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U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2009 OCT 30 PM 1:18
REGIONAL HEARING
CLERK

bhutson@mcguirewoods.com
Direct Fax: 704.444.8739

October 29, 2009

Regional Hearing Clerk
U. S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, New York 10007-1866

Re: In the Matter of Oakite Products, Inc., d/b/a Chemetall Oakite,
and Oakite US, Inc. / Docket No. TSCA-02-2009-9148

To Whom It May Concern:

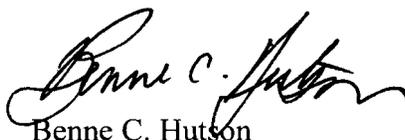
On behalf of the Respondents in this case, we have enclosed for filing the original and two copies of Respondents' Answer and Request for Hearing. We would request that you return one file-stamped copy in the enclosed, self-addressed envelope.

By copy of this letter to Lee A. Spielmann, Assistant Regional Counsel for the U. S. Environmental Protection Agency, we are serving a copy of this pleading on the U. S. Environmental Protection Agency.

If you have any questions regarding this matter, please call me.

Sincerely,

McGuireWoods LLP



Benne C. Hutson

BCH/cr
Enclosure

cc: Lee A. Spielmann (via Federal Express)
Ron Felber (via electronic mail)
Greg Poff (via electronic mail)
Michael Valente (via electronic mail)
Mike Piacentino (via electronic mail)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION TWO

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2009 OCT 30 PM 1:18
REGIONAL HEARING
CLEPK

In the Matter of
Oakite Products, Inc., d/b/a
Chemetall Oakite, and Chemetall US, Inc.,

RESPONDENTS' ANSWER AND
REQUEST FOR HEARING

Respondents.

Docket No. TSCA-02-2009-9148

Proceeding under Section 16(a) of Toxic
Substances Control Act, 15 U.S.C. § 2615(a).

INTRODUCTORY RESPONSE

The Complaint names two entities as Respondents – Oakite Products, Inc., d/b/a Chemetall Oakite, and Chemetall US, Inc. Effective January 1, 2009, Oakite Products, Inc. changed its corporate name to Chemetall US, Inc. A copy of the Certificate of Amendment of the Certificate of Incorporation of Oakite Products, Inc. effecting their name change is attached as Exhibit A. As a result, at law Oakite Products, Inc. and Chemetall US, Inc. are the same legal entity meaning there is only one Respondent in this matter.

With this introductory response, Respondent moves or otherwise responds to the Complaint in this matter as follows:

FIRST DEFENSE

Answering the numbered allegations of the Complaint, Respondent responds as follows:

1. Respondent denies the allegations of paragraph 1 of the Complaint as it sets forth a legal conclusion as to which Respondent lacks knowledge or information sufficient to form a belief as to their truth or falsity.
2. Respondent denies the allegations of paragraph 2 of the Complaint as it calls for a legal conclusion as to which Respondent lacks knowledge or information sufficient to form a believe as to their truth or falsity.
3. Respondent denies the allegations of paragraph 3 of the Complaint as it calls for a legal conclusion as to which Respondent lacks knowledge or information sufficient to form a believe as to their truth or falsity.
4. Respondent denies the allegations of paragraph 4 of the Complaint as it calls for a legal conclusion as to which Respondent lacks knowledge or information sufficient to form a believe as to their truth or falsity.
5. Respondent admits the allegations of paragraph 5 of the Complaint.

6. Respondent denies the allegations of paragraph 6 of the Complaint as it sets forth a legal conclusion as to which Respondent lacks knowledge or information sufficient to form a belief as to their truth or falsity.

7. Respondent denies the allegations of paragraph 7 of the Complaint as it sets forth a legal conclusion as to which Respondent lacks knowledge or information sufficient to form a belief as to their truth or falsity.

8. Respondent admits the allegations of paragraph 8 of the Complaint.

9. In response to the allegations of paragraph 9 of the Complaint, Respondent admits that the Complaint accurately quotes the portions of the statutes cited.

10. Respondent denies the allegations of paragraph 10 of the Complaint as it sets forth a legal conclusion as to which Respondent lacks knowledge or information sufficient to form a belief as to their truth or falsity.

11. Respondent denies the allegations of paragraph 11 of the Complaint as it sets forth a legal conclusion as to which Respondent lacks knowledge or information sufficient to form a belief as to their truth or falsity.

12. In response to the allegations of paragraph 12 of the Complaint, Respondent admits that the Complaint accurately quotes the portions of the statutes cited.

13. Respondent denies the allegations of paragraph 13 of the Complaint as it sets forth a legal conclusion as to which Respondent lacks knowledge or information sufficient to form a belief as to their truth or falsity.

14. In response to the allegations of paragraph 14 of the Complaint, Respondent incorporates by reference its Introductory Response. Except to the extent otherwise admitted, Respondent denies the allegations of paragraph 14 of the Complaint.

15. In response to the allegations of paragraph 15 of the Complaint, Respondent incorporates by reference its Introductory Response. Except as expressly admitted, Respondent denies the allegations of paragraph 15 of the Complaint.

16. Respondent admits the allegations of paragraph 16 of the Complaint.

17. Respondent denies the allegations of paragraph 17 of the Complaint as it sets forth a legal conclusion as to which Respondent lacks knowledge or information sufficient to form a belief as to their truth or falsity.

18. In response to the allegations of paragraph 18 of the Complaint, Respondent admits that Chemetall US, develops, manufactures and supplies specialty chemical products and systems to many industries. Except as expressly admitted, Respondent denies the allegations of paragraph 18 of the Complaint.

19. In response to the allegations of paragraph 19 of the Complaint, Respondent admits that Chemetall US, maintains a headquarters facility at 675 Central Avenue, New Providence, New Jersey 07974. Except as expressly admitted, Respondent denies the allegations of paragraph 19 of the Complaint.

20. Respondent admits the allegations of paragraph 20 of the Complaint.

21. Respondent admits the allegations of paragraph 21 of the Complaint.

22. Respondent denies the allegations of paragraph 22 of the Complaint as it sets forth a legal conclusion as to which Respondent lacks knowledge or information sufficient to form a belief as to their truth or falsity.

23. In response to the allegations of paragraph 23 of the Complaint, Respondent admits that on or about May 14, 2008, representatives of the United States Environmental Protection Agency conducted an inspection of and at Chemetall US's headquarters. Except as expressly admitted, Respondent denies the allegations of paragraph 23 of the Complaint for lack of knowledge or information sufficient to form a belief as to their truth or falsity.

24. In response to paragraph 24 of the Complaint, the responses set forth in the Introductory Response and in paragraphs 1 through 23 of this Answer are incorporated by reference.

25. Respondent admits the allegations of paragraph 25 of the Complaint.

26. Respondent denies the allegations of paragraph 26 of the Complaint as it sets forth a legal conclusion as to which Respondent lacks knowledge or information sufficient to form a belief as to their truth or falsity.

27. Respondent admits the allegations of paragraph 27 of the Complaint.

28. Respondent admits the allegations of paragraph 28 of the Complaint.

29. Respondent denies the allegations of paragraph 29 of the Complaint as it sets forth a legal conclusion as to which Respondent lacks knowledge or information sufficient to form a belief as to their truth or falsity.

30. Respondent denies the allegations of paragraph 30 of the Complaint as it sets forth a legal conclusion as to which Respondent lacks knowledge or information sufficient to form a belief as to their truth or falsity.

31. In response to the allegations of paragraph 31 of the Complaint, Respondent admits that no filings were made during the period from August 25, 2006 to March 23, 2007 but that the filings were subsequently made on a voluntary basis on or about September 24, 2008. Except as admitted, Respondent denies the allegations of paragraph 31 of the Complaint.

32. Respondent denies the allegations of paragraph 32 of the Complaint as it sets forth a legal conclusion as to which Respondent lacks knowledge or information sufficient to form a belief as to their truth or falsity.

33. Respondent denies the allegations of paragraph 33 of the Complaint as it sets forth a legal conclusion as to which Respondent lacks knowledge or information sufficient to form a belief as to their truth or falsity.

34. Respondent denies the allegations of paragraph 34 of the Complaint as it sets forth a legal conclusion as to which Respondent lacks knowledge or information sufficient to form a belief as to their truth or falsity.

35. Respondent denies the allegations of paragraph 35 of the Complaint as it sets forth a legal conclusion as to which Respondent lacks knowledge or information sufficient to form a belief as to their truth or falsity.

36. In response to the allegations of paragraph 36 of the Complaint, Respondent incorporates by reference its Introductory Response. Except as expressly admitted, Respondent denies the allegations of paragraph 36 of the Complaint.

37. Respondent denies the allegations of paragraph 37 of the Complaint as it sets forth a legal conclusion as to which Respondent lacks knowledge or information sufficient to form a belief as to their truth or falsity.

38. In response to paragraph 38 of the Complaint, the responses set forth in the Introductory Response and in paragraphs 1 through 37 of this Answer are incorporated by reference.

39. Respondent admits the allegations of paragraph 39 of the Complaint.

40. Respondent admits the allegations of paragraph 40 of the Complaint.

41. Respondent denies the allegations of paragraph 41 of the Complaint as it sets forth a legal conclusion as to which Respondent lacks knowledge or information sufficient to form a belief as to their truth or falsity.

42. Respondent denies the allegations of paragraph 42 of the Complaint as it sets forth a legal conclusion as to which Respondent lacks knowledge or information sufficient to form a belief as to their truth or falsity.

43. Respondent denies the allegations of paragraph 43 of the Complaint as it sets forth a legal conclusion as to which Respondent lacks knowledge or information sufficient to form a belief as to their truth or falsity.

44. Respondent admits the allegations of paragraph 44 of the Complaint.

45. Respondent denies the allegations of paragraph 45 of the Complaint as it sets forth a legal conclusion as to which Respondent lacks knowledge or information sufficient to form a belief as to their truth or falsity.

46. Respondent denies the allegations of paragraph 46 of the Complaint as it sets forth a legal conclusion as to which Respondent lacks knowledge or information sufficient to form a belief as to their truth or falsity.

47. In response the allegations of paragraph 47 of the Complaint, Respondent admits that no filings were made during the time period from August 25, 2006 to March 23, 2007 but subsequently the filings were made voluntarily on or about September 24, 2008. Except as expressly admitted, Respondent denies the allegations of paragraph 47 of the Complaint.

48. Respondent denies the allegations of paragraph 48 of the Complaint as it sets forth a legal conclusion as to which Respondent lacks knowledge or information sufficient to form a belief as to their truth or falsity.

49. Respondent denies the allegations of paragraph 49 of the Complaint as it sets forth a legal conclusion as to which Respondent lacks knowledge or information sufficient to form a belief as to their truth or falsity.

50. Respondent denies the allegations of paragraph 50 of the Complaint as it sets forth a legal conclusion as to which Respondent lacks knowledge or information sufficient to form a belief as to their truth or falsity.

51. Respondent denies the allegations of paragraph 51 of the Complaint as it sets forth a legal conclusion as to which Respondent lacks knowledge or information sufficient to form a belief as to their truth or falsity.

52. In response to the allegations of paragraph 52 of the Complaint, Respondent incorporates by reference its Introductory Response. Except as expressly admitted, Respondent denies the allegations of paragraph 52 of the Complaint.

53. In response to the allegations of paragraph 53 of the Complaint, Respondent incorporates by reference its Introductory Response. Except as expressly admitted, Respondent denies the allegations of paragraph 53 of the Complaint.

54. Respondent denies the allegations of paragraph 54 of the Complaint as it sets forth a legal conclusion as to which Respondent lacks knowledge or information sufficient to form a belief as to their truth or falsity.

55. Except as otherwise admitted or denied for specifically stated reasons, Respondent denies the allegations of the Complaint.

SECOND DEFENSE

In the section of the Complaint entitled Proposed Civil Penalty, the Complaint states that “for purposes of determining the amount of any penalty to be assessed, Section 16 of TSCA, 15

U.S.C. § 2615, requires the EPA to take into account the nature, circumstances, extent and gravity of the violation(s) alleged. As to the violator, Section 16 also requires EPA to take into account its ability to pay, the effect of the penalty and its ability to continue to due business, its history of prior such violations, its degree of culpability, as well as such other matters as justice may require. To develop the proposed penalty for this proceeding, Complainant has taken into account the particular facts and circumstances of this case, *to the extent known up to the time of issuance*, . . . (Emphasis Added.) Prior to filing the Complaint and issuing the penalty, EPA did not conduct any inquiry of Respondent or, to the knowledge of Respondent , any other parties or any records or documents publicly available to discharge its duty to take into account Respondent's ability to pay, the effect of the penalty on Respondent's ability to continue to do business, Respondent's history of prior such violations, Respondent's degree of culpability, as well as such other matters as justice may require. By failing to conduct such inquiry prior to the issuance of the penalty, the assessment of the penalty is contrary to applicable law, regulations, policies and guidelines, including but not limited to EPA's "Guidelines for Assessment of Civil Penalties Under Section 16 of the Toxic Substances Control Act."

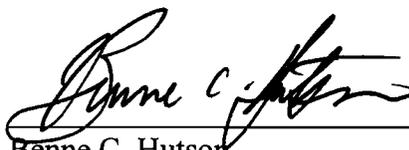
THIRD DEFENSE

For the reasons set forth in the Second Defense, which are incorporated by reference, the penalty assessment at issue in this case is arbitrary and capricious.

REQUEST FOR HEARING

Respondent requests a hearing upon the issues raised by the Complaint and this Answer.

This the 29th day of October, 2009.



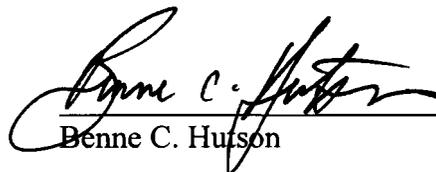
Benne C. Hutson
McGuireWoods LLP
201 North Tryon, 30th Floor
Charlotte, NC 28202
Tel.: 704-343-2060
Fax: 704-444-8739
bhutson@mcguirewoods.com
Attorneys for Respondents

CERTIFICATE OF SERVICE

Certified that I have this day served the Answer and Request for Hearing upon the following by placing a copy in the United States Mail, First Class, postage prepaid, addressed as follows:

Lee A. Spielmann
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866

This 29~~th~~ day of October, 2009.



Benne C. Hurson

Delaware

PAGE 1

The First State

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF AMENDMENT OF "OAKITE PRODUCTS, INC.", CHANGING ITS NAME FROM "OAKITE PRODUCTS, INC." TO "CHEMETALL US, INC.", FILED IN THIS OFFICE ON THE FIFTH DAY OF DECEMBER, A.D. 2008, AT 5:16 O'CLOCK P.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.

AND I DO HEREBY FURTHER CERTIFY THAT THE EFFECTIVE DATE OF THE AFORESAID CERTIFICATE OF AMENDMENT IS THE FIRST DAY OF JANUARY, A.D. 2009.

2036887 8100

081170605

You may verify this certificate online
at corp.delaware.gov/uthver.shtml



Harriet Smith Windsor
Harriet Smith Windsor, Secretary of State
AUTHENTICATION: 7007688

DATE: 12-08-08

State of Delaware
Secretary of State
Division of Corporations
Delivered 08:22 PM 12/05/2008
FILED 05:16 PM 12/05/2008
SRV 081170605 - 2036887 FILE

CERTIFICATE OF AMENDMENT
OF
CERTIFICATE OF INCORPORATION
OF
OAKITE PRODUCTS, INC.

OAKITE PRODUCTS, INC., a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware,

DOES HEREBY CERTIFY:

FIRST: That the Board of Directors of said corporation adopted a resolution proposing and declaring advisable the following amendment to the Certificate of Incorporation of said corporation:

RESOLVED, that effective as of January 1, 2009, the Certificate of Incorporation of Oakite Products, Inc. be amended by changing Article First thereof so that, as amended, said Article shall be and read as follows:

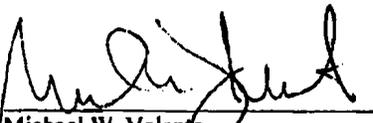
The name of the corporation is Chemetal US, Inc. ("Corporation").

SECOND: That in lieu of a meeting and vote of the sole stockholder, the stockholder has given written consent to said amendment in accordance with the provisions of Section 228 of the General Corporation Law of the State of Delaware.

THIRD: That the aforesaid amendment was duly adopted in accordance with the applicable provisions of Sections 242 and 228 of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, said Oakite Products, Inc. has caused this certificate to be signed by Michael W. Valente, its General Counsel & Assistant Secretary, this 4th day of December, 2008.

OAKITE PRODUCTS, INC.

By: 
Michael W. Valente
General Counsel & Assistant Secretary