



UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

IN THE MATTER OF:)
)
RHODES TECHNOLOGIES,) Docket No. RCRA-01-2011-0124
)
Respondent.)

**ORDER ON RESPONDENT'S MOTION TO EXTEND TIME TO ANSWER
COMPLAINANT'S SECOND AMENDED COMPLAINT AND
NOTICE OF OPPORTUNITY FOR HEARING**

This case was initiated on September 30, 2011, by the U.S. Environmental Protection Agency, Region 1 ("Complainant" or "EPA"), when it filed its first administrative Complaint against Rhodes Technologies ("Respondent"). On February 27, 2012, EPA filed an Amended Complaint correcting that Complaint. Respondent served its Answer to the Amended Complaint on March 16, 2012, and the parties have engaged in Alternative Dispute Resolution before my colleague, Judge Barbara A. Gunning, since April 10, 2012. On July 18, 2012, Complainant moved for leave to amend its Complaint for a second time. This case was redesignated to the undersigned as litigation judge for the sole purpose of amending the Complaint, after which the case would be returned to the ADR judge. The Second Amended Complaint reflected Complainant's decision not to pursue several counts as well as certain portions of another. The Second Amended Complaint also recalculated the proposed penalties for this action and removed the previously proposed compliance order. Respondent did not oppose the motion and by Order issued July 23, 2012, the motion was granted.

On August 8, 2012, the undersigned received Respondent's unopposed Motion to Extend Time to Answer Complainant's Second Amended Complaint and Notice of Opportunity for Hearing ("Motion" or "Mot."). In its Motion, Respondent states that the parties have reached a settlement and Respondent has executed a Consent Agreement and Final Order ("CAFO"), which it delivered to Complainant on August 6, 2012. Mot. at 1. Respondent seeks a thirty-day extension, until September 12, 2012, to file its answer to the Second Amended Complaint. *Id.* Respondent asserts that such extension would conserve the resources of the parties and this tribunal. *Id.*

Respondent is not required to file an amended answer to the Second Amended Complaint; it may simply rely upon its previous Answer. In the particular case where the recent

amendment of a complaint results only in the removal of certain counts and a reduction in the proposed penalty, it is even less likely that significant party resources would need to be expended on an amended answer. It is also unclear how delaying the filing of an amended answer would conserve the resources of this tribunal. Rather, the undersigned must continue to expend resources to track and carry this case on the open docket until it is resolved regardless of whether Respondent files an amended answer. Moreover, in this case Respondent has already signed the CAFO, which will become binding upon execution by Complainant. Finally, the extension of time appears designed only to account for the additional time that Respondent expects to wait for Complainant's execution of the CAFO and is not related to the amendment of the Answer in any way. Requests of additional time to execute the CAFO would be better put to the ADR judge.

Nevertheless, given that the parties have engaged in good faith negotiations and Respondent has already submitted a signed CAFO, any delay in execution by Complainant should not cause Respondent to incur needless work to answer allegations that have already been resolved by agreement (even if those allegations are identical to those already answered). Respondent is hereby granted a **15-day extension** and must file its amended answer, if at all, no later than **August 28, 2012**. Should Respondent choose not to file an amended answer, the original Answer will be deemed a response to the Second Amended Complaint and the case will be immediately returned to the ADR judge for review.



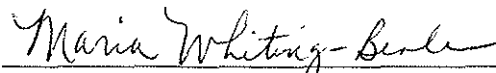
Susan L. Biro
Chief Administrative Law Judge

Date: August 8, 2012
Washington, D.C.

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

CERTIFICATE OF SERVICE

I certify that the foregoing **Order On Respondent's Motion To Extend Time To Answer Complainant's Second Amended Complaint And Notice of Opportunity For Hearing**, dated August 8, 2012, was sent this day in the following manner to the addressees listed below.



Maria Whiting-Beale
Staff Assistant

Dated: August 8, 2012

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