



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

RECEIVED

2011 OCT -4 A 11: 39

EPA ORC
OFFICE OF WS
REGIONAL HEARING CLERK

BY HAND

October 4, 2011

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

Re: In re: Roberts Chemical Company, Inc., EPA Docket No. RCRA-01-2011-0130

Dear Ms. Santiago:

Enclosed for filing in the above-referenced matter are the original and one copy of a Complaint, Compliance Order and Notice of Opportunity for Hearing.

Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Andrea Simpson".

Andrea Simpson
Senior Enforcement Counsel

Enclosures

cc: Robert R. McIntyre, Jr.

RECEIVED

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
NEW ENGLAND REGION
BEFORE THE ADMINISTRATOR

2011 OCT -4 A 11: 39

EPA ORC
OFFICE OF
REGIONAL HEARING CLERK
WJS

In the Matter of:)

ROBERTS CHEMICAL COMPANY, INC.)

Formerly located at:)

258 Pine Street)

Pawtucket, Rhode Island 02860)

EPA ID No. RIR000508416)

and)

Presently located at:)

330-B Victor Road)

Attleboro, Massachusetts 02703)

EPA ID No. MAC300015252)

Proceeding under Section)

3008(a) of the Resource)

Conservation and Recovery)

Act, 42 U.S.C. § 6928(a))

ADMINISTRATIVE COMPLAINT,
COMPLIANCE ORDER, AND
NOTICE OF OPPORTUNITY FOR
HEARING

DOCKET NO. RCRA-01-2011-0130

**ADMINISTRATIVE COMPLAINT, COMPLIANCE ORDER, AND
NOTICE OF OPPORTUNITY FOR HEARING**

I. STATEMENT OF AUTHORITY

1. This Complaint, Compliance Order, and Notice of Opportunity for Hearing (“Complaint”) is filed pursuant to Section 3008(a) of the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6928(a), and 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 (“Consolidated Rules of Practice”), 40 C.F.R. Part 22. The Complainant is the Legal Enforcement Manager of the Office

of Environmental Stewardship, United States Environmental Protection Agency, Region 1 (“EPA” or “Complainant”).

2. Roberts Chemical Company, Inc. (“Roberts” or “Respondent”), is hereby notified of EPA’s determination that it has violated Section 3002 of RCRA, 42 U.S.C. § 6922; the regulations promulgated thereunder at 40 C.F.R. Parts 262 and 265; Section 23-19.1, *et seq.* of Title 23 of the Rhode Island General Laws, G.L.R.I § 23-19.1, *et seq.*; and the regulations promulgated thereunder, known as the Rhode Island Rules and Regulations for Hazardous Waste Management (“Rhode Island Rules”). Complainant hereby provides notice of Respondent’s opportunity to request a hearing concerning this allegation.

II. NATURE OF ACTION

3. This is an action under Section 3008(a) of RCRA, 42 U.S.C. §§ 6901-6987, ordering Respondent to come into compliance with the hazardous waste regulations promulgated pursuant to RCRA.

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

III. RCRA STATUTORY AND REGULATORY FRAMEWORK

5. RCRA was enacted on October 21, 1976, and amended thereafter by, among other acts, the Hazardous and Solid Waste Amendments of 1984 (“HSWA”). RCRA established a program for the management of hazardous wastes, to be administered by the Administrator of EPA. The regulations promulgated by the Administrator are codified at 40 C.F.R. Parts 260 through 271.

6. 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 equivalent to the federal program.

7. The State of Rhode Island received final authorization to implement its hazardous waste management program on January 30, 1986, with an effective date of January 31, 1986. *See* 51 Fed. Reg. 3780 (January 30, 1986).

8. Effective March 26, 1990, May 5, 1992, December 1, 1992, October 8, 2002 and February 11, 2008, Rhode Island received final authorization for revisions to its hazardous waste management program. *See* 55 Fed. Reg. 9128 (March 12, 1990), 57 Fed. Reg. 8089 (March 6, 1992), 57 Fed. Reg. 45574 (October 2, 1992), 67 Fed. Reg. 51765 (August 9, 2002) and 72 Fed. Reg. 70229 (December 11, 2007).

9. The Commonwealth of Massachusetts received final authorization to implement its base hazardous waste management program on January 24, 1985, with an effective date of February 7, 1985. *See* 50 Fed. Reg. 3344 (January 24, 1985).

10. Effective November 30, 1998, October 12, 1999, November 15, 2000, October 31, 2002, November 18, 2005, March 12, 2004, March 31, 2008 and August 23, 2010, Massachusetts received final authorization for revision to its hazardous waste management program. *See* 63 Fed. Reg. 52180 (September 30, 1998), 64 Fed. Reg. 55153 (October 12, 1999), 65 Fed. Reg. 68915 (November 15, 2000), 67 Fed. Reg. 66338 (October 31, 2002), 69 Fed. Reg. 11801 (March 12, 2004), 70 Fed. Reg. 69900 (November 18, 2005), 73 Fed. Reg. 5753 (January 31, 2008) and 75 Fed. Reg. 50932 (August 18, 2010).

11. Pursuant to Sections 3008(a) and 3006(g) of RCRA, 42 U.S.C. § 6928(a) and 6926(g), EPA may enforce the federally-approved Rhode Island and Massachusetts hazardous waste

programs, as well as the federal regulations promulgated pursuant to the HSWA, by issuing orders requiring compliance immediately or within a specified time for violations of any requirement of Subtitle C of RCRA, Sections 3001-3023 of RCRA, 42 U.S.C. §§ 6921-6939e.

12. 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. 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.

IV. FINDINGS OF FACT

13. Roberts Chemical Company, Inc. is a corporation established under the laws of the State of Rhode Island. At all times relevant to the violations alleged in this Complaint, Respondent maintained a principal place of business at 258 Pine Street, Pawtucket, Rhode Island. In January 2011, Respondent moved its principal place of business to 330-B Victor Road, Attleboro, Massachusetts.

14. As a corporation, Respondent is a “person” as defined in Section 1004(5) of RCRA, 42 U.S.C. § 6903(15), and Rhode Island Rule 3.00.

15. At all times relevant to the violations alleged in this Complaint, Respondent operated a wholesale chemical packaging and distribution facility located at 258 Pine Street, Pawtucket, Rhode Island (“Facility”).

16. On February 4, 2009, duly authorized representatives of EPA conducted a RCRA compliance evaluation inspection at the Facility (“Inspection”). At the time of the Inspection, Respondent used a variety of chemicals and generated wastes at the Facility that were “hazardous wastes,” as defined under Section 1004(5) of RCRA, 42 U.S.C. § 6903(5), Section

23-19.1-4 of the Rhode Island General Laws, G.L.R.I § 23-19.1-4, and Rhode Island Rule 3.00, including precious metal wastes generated in the Facility's laboratory, off-specification and expired chemicals from throughout the Facility and waste and off-specification laboratory chemicals.

17. At all times relevant to the allegations set out in this Complaint, Respondent was a "generator" of hazardous waste, as that term is defined in Rhode Island Rule 3.00.

18. Respondent, therefore, was subject to the federal and state standards applicable to generators of hazardous waste found at Section 3002 *et seq.* of RCRA, 42 U.S.C. § 6922 *et seq.*; 40 C.F.R. Parts 262 and 265; Section 23-19.1 *et seq.* of the Rhode Island General Laws, G.L.R.I § 23-19.1-4, and Section 5.00, *et seq.* of the Rhode Island Rules.

19. In January 2011, Respondent closed the Facility and moved its operations to a new facility located at 330-B Victor Road, Attleboro, Massachusetts ("New Facility").

20. The New Facility is subject to the federal and state standards applicable to generators of hazardous waste found at Section 3002 *et seq.* of RCRA, 42 U.S.C. § 6922 *et seq.*; 40 C.F.R. Parts 262 and 265; the Massachusetts Hazardous Waste Management Act, M.G.L. c. 21C, and the regulations promulgated thereunder at 310 C.M.R. 30.000 *et seq.* Respondent notified the Massachusetts Department of Environmental Protection ("MADEP") that it operates as a "small quantity generator" at the New Facility (Facility ID number MAC300015252).

V. VIOLATIONS

21. Based on Complainant's inspection of the Facility and review of documentation contained in Complainant's and Respondent's files, the following violations were identified:

COUNT I – Failure to Segregate Incompatible Waste

22. Paragraphs 1 through 21 are incorporated by reference as if fully set forth herein.
23. Pursuant to Rhode Island Rule 5.02, which requires compliance with 40 C.F.R. § 262.34, which in turn references 40 C.F.R. § 265.177, a generator of hazardous waste must keep containers of incompatible hazardous waste and materials separated from each other by means of a dike, berm, wall, or other device.
24. At the time of the Inspection, Respondent failed to segregate incompatible waste chemicals in Warm Storage Room #3 of the Facility and directly outside of the Analytical Lab on two plastic shelving units located adjacent to the door from the packaging room into Warm Storage Room #3. Paul McIntyre, Vice President of Roberts, informed EPA's inspectors that the shelving units held waste chemicals that were to be "lab-packed." The containers observed on the shelving units included those marked as containing: sodium bromide; anhydrous stannic chloride; phosphoric acid; sodium nitrate; stannous chloride; potassium stannate; mercuric yellow; ferrous sulfate solution; formaldehyde; nickel carbonate; potassium permanganate; barium acetate; potassium nitrate; acetic acid; mercuric nitrate; acids; CN-Cu and Na₂S₂O₄. EPA's inspectors could not prepare a complete inventory of waste chemicals stored in these areas due to the poor condition of the waste containers and the condition of the labeling or lack thereof.
25. Many of the chemical wastes described above in paragraph 24 were incompatible with each other and posed a risk of heat generation, fire, toxic gas and flammable gas generation, violent polymerization and explosion if they mixed together. For example, on the shelves adjacent to the Analytical Lab area Respondent stored a container of formaldehyde and a

container of potassium permanganate. These chemicals are incompatible with each other because their mixture can generate combustion enhancing gas, a corrosive liquid, heat, fire, very unstable explosive compounds, a potential explosion, a violent reaction, and flammable and/or toxic fumes. In the same location, Respondent stored a container of phosphoric acid and a container of sodium nitrate. These chemicals are incompatible with each other because their mixture can generate heat, spontaneous ignition of the reactants or products due to reaction heat, and the heat generated may initiate an explosion, a violent reaction, and/or toxic fumes.

26. At the time of the Inspection, Respondent failed to segregate incompatible waste chemicals in an area around the corner from and around the outer wall of the Analytical Lab at the Facility. Paul McIntyre informed EPA's inspectors that the shelving units held waste chemicals that were to be "lab-packed." The containers stored in this area included those marked as containing: electroless nickel stripper; potassium stannate; potassium hydroxide; sodium cyanide with thallium acetate; potassium silicate; formaldehyde; phenol; nickel stripper; sodium cyanide; sodium chromate; sodium hydroxide; sulfuric acid; copper plating concentrate; acid copper; sodium metasilicate and sodium hydroxide; ammonium hydroxide; nitric acid and phosphoric acid. EPA's inspectors could not prepare a complete inventory of waste chemicals stored in these areas due to the poor condition of the waste containers and the condition of the labeling or lack thereof.

27. Many of the chemical wastes described above in paragraph 26 were incompatible with each other and posed a risk of heat generation, fire, toxic gas and flammable gas generation and violent polymerization if mixed together. For example, on shelves around the outer wall of the Analytical Lab, Respondent stored a container of sodium chromate and a container of sodium

cyanide. These chemicals are incompatible with each other because their mixture can generate heat and pressure and the heat generated may initiate an ignition of the reactants or products especially if combustible materials are present (which were present). In addition, the reaction may proceed with explosive violence and/or produce explosive products, the reaction can generate combustion enhancing gas and toxic and corrosive fumes. In the same location, Respondent stored a container of nitric acid and a container of sodium hydroxide. These chemicals are incompatible with each other because their mixture can generate heat and pressure and the heat generated may initiate a spontaneous ignition of the reactants or products especially if combustible materials are present (which were present). In addition, the reaction may proceed with explosive violence and/or produce explosive products and the reaction may generate toxic and corrosive fumes.

28. At the time of the Inspection, Respondent failed to segregate incompatible waste chemicals in Cold Room #7 at the Facility. According to Richard Enos, Chief Operating Officer of Roberts, Cold Room #7 was the location where Respondent accumulated hazardous wastes to be shipped out of the Facility. The wastes in Cold Room #7 were arranged in five rows with no method for segregating incompatible wastes in the entire area.

29. At the time of the Inspection, containers in Cold Room #7, Row #1 were marked as containing the following chemical wastes: methanol and acetone wastes; one drum labeled "acetone" on top of the drum and "IPA" on the side of the drum; a very rusted 5-gallon drum marked "health-1, flammability-1, reactivity-0, flammable solid, 'non-cyanide stripper for electroless nickel from steel'" which was located on top of a 55-gallon drum marked "waste acetone;" approximately eight 50-pound bags of sodium sulfide and approximately thirty 50-

pound bags of "premium aluminum sulfate."

30. At the time of the Inspection, containers in Cold Room #7, Row #2 were marked as containing the following chemical wastes: one 55-gallon drum of zinc chloride; one 55-gallon drum labeled "bad production tote from Beltcher;" one 300-gallon tote of unknown waste; one 26-gallon over-pack with potassium cyanide written on the top and zinc dust written on the side; one 26-gallon container of sodium molybdate; and six 85-gallon, over-pack drums of unknown wastes.

31. At the time of the Inspection, there were six pallets with four containers on each pallet, in Cold Room #7, Row #3. Four 55-gallon drums on the first pallet were all in very poor condition and were marked as follows: one drum of nickel stripper, ammonium hydroxide; one drum of sodium bichromate; one drum labeled as pluronic L-62, dated 12/30/98; and one drum of unknown wastes. Four 55-gallon drums on the second pallet were marked as containing zinc-brite (corrosive). Four 55-gallon drums on the third pallet and four 55-gallon drums on the fourth pallet contained unknown wastes. Four 55-gallon poly drums on the fifth pallet were marked as containing Robchem 13. Four 55-gallon poly drums on the sixth pallet were marked as containing corrosives.

32. At the time of the Inspection, containers in Cold Room #7, Row #4 were marked as containing the following chemical wastes: six drums of unknown wastes; three drums of scrubber cleanout; one drum of sodium bisulfate; three drums of Robchem 77; one drum of Robchem 13; one drum of Robchem 100; one drum of Robchem 111S; one drum of ammonium fluoborate; and one drum of ammonium oxalate.

33. At the time of the Inspection, there were at least seven pallets of small containers in Cold

Room #7, Row #5. The containers ranged from 1-gallon to 5-gallon in size, many were badly corroded and many were unmarked and/or unlabeled. The containers observed in Cold Room #7, Row #5 included those marked as containing: sulfuric acid; nickel sulfamate; phosphoric acid; triethylenetetramine and monoethanolamine; lithium carbonate; sulfonic acid; sodium hypochlorite; sodium polysulfide; potassium hydroxide and ammonium hydroxide.

34. Many of the chemical wastes stored in Cold Room #7 and described above in paragraphs 29 through 33 were incompatible with each other and posed a risk of heat generation, fire, toxic gas, flammable gas generation, innocuous and non-flammable gas generation, violent polymerization and explosion if mixed together. For example, in Cold Room #7 Respondent stored a container of lithium carbonate and a container of sulfuric acid near one another. These chemicals are incompatible with each other because their mixture can generate heat and pressure, spontaneous ignition of the reactants or products due to reaction heat, and/or toxic and corrosive fumes. In the same location, Respondent stored a container of ammonium hydroxide and a container of sodium dichromate. These chemicals are incompatible with each other because their mixture can generate combustion enhancing gas, heat and pressure and the heat generated may initiate a spontaneous ignition of the reactants or products. In addition, the reaction may proceed with explosive violence and/or produce explosive products and the reaction may generate toxic and corrosive fumes.

35. Respondent's failure to segregate incompatible waste chemicals by means of a dike, berm, wall, or other device as described above constitutes a violation of Rhode Island Rule 5.02 which requires compliance with 40 C.F.R. § 262.34, which in turn references 40 C.F.R. § 265.177.

COUNT II – Failure to Have Adequate Secondary Containment for Containers of Hazardous Waste

36. Paragraphs 1 through 35 are incorporated by reference as if fully set forth herein.
37. Pursuant to Rhode Island Rule 5.02 which requires compliance with 40 C.F.R. § 264.175, as referenced by 40 C.F.R. § 262.34, a generator of hazardous waste must store containers of hazardous waste with a secondary containment system that has sufficient capacity to contain 10% of the volume of the containers.
38. At the time of the Inspection, Respondent failed to provide all of the containers of hazardous waste referenced above in paragraphs 24 through 33 with adequate secondary containment.
39. Respondent's failure to store the containers of hazardous waste referenced above in paragraphs 24 through 33 with a secondary containment system that has sufficient capacity to contain 10% of the volume of the containers constitutes a violation of Rhode Island Rule 5.02 which requires compliance with 40 C.F.R. § 264.175, as referenced by 40 C.F.R. § 262.34.

COUNT III – Failure to Properly Mark or Label Containers of Hazardous Waste

40. Paragraphs 1 through 39 are incorporated by reference as if fully set forth herein.
41. Pursuant to Rhode Island Rule 5.04A and B a generator of hazardous waste must label the side of all hazardous waste containers with: the words "Hazardous Waste;" the generator's name and address of generating facility; the USDOT shipping name and the generic names of the principal hazardous waste components; the EPA or Rhode Island waste code; the accumulation start date and the Hazardous Waste Manifest Number (prior to being shipped off-site). The generator must also label and mark every container in accordance with 40 C.F.R. § 262.32 and

must comply with 40 C.F.R. § 262.33.

42. At the time of the Inspection, none of the containers of hazardous waste referenced above in paragraphs 24 through 33 were marked or labeled with the words "Hazardous Waste." Most of the containers were not marked or labeled with any identifying information other than the generic name of the contents.

43. Respondent's failure mark or label each container with the words "Hazardous Waste" and other identifying information for the hazardous waste referenced above in paragraphs 24 through 33 constitutes a violation of Rhode Island Rule 5.04A and B.

COUNT IV – Failure to Place Accumulation Dates on Containers of Hazardous Waste

44. Paragraphs 1 through 43 are incorporated by reference as if fully set forth herein.

45. Pursuant to Rhode Island Rule 5.02, which requires compliance with 40 C.F.R. § 262.34(a)(2), a generator of hazardous waste must clearly mark each container of hazardous waste with the date upon which each period of accumulation begins and ensure the markings are visible for inspection.

46. At the time of the Inspection, Respondent failed to clearly mark each container of hazardous waste referenced above in paragraphs 24 through 33 with accumulation dates and failed to ensure that the accumulation date markings were visible for inspection.

47. Respondent's failure to clearly mark each container of hazardous waste referenced above in paragraphs 24 through 33 with accumulation dates and ensure that the accumulation date markings were visible for inspection constitutes a violation of Rhode Island Rule 5.02, which requires compliance with 40 C.F.R. § 262.34(a)(2).

COUNT V – Failure to Ensure that Containers of Hazardous Waste Are in Good Condition

48. Paragraphs 1 through 47 are incorporated by reference as if fully set forth herein.

49. Pursuant to Rhode Island Rule 5.02, which requires compliance with 40 C.F.R. § 264.171, as referenced by 40 C.F.R. § 262.34, if a container holding hazardous waste is not in good condition or if it begins to leak, the generator must transfer the hazardous waste from the defective container to a container that is in good condition or manage the waste in some other way that complies with 40 C.F.R. Part 264, Subpart I.

50. At the time of the Inspection, several of the containers referenced above in paragraphs 24 through 33 were not in good condition as follows: one very rusted 5-gallon drum marked “health-1, flammability-1, reactivity-0, flammable solid, ‘non-cyanide stripper for electroless nickel from steel’” in Cold Room #7, Row #1; four 55-gallon drums in very poor condition that were marked nickel stripper, ammonium hydroxide, sodium bichromate; pluronic L-62 and one unmarked/unlabeled drum in Cold Room #7, Row #3; and at least seven pallets of 1-gallon to 5-gallon containers, many badly corroded and many unmarked and/or unlabeled, including those marked as containing sulfuric acid, nickel sulfamate, phosphoric acid, triethylenetetramine and monoethanolamine, lithium carbonate, sulfonic acid, sodium hypochlorite, sodium polysulfide, potassium hydroxide and ammonium hydroxide in Cold Room #7, Row #5.

51. Respondent’s failure to ensure that all of the containers of hazardous waste referenced above in paragraphs 24 through 33 were in good condition constitutes a violation of Rhode Island Rule 5.02, which requires compliance with 40 C.F.R. § 264.171, as referenced by 40 C.F.R. § 262.34.

COUNT VI – Failure to Conduct Adequate Hazardous Waste Determinations

52. Paragraphs 1 through 51 are incorporated by reference as if fully set forth herein.
53. Pursuant to Rhode Island Rule 5.08, which requires compliance with 40 C.F.R. § 262.11, a generator of waste must determine if any of the wastes meet any of the definitions of a hazardous waste using the following process: a) determine if a waste meets any of the federal definitions of hazardous waste as required by 40 C.F.R. § 262.11; and b) if not, the generator must then determine if any of the Rhode Island waste types apply, as defined under the “Rhode Island Wastes” definition in Rhode Island Rule 3.00. Regardless of any advisory opinions or statements from any laboratory or government agency, it remains the generator's responsibility to properly characterize his wastes.
54. At the time of the Inspection, Respondent categorized numerous wastes as “unknowns.” EPA’s inspectors observed that Respondent had determined that the following containers were hazardous waste but had not identified or classified the waste types or specific contents/constituents: one 55-gallon drum labeled “bad production tote from Beltcher” and six 85-gallon, over-pack drums of unknown wastes in Cold Room #7, Row #2; five 55-gallon drums of unknown wastes and four 55-gallon poly drums of corrosives in Cold Room #7, Row #3; six 55-gallon drums of unknown wastes and three 55-gallon drums of scrubber cleanout in Cold Room #7, Row #4; and an undetermined number of 1-gallon to 5-gallon containers of unknown wastes, many of which were badly corroded, in Cold Room #7, Row #5.
55. Respondent’s failure to conduct adequate hazardous waste determinations for the waste chemicals referenced above in paragraph 54 constitutes a violation of Rhode Island Rule 5.08, which requires compliance with 40 C.F.R. § 262.11.

COUNT VII – Failure to Have an Adequate Hazardous Waste Training Program

56. Paragraphs 1 through 55 are incorporated by reference as if fully set forth herein.

57. Pursuant to Rhode Island Rule 5.02 which requires compliance with 40 C.F.R. § 264.16, as referenced by 40 C.F.R. § 262.34(a)(4), all facility management personnel assigned to manage hazardous waste must complete a training program that teaches personnel to perform their duties in a way that ensures the facility's compliance with RCRA. The program must be directed by a person trained in hazardous waste management procedures and must include instruction in hazardous waste management procedures relevant to the position in which the employee is employed. Personnel may not work in unsupervised positions until they have such training, and they must receive it within six months of starting their position. They must receive annual training refresher courses. The facility must keep training records for current personnel until three years after they leave.

58. During the Inspection, Tony Pisano, Compliance Officer of Roberts, and David McIntyre, stated that Roberts did not have a hazardous waste training program.

59. At the time of the Inspection, Respondent did not have training records for any of the Facility's personnel.

60. Respondent's failure to have a hazardous waste training program, provide hazardous waste training for personnel managing hazardous wastes and maintain hazardous waste training records constitutes a violation of Rhode Island Rule 5.02 which requires compliance with 40 C.F.R. § 264.16, as referenced by 40 C.F.R. § 262.34(a)(4).

COUNT VIII – Failure to Have an Adequate Contingency Plan

61. Paragraphs 1 through 60 are incorporated by reference as if fully set forth herein.
62. Pursuant to Rhode Island Rule 5.02 which requires compliance with 40 C.F.R. Part 265, Subpart D, as referenced by 40 C.F.R. § 262.34(a)(4), a facility must have a hazardous waste contingency plan. The contingency plan must be designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil or surface water and must contain the elements listed in 40 C.F.R. § 265.52. Pursuant to 40 C.F.R. § 265.53, a copy of the contingency plan must be maintained at the facility and submitted to all local police departments, fire departments, hospitals, and State and local emergency response teams that may be called upon to provide emergency services.
63. At the time of the Inspection, Tony Pisano and David McIntyre stated that Respondent did not have a hazardous waste contingency plan for the Facility.
64. Respondent's failure to have a hazardous waste contingency plan for the Facility constitutes a violation of Rhode Island Rule 5.02 which requires compliance with 40 C.F.R. Part 265, as referenced by 40 C.F.R. § 262.34(a)(4).

COUNT IX – Failure to Conduct and Document Weekly Inspections of Areas Where Hazardous Waste Containers are Stored

65. Paragraphs 1 through 64 are incorporated by reference as if fully set forth herein.
66. Pursuant to Rhode Island Rule 5.02 which requires compliance with 40 C.F.R. § 265.174, as referenced by 40 C.F.R. 262.34(a)(1)(i), a generator must, at least weekly, inspect areas where hazardous waste containers are stored and document such inspections. The generator must look

for leaking containers and for deterioration of containers caused by corrosion and other factors.

67. At the time of the Inspection, Tony Pisano and David McIntyre stated that Respondent did not conduct weekly inspections of areas where hazardous waste containers were stored at the Facility and did not possess documentation regarding any inspections.

68. Respondent's failure to conduct weekly inspections of areas where hazardous waste storage containers were stored and document such inspections constitutes a violation of Rhode Island Rule 5.02 which requires compliance with 40 C.F.R. § 265.174, as referenced by 40 C.F.R. § 262.34(a)(1)(i).

VI. ORDER

69. Based on the foregoing findings, Respondent is hereby **ORDERED** to immediately achieve and maintain compliance with all applicable requirements of RCRA and the Massachusetts Hazardous Waste Management Act at the New Facility. Respondent notified the MADEP that it operates as a "small quantity generator" at the New Facility. Accordingly, Respondent must operate the New Facility in full compliance with the Massachusetts hazardous waste regulations set forth at 310 C.M.R. § 30.351.

70. Within sixty (60) days of the receipt of this Complaint, Respondent shall submit to Complainant written confirmation of its compliance (accompanied by a copy of any appropriate supporting documentation and photographs depicting compliance) or noncompliance with the following applicable requirements of the Massachusetts Hazardous Waste Management Act and RCRA at the New Facility: 310 C.M.R. § 30.342(1), as referenced by 310 C.M.R. § 30.351(8)(b), (regarding storage of incompatible wastes); 310 C.M.R. § 30.342(1)(e), as referenced by 310 C.M.R. § 30.351(8)(b), (regarding secondary containment for containers of

hazardous waste); 310 C.M.R. § 30.341(2), as referenced by 310 C.M.R. § 30.351(8)(a), (regarding marking and labeling of containers of hazardous waste); 310 C.M.R. § 30.341(2), as referenced by 310 C.M.R. § 30.351(8)(a), (regarding placement of accumulation dates on containers of hazardous waste); 310 C.M.R. § 30.342(1), as referenced by 310 C.M.R. § 30.351(8)(b), (regarding condition of containers of hazardous waste) and 310 C.M.R. § 30.342(1), as referenced by 310 C.M.R. § 30.351(8)(b), (regarding inspection of containers of hazardous waste). Any notice of noncompliance required under this paragraph shall state the reasons for the noncompliance and when compliance is expected. Notice of noncompliance will in no way excuse the noncompliance.

71. Within sixty (60) days of the receipt of this Complaint, Respondent shall submit to Complainant written standard operating procedures (“SOPs”) that describe how Respondent determines if a waste is a hazardous waste as required under 310 C.M.R. § 30.302, as referenced by 310 C.M.R. § 30.351(10). The SOPs shall also describe how Respondent manages its hazardous wastes in compliance with 310 C.M.R. § 30.351.

72. Within sixty (60) days of the receipt of this Complaint, Respondent shall submit to Complainant documentation that demonstrates that its employees are properly trained to handle hazardous wastes as set forth in 310 C.M.R. § 30.351(9)(g). The documentation submitted to Complainant shall identify the individuals employed by Respondent who handle hazardous wastes and specify what training has been provided or will be provided.

73. Within sixty (60) days of the receipt of this Complaint, Respondent shall submit to Complainant documents and information demonstrating how Respondent is complying with the requirements governing emergency procedures, prevention and response as set forth in 310

C.M.R. § 30.351(9)(b). Respondent shall submit to Complainant information and documents including, but not limited to: identification of employees designated as emergency coordinators; lists of emergency and spill response equipment (including communication equipment, alarms, fire protection equipment and spill control equipment) and lists of appropriate state and local contacts to ensure compliance with 310 C.M.R. § 30.351(i), (j) and (k).

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

75. Respondent shall submit the copies of any information, reports, and/or notices required by this Order to:

Rich Piligian
Environmental Scientist, RCRA Enforcement Unit
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100 (OES05-1)
Boston, MA 02109-3912
Telephone: (617) 918-1756
Fax: (617) 918-0756

and

Andrea Simpson, Senior Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100 (OES04-2)
Boston, MA 02109-3912
Telephone: (617) 918-1738
Fax: (617) 918-0738

76. If Respondent fails to comply with the requirements of this Order within the time specified, Section 3008(c) of RCRA, 42 U.S.C. § 6928(c), provides for further enforcement action in which EPA may seek the imposition of penalties of up to \$37,500 for each day of continued noncompliance.

77. This Order shall become effective immediately upon receipt by Respondent.

78. In accordance with 40 C.F.R. § 22.37(b), this Order shall automatically become a final order unless, no later than 30 days after the Order is served, Respondent requests a hearing pursuant to 40 C.F.R. § 22.15.

VII. ASSESSMENT OF PENALTIES

79. EPA reserves its right to assess penalties and/or seek other injunctive relief for violations of the requirements cited above, as provided by Section 3008 of RCRA, 42 U.S.C. § 6928.

VIII. OPPORTUNITY TO REQUEST A HEARING AND FILE ANSWER

80. As provided by Section 3008(b) of RCRA, 42 U.S.C. § 6928(b), and in accordance with 40 C.F.R. § 22.15, Respondent has a right to request a hearing on the issues raised in this Order. Any such hearing would be conducted in accordance with Part 22. **To avoid being found in default, which constitutes an admission of all facts alleged in the Complaint and a waiver of the right to a hearing, Respondent must file a written Answer within thirty (30) days of Respondent's receipt of this Complaint.** The Answer must clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint with regard to which Respondent has any knowledge. If Respondent has no knowledge of a particular fact and so states, the allegation is considered denied. Failure to admit, deny, or explain an allegation constitutes an admission of that allegation. Respondent's Answer must also state all arguments or circumstances that are alleged to constitute grounds for a defense; the facts that Respondent intends to place at issue; and must specifically request an administrative hearing if such a hearing is desired. If Respondent denies any material fact or raises any

affirmative defense, Respondent will be considered to have requested a hearing. The Answer must be sent to:

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

IX. DEFAULT ORDER

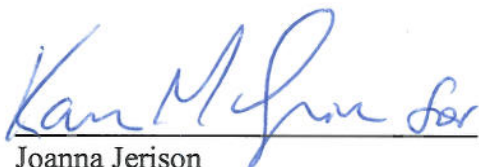
81. If Respondent fails to file a timely Answer to the Order, Respondent may be found to be in default pursuant to 40 C.F.R. § 22.17. For purposes of this action only, default by Respondent constitutes an admission of all facts alleged in the Order and a waiver of Respondent's right to a hearing on such factual allegations under Section 3008 of RCRA, 42 U.S.C. § 6928. In addition, default will preclude Respondent from thereafter obtaining adjudicative review of any of the provisions contained in the Order.

X. SETTLEMENT CONFERENCE

82. Whether or not a hearing is requested upon filing an Answer, Respondent may confer informally with the EPA concerning the alleged violations. Such conference provides Respondent with an opportunity to provide whatever additional information may be relevant to the disposition of this matter. Any settlement shall be made final by the signing of a Consent Agreement and Final Order by the Regional Judicial Officer, EPA Region I. 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 default. To explore the possibility of settlement in this matter, Respondent should contact Andrea Simpson, Senior Enforcement

Counsel, Office of Environmental Stewardship, EPA Region I, who is also designated to receive service on behalf of Complainant, at the above address, at (617) 918-1738.

For Complainant:



Joanna Jerison
Legal Enforcement Manager
Office of Environmental Stewardship
U.S. EPA-Region 1

9-29-11
Date

In re: Roberts Chemical Company, Inc.
Docket No. RCRA-01-2011-0130

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Complaint, Compliance Order, and Notice of Opportunity for a Hearing has been sent to the following persons on the date noted below:

Original and one copy,
Hand delivered:

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

Copy of Complaint (with the
Consolidated Rules of Practice),
first class mail, return receipt
requested:

Robert R. McIntyre, Jr.
President
Roberts Chemical Company, Inc.
330-B Victor Road
Attleboro, MA 02703

Date: 10/9/11


Andrea Simpson, Senior Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100 (OES04-2)
Boston, MA 02109-3912
Telephone: (617) 918-1738
Fax: (617) 918-0738
E-mail: simpson.andrea@epa.gov