UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

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

ORDER GRANTING MOTION FOR LEAVE TO AMEND COMPLAINT

On September 30, 2011, the U.S. Environmental Protection Agency, Region 1 ("Complainant" or "EPA"), initiated this action by filing a Complaint against Rhodes Technologies ("Respondent"). On February 27, 2012, EPA filed an Amended Complaint correcting that Complaint. Rhodes 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.

By Motion dated July 18, 2012, Complainant filed a Motion For Leave to Amend Complaint ("Motion") with an attached, signed Second Amended Complaint and Notice of Opportunity for Hearing ("Second Amended Complaint"). The stated purpose of the Motion is to amend the Amended Complaint filed on February 27, 2012, to reflect Complainant's decision not to pursue Counts I, II, or VI of the Amended Complaint. Further, with regard to Count III, Complainant has determined 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 Complainant asserts is no longer needed. The Motion's proposed changes are all accurately reflected in the attached Second Amended Complaint. Complainant states that Respondent has reviewed the Motion and the Second Amended Complaint and does not oppose the Motion.

Section 22.14(c) of the Rules of Practice (40 C.F.R. § 22.14(c)) provides that once an answer has been filed, the complainant may amend the complaint only upon motion granted by the Presiding Officer. However, the Rules of Practice provide no standard for determining when leave to amend should be granted. Rule 15(a) of the Federal Rules of Civil Procedure concerning amended pleadings provides that "leave [to amend] shall be freely given when justice so requires." Fed. R. Civ. P 15(a). The United States Supreme Court has interpreted this Rule to mean that there should be a strong liberality in allowing amendments to pleadings. *Forman v.*

Davis, 371 U.S. 178, 182 (1962). Leave to amend pleadings under Rule 15(a) should be given freely in the absence of any apparent or declared reason, such as undue delay, bad faith, or dilatory motive on the movant's part, repeated failure to cure deficiencies by previous amendment, undue prejudice, or futility of amendment. *Id.*

There is no evidence in the record of any undue delay, bad faith, or other basis for denying the Motion. Therefore, the unopposed Motion is hereby, **GRANTED.** Because both Respondent and the undersigned have received a copy of the Second Amended Complaint, it will be deemed filed as of the date of this Order. Respondent may file an Answer to the Second Amended Complaint within 20 days of this Order. Upon expiration of this 20-day period, or upon either the receipt of Respondent's Amended Answer or a statement that it does not intend to file an Amended Answer, this case will be reassigned to the ADR judge to continue settlement negotiations.

Susan L. Biro
Chief Administrative Law Judge

Date: July 23, 2012
Washington, D.C.