) and (7) of the CAA, 42 U.S.C. § 7412(r)(3) and (7).

5. Under 40 C.F.R. § 68.10, an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process must comply with the requirements of Part 68 by no later than the latest of the following dates: (a) June 21, 1999; (b) three years after the date on which a regulated substance is first listed under 40 C.F.R. § 68.130; or (c) the date on which a regulated substance is first present above a threshold quantity in a process.

6. Each process in which a regulated substance is present in more than a threshold quantity ("covered process") is subject to one of three Risk Management Programs. Pursuant to 40 C.F.R. § 68.10(b), a covered process is subject to Program 1 if the process meets all of the following requirements: 1) for the five years prior to the submission of an RMP, the process has not had an accidental release of a regulated substance where exposure to the substance, its reaction products, overpressure generated by an explosion involving the substance, or radiant heat generated by a fire involving the substance led to off-site death injury or response or restoration activities for an exposure of an environmental receptor; 2) the distance to a toxic or flammable endpoint for a worst-case release assessment conducted under subpart B and 40 C.F.R. § 68.25 is less than the distance to any public receptor, as defined in 40 C.F.R. § 68.30; and 3) emergency response procedures have been coordinated between the stationary source and the local emergency planning and response organizations.

7. Forty C.F.R. § 68.12 mandates that the owner or operator of a stationary source subject to the requirements of Part 68 submit an RMP to EPA, as provided in 40 C.F.R. § 68.150. The RMP documents compliance with the elements of the Risk Management Program to which the source is subject.

8. Sections 113(a) and (d) of the CAA, 42 U.S.C. §§ 7413(a) and (d), as amended by EPA's 2008 Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, promulgated in accordance with the Debt Collection Improvement Act of 1996 ("DCIA"), 31 U.S.C. § 3701, provide for the assessment of civil penalties for violations of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), in amounts up to $32,500 per day for violations occurring between March 15, 2004 and January 12, 2009, and up to $37,500 per day for violations occurring after January 12, 2009.

III. GENERAL ALLEGATIONS

9. Respondent operates a facility located at 11 Twin Rivers Drive in Wiscasset, Maine (the "Facility"), where Respondent manufactures medical and cosmetic-grade hydrophilic polyurethane foam.

10. Respondent is a corporation organized under the laws of the State of Maine. As a corporation, Respondent is a "person" within the meaning of Section 302(e) of the CAA, 42 U.S.C. § 7602(e), against whom an administrative order assessing a civil penalty may be issued under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1).

11. Respondent is the operator of a "stationary source," as that term is defined at Section 112(r)(2)(C), 42 U.S.C. § 7412(r)(2)(C), and 40 C.F.R. § 68.3.

12. On April 26, 2012, EPA conducted an inspection of the Facility to determine compliance with, *inter alia*, Section 112(r) of the CAA.

13. The chemicals 2,4-TDI and 2,6-TDI are RMP chemicals listed at 40 C.F.R. § 68.130 for which an RMP is required when such chemicals are present in a "covered process" in quantities above 10,000 pounds.

14. Mondur TD-80 (also called "Lupranate T80 Type 1 isocyanate") is a mixture consisting of eighty percent 2,4-TDI and twenty percent 2,6-TDI.

15. At all times relevant to the alleged violation, Respondent stored collocated drums of toluene diisocyanate (such as Mondur TD-80 or a similar material containing eighty percent 2,4- TDI and twenty percent 2,6-TDI) at the Facility. These drums were collocated and stacked side-by-side and on top of one another near the Facility's reaction room. Respondent also uses, handles, and/or moves Mondur TD-80 or similar material around the Facility in order to manufacture polyurethane foam or other material.

16. Purchase order records Respondent provided to EPA and statements made by Rynel personnel to EPA's inspector reveal that Respondent exceeded the 10,000 pound threshold for 2,4-TDI during at least two (2) months in 2009, twelve (12) months in 2010, twelve (12) months in 2011, and four (4) months in 2012. Specifically:

a. In November 2009, Respondent stored a maximum of 12,838 pounds of Mondur T-80, equivalent to 10,270 pounds of 2,4-TDI, in a covered process;

b. In December 2009, Respondent stored a maximum of 79,355 pounds of Mondur T-80, equivalent to 63,484 pounds of 2,4-TDI, in a covered process;

c. In 2010, Respondent stored a maximum amount of 91,143 pounds of Mondur T-80, equivalent to 79,214 pounds of 2,4-TDI, in a covered process, with an average inventory of 40,240 lbs of 2,4-TDI per month;

d. In 2011, Respondent stored a maximum amount of 69,032 pounds of Mondur T-80, equivalent to 55,226 pounds of 2,4-TDI, in a covered process, with an average inventory of 31,169 pounds of 2,4-TDI per month;

e. From January through April 26, 2012, Respondent stored at least 10,000 pounds of 2,4-TDI in a covered process.

17. Purchase order records Respondent provided to EPA and statements made by Rynel personnel to EPA's inspector reveal that Respondent exceeded the 10,000 pound threshold for 2,6-TDI at least during December 2009, eleven (11) months in 2010, and ten (10) months in 2011. Specifically:

a. In December 2009, Respondent stored a maximum amount of 79,355 pounds of TDI mixture such as Mondur T-80, equivalent to 15,871 pounds of 2,6-TDI, in a covered process;

b. In 2010, Respondent stored a maximum amount of 91,143 pounds of TDI mixture such as Mondur T-80, equivalent to 18,229 pounds of 2,6-TDI, in a covered process, with an average inventory of 10,060 pounds of 2,6-TDI per month;

c. In 2011, Respondent stored a maximum amount of 69,032 pounds of TDI mixture such as Mondur T-80, equivalent to 13,806 pounds of 2,6-TDI, in a covered process.

18. As the operator of a stationary source that had more than the threshold amount of two regulated RMP substances in a covered process, Respondent was subject to Part 68.

19. In accordance with 40 C.F.R. §§ 68.10(a)-(d), Respondent's storage of 2,4-TDI and 2,6-TDI was subject to the requirements of RMP Program 1 because the distance to a toxic or flammable endpoint for a "worst-case release" of 2,4-TDI and 2,6-TDI was less than the distance to a public receptor.

IV. FINDING OF VIOLATION

20. Complainant realleges and incorporates by reference paragraphs 1 through 19 of this Complaint.

21. From November 2009 through April 26, 2012, Respondent stored 2,4-TDI, a RMP regulated substance, in quantities exceeding the 10,000 pound threshold prescribed by 40 C.F.R. § 68.130, at the Facility. From December 2009 through December 2011, Respondent stored 2,6-TDI, a RMP regulated substance, in quantities exceeding the 10,000 pound threshold prescribed by 40 C.F.R. § 68.130, at the Facility.

22. At all times relevant to alleged violation, Respondent stored 2,4-TDI and 2,6-TDI in a "covered process," as that term is defined in 40 C.F.R. § 68.3.

23. Pursuant to 40 C.F.R. §§ 68.10 and 68.12, and as discussed in Paragraph 19 above, Respondent was required to implement a Program 1 Risk Management Program for the storage of 2,4-TDI and 2,6-TDI in a covered process in quantities over the 10,000 pound threshold.

24. Pursuant to 40 C.F.R. §§ 68.10(a) and 68.150, Respondent was required to prepare and submit a RMP for 2,4-TDI and 2,6-TDI documenting such compliance before it began storing 2,4-TDI and 2,6-TDI in a covered process at the Facility. Forty C.F.R. §§ 68.12 and 68.150-68.185 specify the required elements of the RMP.

25. By failing to submit the RMP for 2,4-TDI and 2,6-TDI before storing these chemicals at the Facility in amounts that exceeded the regulatory threshold, Respondent violated Section 112(r)(7)(e) of the CAA, 42 U.S.C. § 7412(r)(7)(e), and 40 C.F.R. §§ 68.10(a), 68.12 and 68.150.

26. Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), EPA obtained from the United States Department of Justice a waiver of the twelve-month limitation on EPA's authority to initiate administrative cases.

27. Respondent is therefore subject to an assessment of penalties under Section 113(a)(3) and (d) of the CAA, 42 U.S.C. § 7413(a)(3) and (d), and 40 C.F.R. Part 19.

V. PROPOSED CIVIL PENALTY

28. Sections 113(a) and (d) of the CAA, 42 U.S.C. §§ 7413(a) and 7413(d), as amended, authorize EPA to assess a civil penalty of up to $25,000 per day of violation for violations of Section 112(r) of the CAA, 42 U.S.C. § 7412(r). Pursuant to the DCIA, 31 U.S.C. § 3701, and 40 C.F.R. Part 19, violations that occurred between January 30, 1997 and March 15, 2004 are subject to up to $27,500 per day of violation; violations that occur between March 15, 2004 and January 12, 2009 are subject to up to $32,500 per day of violation; and violations that occur after January 12, 2009 are subject to up to $37,500 per day of violation.

29. In light of the above-referenced findings, EPA seeks to assess civil penalties of $99,600 for Respondent's failure to submit a RMP. This violation is significant because a RMP helps facility personnel and emergency responders assess and manage the hazards that are posed by chemicals at a facility so that releases are prevented and the effects of accidental releases are minimized. Toluene diisocyanates are dangerous chemicals, the toxic fumes of which can cause, among others harms, respiratory problems through inhalation. These chemicals are also highly water reactive, and closed containers of 2,4-TDI and 2,6-TDI may forcibly rupture under extreme heat or when contents have been contaminated with water.

30. In determining the penalty described in Paragraph 29, EPA has taken into account the statutory factors listed in Section 113(e) of the CAA, 42 U.S.C. § 7413(e). These factors

include the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence, payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, the seriousness of the violation, and such other factors as justice may require.

31. EPA calculated the penalty proposed in Paragraph 29 in accordance with the "Final Combined Enforcement Response Policy for Clean Air Act Sections 112(r)(1) and 112(r)(7) and 40 C.F.R. Part 68" dated June 2012 ("Combined Enforcement Policy"), a copy of which is enclosed with this Complaint. This policy provides a rational, consistent, and equitable calculation methodology for applying the statutory penalty factors identified above to a particular case.

32. Respondent has stored more than 95,000 pounds of toluene diisocynate (2,4-TDI and 2,6- TDI) over the reporting threshold in a Program 1 process. Both chemicals are highly toxic substances which Respondent did not simply store but also handled, processed and/or reacted 24 hours per day at the Facility. Respondent's failure to submit a Program 1 RMP essentially undermined the ability of the Facility to respond to releases through the development and implementation of an RMP. Therefore, in accordance with Section 3.III.A of the Combined Enforcement Policy, the potential for harm was determined to be "major" and the extent of deviation was determined to be "major." EPA has discretion to select an amount within the range specified in the appropriate matrix box under Section 3.III.A. of the Combined Enforcement Policy. EPA determined that Respondent's failure to submit a Program 1 RMP before storing more than 95,000 pounds of highly toxic RMP chemicals at quantities above

regulatory thresholds fell at the mid-point of the "major" matrix box of Table 1 (at page 12 of the Combined Penalty Policy), resulting in a gravity-based penalty of $33,750.

33. Section 3.II.B. of the Combined Penalty Policy provides for an increase in the penalty where a violation continues for more than one day. The violation alleged in this Complaint continued from November 2009 to April 2012, thirty (30) months. According to Table III of the Combined Penalty Policy, the gravity component of the penalty was increased by $40,500 to reflect the duration of the violation.

34. Section 3.II.C. of the Combined Penalty Policy provides for an increase in the penalty to reflect the size of the violator. Where information regarding a respondent's net worth is not available, the Combined Enforcement Policy allows the use of the respondent's gross revenue from the prior calendar year. For 2011, Respondent's gross revenue was approximately $5.5 million. Accordingly, the gravity component of the penalty was increased by $20,000.

35. After consideration of Respondent's lack of a history of prior violations, degree of culpability, extent of damages, economic benefit, EPA proposes no further adjustments to the gravity-based penalty.

36. According to the "Amendments to EPA's Civil Penalty Policies to Implement the 2008 Civil Monetary Penalty Inflation Adjustment Rule (effective January 12, 2009)," the total applicable gravity-based penalty for any civil penalty must be rounded to the nearest unit of $100. Accordingly, the total penalty assessed for the violation was rounded from $99,591 to $99,600.

37. Accordingly, the total penalty for Respondent's violation of CAA Section 112(r)(7) and 40 C.F.R. Part 68 is $99,600.

VI. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

38. Respondent has the right to request a hearing to contest the issues raised in this Complaint. Any such hearing would be conducted in accordance with the Consolidated Rules of Practice, 40 C.F.R. Part 22. Any request for a hearing must be included in Respondent's written Answer to this Complaint and filed with the Regional Hearing Clerk at the address listed below within 30 days of receipt of this Complaint.

39. In its Answer, Respondent may also: (1) dispute any material fact in the Complaint; (2) contend that the proposed penalty is inappropriate; or (3) contend that it is entitled to judgment as a matter of law. The Answer must clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint of which Respondent has any knowledge. If Respondent has no knowledge of a particular factual allegation and so states, the allegation is considered denied. The failure to deny an allegation constitutes an admission of that allegation. The Answer must also include the grounds for any defense and the facts Respondent intends to place at issue.

40. The original and one copy of the Answer, as well as a copy of all other documents which Respondent files in this action, must be sent to:

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

41. Respondent should also send a copy of the Answer, as well as a copy of all other documents which Respondent files in this action, to Yen Hoang, the attorney assigned to represent EPA and who is designated to receive service in this matter at:

Yen Hoang
Office of Regional Counsel
U.S. EPA, Region 1
5 Post Office Square
Suite 100
Mail Code: ORA17-1
Boston, MA 02109-3912
Tel: (617) 918-1777

42. If Respondent fails to file a timely Answer to this Complaint, it may be found to be in default, which constitutes an admission of all the facts alleged in the Complaint and a waiver of the right to a hearing.

VII. INFORMAL SETTLEMENT CONFERENCE

43. Whether or not a hearing is requested upon the filing of an Answer, Respondent may confer informally with EPA concerning the alleged violations, the amount of any penalty, and/or the possibility of settlement. Such a conference provides Respondent with an opportunity to respond informally to the charges, and to provide any additional information that may be relevant to this matter. EPA has the authority to adjust penalties, where appropriate, to reflect any settlement reached in an informal conference. The terms of such an agreement would be embodied in a binding Consent Agreement and Final Order.

44. Please note that a request for an informal settlement conference does not extend the thirty (30) 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 Yen Hoang at (617) 918-1171.

VIII. CONTINUED COMPLIANCE OBLIGATION

45. Neither assessment nor payment of an administrative penalty shall affect the Respondent's continuing obligation to comply with Section 112(r)(7) of the CAA, 42 U.S.C.

§ 7412(r)(7) and implementing regulations at 40 C.F.R. Part 68.

Susan Studlien

Susan Studlien, Director
Office of Environmental Stewardship
U.S. Environmental Protection Agency
Region 1 – New England

09/26/12
Date

In the Matter of: Rynel, Inc.
Docket Number CAA-01-2012-0105

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Administrative Penalty Order has been sent to the following persons on the date noted below:

Original and one copy
hand delivered:

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

Certified Mail Return Receipt
Requested and one copy of
40 C.F.R. Part 22

Jim Detert, President
Rynel, Inc.
11 Twin Rivers Drive
Wiscasset, Maine 04578

Date: 9/27/2012

Yen Hoang, Esq. (Lic. 5012398)
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5 Post Office Square, Suite 100
Mail Code: ORA17-1
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