



# THE ADMINISTRATIVE WATCH

ADMINISTRATIVE WATCH ADDRESSES ENVIRONMENTAL, HEALTH & SAFETY ISSUES

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## IMPROPER DECOMMISSIONING OF CHEMICAL PLANT RESULTS IN \$18 MILLION RCRA PENALTY

Rhodia, Inc. (“Rhodia”) has been sentenced to pay \$18 million in criminal fines and restitution as a result of pleading guilty to two counts of violating the Resource Conservation and Recovery Act (“RCRA”) during the decommissioning of its phosphorus manufacturing plant in Silver Bow County, Montana. Under a plea agreement providing for one of the largest criminal fines in RCRA history, Rhodia agreed to pay \$16.2 million in criminal penalties and \$1.8 million in restitution to the Montana Department of Environmental Quality (“MDEQ”) as well as cleanup the Site under orders issued by EPA pursuant to Sections 3008(h) and 7003 of RCRA.

The Silver Bow plant operated from 1986 until 1997 and produced elemental phosphorus, which was used as an ingredient in the manufacture of fertilizer and food grade phosphoric acid. In 1997, the facility shut down for decommissioning and closure, and Rhodia began decommissioning activities in 1998.

EPA inspectors reportedly found an open-topped, in-ground tank or clarifier with a capacity of 400,000 to 500,000

gallons, containing approximately 20% elemental or crude phosphorus along with dirt and other material. A water cap of several feet was maintained over the solids to prevent the phosphorus material from contacting air.

Sludge samples from the clarifier taken by EPA caught fire as they dried and burned persistently despite repeated attempts to extinguish them. EPA inspectors found leaks in the concrete walls of the tank and were concerned about the levels of phosphine gas measured at the surface of the clarifier. Fires also erupted when EPA inspectors disturbed piles of refractory brick containing elemental phosphorus in other areas of the plant. Although access to the site was restricted by a fence, there were no warning signs advising potential trespassers of the hazards.

Based on the inspection, EPA found that conditions at the facility presented an imminent and substantial endangerment and issued a RCRA Section 7003 Order requiring Rhodia to install additional fencing with warning signs around the hazardous areas, including the clarifier. Rhodia was

Two gateway center

Pittsburgh, PA 15222

412.394.5400

[WWW.BCCZ.COM](http://WWW.BCCZ.COM)

required to implement interim measures to ensure maintenance of the water cap over the sludge in the clarifier. The Order also directed Rhodia to submit a Waste Plan to address the ultimate disposition of the wastes, cleanup of which is expected to cost an additional \$5.9 million to \$41 million. At the time of the inspection, Rhodia did not have a permit for the storage, treatment or disposal of hazardous waste.

The criminal information alleged two counts of illegal storage of hazardous waste – one for the clarifier sludge and another for refractory brick and precipitator dust found at the facility. In defense, Rhodia argued that it had characterized the wastes in question as nonhazardous in good faith. The

company also unsuccessfully argued that the clarifier sludge was not ignitable when the waste in the clarifier was characterized as a whole, which Rhodia argued included the water component.

The Rhodia case suggests that owners and operators of chemical operations that are being decontaminated or decommissioned must be certain that hazardous wastes are being addressed appropriately within the time frames established by the regulations. If you have questions related to closure or decommissioning of your facilities, please contact Dean Calland at (412) 394-5408, Susanne Herald at (412) 394-6590 or any of the other attorneys in the Environmental, Health and Safety group at Babst, Calland, Clements & Zomnir, P.C.