

CYTEC

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Office of Regional Hearing Clerk

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March 12, 2009

VIA OVERNIGHT MAIL

Ms. Wanda Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
One Congress Street, Suite 1100 (RAA)
Boston, Massachusetts 02114-2023

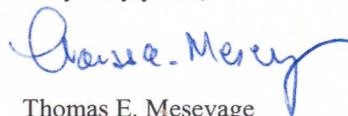
Re: **In the Matter of: Cytec Industries Inc.; Docket No. CAA-01-2009-0024**
Answer to Complaint and Request for Hearing

Dear Ms. Santiago:

I enclose on behalf of Cytec Industries Inc. in the above matter an original and two copies of its Answer to Complaint and Request for Hearing. Kindly return the extra copy of the Answer stamped "filed" to me in the enclosed self-addressed stamped envelope. By copy of this letter I am also serving a copy of the Answer upon Assistant Regional Counsel, John Kilborn, Esq.

Thank you for your kind attention.

Very truly yours,



Thomas E. Mesevage

cc: John W. Kilborn ✓
Senior Enforcement Counsel
U.S. Environmental Protection Agency
One Congress Street, Suite 1100 (RAA)
Boston, Massachusetts 02114-2023

Cytec Industries Inc.
Five Garret Mountain Plaza
Woodland Park, NJ 07424

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Technology Ahead Of Its Time™

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

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In the Matter of:

Cytec Industries Inc.
South Cherry Street
Wallingford, CT 06492
Respondent

Answer to Complaint and Request for
Hearing

Index No. CAA-01-2009-0024

ANSWER

Cytec Industries Inc. ("Cytec") answering the Complaint of the United States Environmental Protection Agency ("EPA"), which alleges violations of Section 111, 112, 114, and title V of the Clean Air Act ("CAA"), and EPA's regulations at 40 C.F.R. Part 60, Subpart Kb, and 40 C.F.R. Part 63, Subpart OOO.

STATEMENT OF AUTHORITY

1. Cytec does not answer the allegations contained in Paragraph 1 of the Complaint and respectfully refers the Court to Clean Air Act § 113(d) and 40 C.F.R. Part 22 for their terms.
2. Cytec does not answer the allegations contained in Paragraph 2 of the Complaint and respectfully refers the Court to Sections 111, 112, 114, and Title V of the CAA, and EPA's regulations at 40 C.F.R. Part 60, Subpart Kb, and 40 C.F.R. Part 63, subpart OOO for their terms.

STATUTORY AND REGULATORY BACKGROUND

3. Cytec does not answer the allegations contained in Paragraph 3 of the Complaint and respectfully refers the Court to Sections 11(a) and (d) of the CAA for their terms.

A. Subpart Kb Storage Vessel Regulations

4. Cytec does not answer the allegations contained in Paragraph 4 of the Complaint and respectfully refers the Court to Clean Air Act § 111 for its terms.

5. Cytec does not answer the allegations contained in Paragraph 5 of the Complaint and respectfully refers the Court to 40 C.F.R. §60.1 for its terms.

6. Cytec does not answer the allegations contained in Paragraph 6 of the Complaint and respectfully refers the Court to Clean Air Act § 111 and 40 C.F.R. Part 60, Subpart Kb (“NSPS Kb”) for their terms.

7. Cytec does not answer the allegations contained in Paragraph 7 of the Complaint and respectfully refers the Court to the NSPS Kb for its terms.

B, Federal Hazardous Air Pollutant Regulations

8. Cytec does not answer the allegations contained in Paragraph 8 of the Complaint and respectfully refers the Court to Clean Air Act § 112 for its terms.

9. Cytec does not answer the allegations contained in Paragraph 9 of the Complaint and respectfully refers the Court to 40 C.F.R. §63.1 for its terms.

10. Cytec does not answer the allegations contained in Paragraph 10 of the Complaint and respectfully refers the Court to Clean Air Act § 112 and 40 C.F.R. Part 63, Subpart OOO (“Amino/Phenolic Resins NESHAP”) for their terms.

11. Cytec does not answer the allegations contained in Paragraph 11 of the Complaint and respectfully refers the Court to the Amino/Phenolic Resins NESHAP for its terms.

C. Section 114 Reporting Requirements

12. Cytec does not answer the allegations contained in Paragraph 12 of the Complaint and respectfully refers the Court to Clean Air Act § 114(a)(1) for its terms.

D. Title V Operating Permit

13. Cytec does not answer the allegations contained in Paragraph 13 of the Complaint and respectfully refers the Court to Clean Air Act Amendments of 1990 for their terms.

14. Cytec admits that the Connecticut Department of Environmental Protection (“CT DEP”) implements a Title V operating permit program.

15. Cytec admits the allegations of Paragraph 15 of the Complaint.

16. Cytec does not answer the allegations contained in Paragraph 16 of the Complaint and respectfully refers the Court to Section 502(a) of the CAA and 40 C.F.R. § 70.7(b) for their terms.

III. General Allegations

17. Cytec admits the allegations of Paragraph 17 of the Complaint.

18. Cytec admits the allegations of Paragraph 18 of the Complaint.

19. Cytec admits that it owns and operates certain assets at the Facility but denies that Cytec owns and operates the thermoplastic operations of Evonik Cyro LLC., also located at the Facility.

20. Cytec admits the allegations contained in Paragraph 20 of the Complaint.

21. Cytec admits the allegations contained in Paragraph 21 of the Complaint.

22. Cytec admits the allegations contained in Paragraph 22 of the Complaint.

23. Cytec admits that the Facility previously contained a chemical manufacturing process with two reactor kettles that produced spray dried resins with the potential to emit formaldehyde and methanol. All other allegations contained in Paragraph 23 of the Complaint are denied.

24. Cytec does not answer the allegations contained in Paragraph 24 of the Complaint and respectfully refers the Court to Section 112(a)(6) of the CAA for its terms.

25. Cytec admits the allegations contained in Paragraph 25 of the Complaint.

26. Cytec admits the allegations contained in Paragraph 26 of the Complaint.

27. Cytec admits that it was the "owner or operator" of an "affected source," as those terms are defined in 40 C.F.R. §63.2 and 40 C.F.R. §60.1400(b). All other allegations contained in Paragraph 27 of the Complaint are denied.

28. Cytec admits the allegations contained in Paragraph 28 of the Complaint.

29. Cytec admits the allegations contained in Paragraph 29 of the Complaint.

30. Cytec admits the allegations contained in Paragraph 30 of the Complaint.

31. Cytec admits the allegations contained in Paragraph 31 of the Complaint.

32. Cytec admits the allegations contained in Paragraph 32 of the Complaint.
33. Cytec admits the allegations contained in Paragraph 33 of the Complaint.
34. Cytec admits the allegations contained in Paragraph 34 of the Complaint.
35. Cytec does not answer the allegations contained in Paragraph 35 of the Complaint as no answer is required.

IV. VIOLATIONS

36. Cytec repeats and incorporates herein its answers contained in Paragraphs 1 through 35 of this Answer.

COUNT I

37. Cytec does not answer the allegations contained in Paragraph 37 of the Complaint and respectfully refers the Court to Section III.I.3.a.x of the Permit and 40 C.F.R. §63.1410 for their terms.

38. Cytec denies the allegations contained in Paragraph 38.
39. Cytec denies the allegations contained in Paragraph 39.

COUNT II

40. Cytec does not answer the allegations contained in Paragraph 40 of the Complaint and respectfully refers the Court to Section III.I.3.b.vi of the Permit for its terms.
41. Cytec denies the allegations contained in Paragraph 41 of the Complaint.
42. Cytec denies the allegations contained in Paragraph 42 of the Complaint.

COUNT III

43. Cytec does not answer the allegations contained in Paragraph 44 of the Complaint and respectfully refers the Court to Section III.I.2 of the Permit and 40 C.F.R. §63.1406(a)(2) for its terms.

44. Cytec denies the allegations contained in Paragraph 44 of the Complaint.

45. Cytec denies the allegations contained in Paragraph 45 of the Complaint.

COUNT IV

46. Cytec does not answer the allegations contained in Paragraph 46 of the Complaint and respectfully refers the Court to Section III.I.2.a.i of the Permit and 40 C.F.R. §63.1415(a)(2) and (b)(3) for their terms.

47. Cytec does not answer the allegations contained in Paragraph 47 of the Complaint and respectfully refers the Court to Section III.I.2.b.i of the Permit and 40 C.F.R. §63.1415(a)(2) and (b)(3) for their terms.

48. Cytec admits that between August 2004 and May 2006, the automated data recorder preserving condenser exit temperatures for the condenser for Kettles 63 and 64 intermittently malfunctioned and failed to record properly. Cytec denies all other allegations contained in Paragraph 48 of the Complaint.

49. Cytec admits the allegations of Paragraph 49 of the Complaint.

COUNT V

50. Cytec does not answer the allegations contained in Paragraph 50 of the Complaint and respectfully refers the Court to Section 114(a)(1) of the CAA for its terms.

51. Cytec does not answer the allegations contained in Paragraph 51 of the Complaint and respectfully refers the Court to the December 5, 2007 Administrative Order and Reporting Requirement for its terms.

52. Cytec admits the allegations contained in Paragraph 52 of the Complaint.

53. Cytec does not answer the allegations contained in Paragraph 53 of the Complaint and respectfully refers the Court to the Reporting Requirement letter dated April 21, 2008 (the "Reporting Requirement") for its terms.

54. Cytec does not answer the allegations contained in Paragraph 54 of the Complaint and respectfully refers the Court to Paragraph 2.b.v of the Reporting Requirement for its terms.

55. Cytec admits the allegations contained in Paragraph 55 of the Complaint.

56. Cytec admits the allegations of Paragraph 56 of the Complaint.

57. Cytec admits the allegations of Paragraph 57 of the Complaint.

58. Cytec denies the allegations of Paragraph 58 of the Complaint.

COUNT VI

59. Cytec does not answer the allegations contained in Paragraph 59 of the Complaint and respectfully refers the Court to the NSPS Kb regulations.

60. Cytec does not answer the allegation contained in Paragraph 60 of the Complaint and respectfully refers the Court to 40 C.F.R. §60.113(c)(1)(i) and (ii) for their terms.

61. Cytec admits that by letter dated February 15, 2008, it provided information to EPA relating to its operating plan for storage tanks subject to NSPS Kb. Cytec denies all other allegations in Paragraph 61 of the Complaint.

62. Cytec denies the allegations contained in Paragraph 62 of the Complaint.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Cytec maintained no "open-ended line," as such term is defined at 40 C.F.R. §63.1020, at emission unit GEU-005 (as described in the Permit) during the period from at least June 12, 2007 through July 19, 2007.

SECOND AFFIRMATIVE DEFENSE

Emissions in excess of any emissions limitation established in the Amino/Phenolic Resins NESHAP, if any, occurred during a malfunction incident subject to 40 C.F.R. §63.1400(k). The emissions limitations established in the Amino/Phenolic Resins NESHAP do not apply during periods of malfunction.

THIRD AFFIRMATIVE DEFENSE

Enforcement is barred with respect to one or more of the alleged violations because the applicable statute of limitations has run.

FOURTH AFFIRMATIVE DEFENSE

Cytec has not been provided fair notice of EPA's interpretation of its regulations or the requirements of the agency and enforcement in this matter violates Cytec's due process rights.

FIFTH AFFIRMATIVE DEFENSE

EPA's "Clean Air Act Stationary Source Civil Penalty Policy," dated October 25, 1991 is invalid on its face as it is expressly contrary of the provisions of Section 113(d) and (e) of the CAA.

SIXTH AFFIRMATIVE DEFENSE

A civil penalty determination that imposes progressively higher penalties arising from strict liability violations on respondents with a net worth of greater than \$100,000 lacks rationale basis and legitimate public purpose and therefore violates Cytec's equal protection guarantee.

SEVENTH AFFIRMATIVE DEFENSE

The proposed civil penalty is excessive and inequitable.

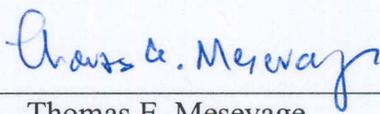
EIGHTH AFFIRMATIVE DEFENSE

The penalties assessed in the Complaint are arbitrary, capricious and unreasonable.

REQUEST FOR HEARING

Cytec requests an administrative hearing to contest material facts, challenge the amount of the penalty proposed in the Complaint and to seek a judgment as to applicable legal issues.

CYTEC INDUSTRIES INC.

By: 
Thomas E. Mesevage
Safety, Health & Environmental Counsel

Dated: March 12, 2009