



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 1  
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BOSTON, MA 02109-3912

July 18, 2012

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Office of Regional Hearing Clerk

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

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

Dear Ms. Santiago,

Please accept for filing an original and one copy of a Motion for Leave to Amend Complaint that has been served by the U.S. Environmental Protection Agency ("EPA"), Region 1 ("Complainant") on Chief Judge Susan L. Biro and Judge Barbara J. Gunning, and on counsel for Rhodes Technologies ("Rhodes"), in the above-captioned administrative enforcement action. This motion is unopposed by Rhodes.

EPA Region 1 originally issued a complaint, compliance order, and notice of opportunity for hearing ("Complaint") in this action on September 30, 2011. Pursuant to 40 C.F.R. § 22.14(c), EPA Region 1 amended the Complaint as of right and filed an Amended Complaint on February 27, 2012. Rhodes served its Answer to the Amended Complaint on March 16, 2012, and the parties have engaged in alternative dispute resolution led by Judge Barbara J. Gunning since April 10, 2012. Because Rhodes's answer has been filed, EPA Region 1 may now further amend its complaint only upon motion granted by the Presiding Officer. Thank you for your attention to this matter.

Sincerely,

Steven J. Viggiani  
Senior Enforcement Counsel  
EPA Region 1

Attachments

cc: Honorable Susan L. Biro  
Honorable Barbara J. Gunning  
James P. Doyle, Rhodes  
Andrew Kolesar, Thompson Hine LLP

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION I

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EPA ORC WS  
Office of Regional Hearing Clerk

\_\_\_\_\_  
In the Matter of: )  
 )  
Rhodes Technologies )  
498 Washington Street )  
Coventry, Rhode Island 02816 )  
 )  
Proceeding under Section 3008(a) )  
of the Resource Conservation and )  
Recovery Act, 42 U.S.C. § 6928(a) )  
\_\_\_\_\_ )

Docket No. RCRA-01-2011-0124

MOTION FOR LEAVE  
TO AMEND COMPLAINT

MOTION FOR LEAVE TO AMEND COMPLAINT

1. Pursuant to Section 22.14 (c) of 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, Complainant, the U.S. Environmental Protection Agency ("EPA"), Region 1, respectfully moves for leave to further amend its Complaint in the above-captioned matter.

2. EPA Region 1 ("Complainant") originally issued a complaint, compliance order, and notice of opportunity for hearing ("Complaint") in this action to Rhodes Technologies ("Rhodes" or Respondent") on September 30, 2011. Pursuant to 40 C.F.R. § 22.14(c), EPA Region 1 amended the Complaint as of right and filed an Amended Complaint on February 27, 2012. Rhodes served its Answer to the Amended Complaint on March 16, 2012.

3. 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 and settlement negotiations since that time.

4. Based on the above-described ADR and settlement negotiations, Complainant has decided in its enforcement discretion not to pursue Counts I, II and VI of the Amended Complaint. Further, with regard to Count III, Complainant has decided in its enforcement discretion not to pursue certain portions of the Count that were previously included therein. In accordance with these decisions, Complainant has recalculated the proposed penalties for this action. Complainant has also removed the previously proposed compliance order, which is no longer needed. All of these revisions are reflected in the proposed Second Amended Complaint, which is attached to this Motion as Exhibit 1.

5. Respondent, through counsel, has reviewed this Motion and the proposed Second Amended Complaint, and has stated to Complainant that it does not oppose this Motion.

6. As a general rule, administrative pleadings are to be "liberally construed and easily amended." *Port of Oakland and Great Lakes Dredge and Dock Company*, 4 E.A.D. 170, 205 (EAB 1992) (quoting *Yaffe Iron & Metal Co., Inc. v. U.S. EPA*, 774 F.2d 1008, 1012 (10<sup>th</sup> Cir. 1985)). Leave to amend pleadings should be allowed "[i]n the absence of any ... undue delay, bad faith or dilatory motive on the part of the movant ... [or] undue prejudice to the opposing party by virtue of allowance of the amendment." *Foman v. Davis*, 371 U.S. 178, 181-82 (1962) (construing Rule 15(a) of the Federal Rules of Civil Procedure).

7. The granting of this Motion will neither cause undue delay and nor result in prejudice to Respondent. By narrowing the allegations at issue, the amendments proposed in the Motion will help expedite the resolution of this action. Since Respondent does not oppose the Motion, the granting of the Motion will not prejudice Respondent.

8. Accordingly, Complainant respectfully requests that the Presiding Officer grant Complainant's unopposed Motion for Leave to Amend the Complaint in this matter.

Respectfully submitted,



Steven J. Viggiani  
Counsel for Complainant  
U.S. Environmental Protection Agency, Region 1  
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e-mail: viggiani.steven@epa.gov

7/18/12  
Date

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

**CERTIFICATE OF SERVICE FOR MOTION FOR LEAVE TO AMEND COMPLAINT**

I hereby certify that on July 18, 2012, I provided the original and one copy of the foregoing Motion for Leave to Amend Complaint to the Regional Hearing Clerk via hand delivery, and arranged for copies of the Motion 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:

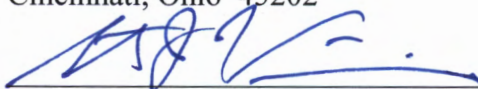
James P. Doyle  
Associate General Counsel  
Rhodes Technologies  
498 Washington Street  
Coventry, Rhode Island 02816

Copy, via express mail:

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

Date:

7/18/12



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