

McGuireWoods LLP  
201 North Tryon Street  
P.O. Box 31247 (28231)  
Charlotte, NC 28202  
Phone: 704.343.2000  
Fax: 704.343.2300  
www.mcguirewoods.com

Benne C. Hutson  
Direct: 704.343.2060

McGUIREWOODS

bhutson@mcguirewoods.com  
Direct Fax: 704.444.8739

August 4, 2010

**Via Facsimile**

Honorable Barbara A. Gunning  
Administrative Law Judge  
U. S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Mail Code 1900L  
Washington, DC 20460

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. 1  
2010 AUG 11 PM 1:21  
REGIONAL HEARING  
CLERK

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

Dear Judge Gunning:

On behalf of the Respondents in this case, we have enclosed a copy of Respondent's Motion for Order Setting Specific Deadlines for EPA to Provide Draft CAFO, For Settlement to be Completed and for Additional Time for Filing Pre-Hearing Exchange.

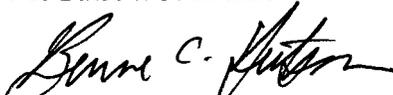
By copy of this letter, the original and two copies of this pleading are being sent to the Regional Hearing Clerk for EPA Region 2 for filing. We would request that the Clerk return one file-stamped copy in the enclosed, self-addressed envelope.

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

Enclosures

cc: Regional Hearing Clerk  
Lee A. Spielmann  
Greg Poff

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
**REGION TWO**

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

Docket No.: TSCA-02-2009-9148

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2010 AUG 11 PM 1:21  
REGIONAL HEARING  
CLERK

**RESPONDENT'S MOTION FOR ORDER SETTING SPECIFIC DEADLINES FOR  
EPA TO PROVIDE DRAFT CAFO, FOR SETTLEMENT TO BE COMPLETED  
AND FOR ADDITIONAL TIME FOR FILING PRE-HEARING EXCHANGE**

By its Order dated June 4, 2010, this Court granted the parties “an extension of 60 days in which to finalize a CAFO” in this matter with Respondent having to “sign the final CAFO by August 10, 2010, or submit its prehearing exchange information on that date.” Respondent (hereinafter referred to as “Chemetall”) stands ready and willing to sign the CAFO and finalize the settlement in this case but cannot do so for one simple reason – EPA has yet to provide Chemetall with even a draft of a CAFO yet. This situation exists despite the fact that Chemetall has provided EPA with all information that the agency has requested and has stayed in regular contact with the agency to try to move the matter along.

The following factual summary documents this situation.

1. On June 2, 2010, representatives of Chemetall traveled to New York City to meet with representatives of EPA during which meeting the parties finalized the terms of a settlement of this matter.
2. At that meeting, EPA requested that Chemetall provide certain additional information for inclusion in the CAFO that would document the settlement. Chemetall

provided that information the very next day, June 3, 2010. A copy of the E-mail documenting this is attached as Exhibit A.

3. On June 4, 2010, Chemetall filed a motion with the Court requesting an extension of 60 days to the remaining pre-hearing filing deadlines to allow the settlement documents to be completed and signed. The Court granted that motion that same day.

4. On June 30, 2010, Chemetall's attorney sent an E-mail to EPA's attorney inquiring as to the status of the draft CAFO and confirming the terms of the settlement. A copy of this E-mail is attached as Exhibit B.

5. Counsel for EPA responded the next day (July 1, 2010) stating that "A consent agreement has been drafted and is being reviewed" and that EPA hoped "to send it . . . sometime next week." A copy of this E-mail is attached as Exhibit C.

6. On July 16, 2010, Chemetall's attorney, after returning from vacation, acknowledge receipt of Exhibit C and inquired as to when a draft CAFO would be sent as one had not yet been received. A copy of this E-mail is attached as Exhibit D.

7. Since July 16, 2010, attorneys for the parties have spoken on at least two and possibly three occasions, including a discussion yesterday at approximately 5:40 p.m. During that conversation, counsel for EPA stated that the draft CAFO was still being reviewed within the agency and, in light of the Court's deadline of August 10, that Chemetall should seek an extension of time and that EPA would file a concurrence in support of the motion as the delay in completing the settlement was not the fault of Chemetall.

Chemetall would note at the outset that counsel for EPA has been very professional in dealing with this situation as well as expressing apologies for the delay in completing the settlement. However, Chemetall is very, very frustrated by this situation. In settling this matter, Chemetall has agreed to pay a penalty of \$93,000 as well as spend close to \$400,000 on two major supplemental environmental projects. Beyond establishing these obligations with certainty, the settlement also meant that legal proceedings and the attendant time and costs (including legal fees) associated with those proceedings could be brought to an end. Instead, Chemetall continues to face filing deadlines and incur legal fees to seek extensions of those deadlines and to try to push the settlement to conclusion. (Since the June 2 meeting with EPA, Chemetall has incurred legal fees exceeding \$2,500, including the costs to prepare this motion.)

Chemetall's counsel is familiar with the form CAFO used by EPA to document settlements of matters similar to the one at issue here, having recently negotiated two CAFOs with EPA Region 4. As a result, Chemetall's counsel will be able to review the draft, discuss it with Chemetall's management and respond to EPA within a few days after receiving it.

This matter needs to be brought to a conclusion as soon as possible so that the parties can devote their time to implementing the settlement terms and this Court can devote its finite resources to matters where true controversies exist.

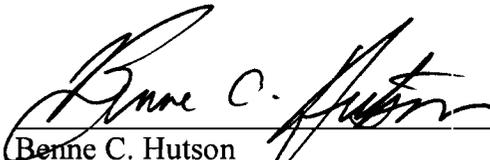
For the reasons stated in this motion, Respondent respectfully moves this Court pursuant to 40 CFR Sections 22.4(c)(2), 22.7(b), 22.16(a) and 22.19(a) for an order that:

1. Requires EPA to provide a draft CAFO to Respondent within 20 days;

2. Requires Respondent to respond to the draft CAFO within 10 days of receipt;
3. Requires the parties to complete negotiation of and have EPA send to Respondent for execution the final CAFO by September 15; and
4. Extends for 45 days the remaining deadlines for submission of pre-hearing and rebuttal pre-hearing statements.

This the 4<sup>th</sup> day of August.

Respectfully submitted,

  
Benne C. Hutson  
Attorney for Respondent

## CERTIFICATE OF SERVICE

The undersigned certifies that I have this day served the Respondent's Motion for Setting Specific Deadline for EPA to Provide CAFO and For Additional Time for Filing Pre-Hearing Exchange upon the following by the methods indicated below, as follows:

Via U.S. Mail

Office of Regional Hearing Court  
U.S. Environmental Protection Agency  
Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, NY 10007-1866

Via Facsimile and U.S. Mail

The Honorable Barbara A. Gunning  
Administrative Law Judge  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Mail Code 1900L  
Washington, D.C. 20460

Via Electronic and U.S. Mail

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

This 4th day of August, 2010.

  
\_\_\_\_\_  
Benne C. Hutson

EXHIBIT "A"

**Hutson, Benne C.**

**From:** Hutson, Benne C.  
**Sent:** Thursday, June 03, 2010 3:11 PM  
**To:** Spielmann.Lee@epamail.epa.gov  
**Cc:** greg.poff@chemetall.com; barry.martin@chemetall.com; Short, Amanda Kitchen  
**Subject:** Chemetall/TSCA Matter -- Motion for Extension of Time and Other Requested Documents  
**Attachments:** Active\_11526135\_1\_rockwood chemetall description of SEPs.DOC; 1210\_001.pdf; 1209\_001.pdf; 1211\_001.pdf; Active\_11534709\_1\_Chemetell - Motion for Extension of Time.DOC

Lee:

Thanks again to you, Dan and Chester for meeting with us yesterday and I hope you are as pleased as we are to have reached a settlement of this matter.

As a follow up to our meeting, I have attached the following:

1. A description of each SEP for your review and revision or approval for use in the Consent Agreement Final Order;
2. A breakdown of the costs for the packed bed scrubber SEP with supporting vendor cost estimates;
3. A breakdown of the costs for the bulk off-loading and spill containment SEP with supporting vendor cost estimates;
4. Proposed milestone dates for each SEP for your review and revision or approval for use in the Consent Agreement Final Order; and
5. A draft Motion for Additional Time for Filing Pre-Hearing Exchange for your review and revision or approval.

Please let me know as soon as you can as to your comments on or approval of the draft Motion so I can proceed to file that and get it to the Judge.

None of these documents is being submitted as confidential business information.

I look forward to hearing from you soon regarding these matters.

Benne

Benne C. Hutson  
McGuireWoods LLP

201 N. Tryon Street  
Suite 3000  
Charlotte, NC 28202  
704.343.2060 (Direct Line)  
704.343.2000 (Direct FAX)  
bhutson@mcguirewoods.com  
<http://www.mcguirewoods.com>

---

*This e-mail may contain confidential or privileged information. If you are not the intended recipient, please advise by return e-mail and delete immediately without reading or forwarding to others.*

8/4/2010

EXHIBIT "B"

**Hutson, Benne C.**

**From:** Hutson, Benne C.  
**Sent:** Wednesday, June 30, 2010 4:29 PM  
**To:** Spielmann.Lee@epamail.epa.gov  
**Cc:** greg.poff@chemetall.com; barry.martin@chemetall.com  
**Subject:** Chemetall/TSCA Settlement

Lee:

I am heading out on vacation starting tomorrow and returning July 12. As we will have less than a month to complete the CAFO when I get back, I am writing to confirm the agreed upon settlement terms, information we have provided for inclusion in the CAFO and that there are no other outstanding items due from us. If there are any inaccuracies in this, please let me know right away so we can get those resolved immediately upon my return and eliminate any chance that the Court's deadline will not be met.

The basic terms of the settlement are as follows:

1. The cash payment portion of the penalty will be \$93,000 with payment due within 45 days of execution of the CAFO by all parties.
2. Chemetall will perform two SEPs at its Romulus, Michigan facility -- the packed bed scrubber project and the bulk off-loading and spill containment project.
3. The total amount to be spent on the SEPs will be \$396,600.
4. The SEPs will be completed by September 2011.
5. Quarterly status reports will be submitted by October 31, 2010, January 31, 2011, April 30, 2011 and July 31, 2011 covering activities relating to the SEPs conducted during the preceding calendar quarter
6. The CAFO will be based on the standard model CAFO used by EPA.

We have provided by a June 3 E-mail to you milestone timelines for each project, supporting documentation for the cost estimate for each project and a description of each project for your use in drafting the CAFO. I am not aware of any other information or items we have been asked to provide.

Once again, if there are any inaccuracies in the basic settlement terms as I have presented them here, if you have not received any of the information I have indicated has been previously provided or if there is anything that we had agreed to provide but have not yet done so, please let me know so we can address those matters right away. If not, I will await receipt of the draft CAFO for prompt review and comments so that we can complete the settlement by the Court's deadline.

Have a good holiday weekend.

Benne

Benne C. Hutson  
McGuireWoods LLP

201 N. Tryon Street  
Suite 3000  
Charlotte, NC 28202  
704.343.2060 (Direct Line)  
704.343.2000 (Direct FAX)

8/4/2010

EXHIBIT "C"

**Hutson, Benne C.**

**From:** Spielmann.Lee@epamail.epa.gov  
**Sent:** Thursday, July 01, 2010 11:56 AM  
**To:** Hutson, Benne C.  
**Subject:** Re: Chemetall/TSCA Settlement

Thanks for your message. A consent agreement has been drafted and is being reviewed. I hope to send it to you sometime next week or so (I am out the 6th through the 8th).

Lee

From: "Hutson, Benne C." <BHutson@mcguirewoods.com>  
To: Lee Spielmann/R2/USEPA/US@EPA  
Cc: "greg.poff@chemetall.com" <greg.poff@chemetall.com>, "barry.martin@chemetall.com" <barry.martin@chemetall.com>  
Date: 06/30/2010 04:29 PM  
Subject: Chemetall/TSCA Settlement

Lee:

I am heading out on vacation starting tomorrow and returning July 12. As we will have less than a month to complete the CAFO when I get back, I am writing to confirm the agreed upon settlement terms, information we have provided for inclusion in the CAFO and that there are no other outstanding items due from us. If there are any inaccuracies in this, please let me know right away so we can get those resolved immediately upon my return and eliminate any chance that the Court's deadline will not be met.

The basic terms of the settlement are as follows:

1. The cash payment portion of the penalty will be \$93,000 with payment due within 45 days of execution of the CAFO by all parties.
2. Chemetall will perform two SEPs at its Romulus, Michigan facility -- the packed bed scrubber project and the bulk off-loading and spill containment project.
3. The total amount to be spent on the SEPs will be \$396,600.
4. The SEPs will be completed by September 2011.
5. Quarterly status reports will be submitted by October 31, 2010, January 31, 2011, April 30, 2011 and July 31, 2011 covering activities relating to the SEPs conducted during the preceding calendar quarter.
6. The CAFO will be based on the standard model CAFO used by EPA.

We have provided by a June 3 E-mail to you milestone timelines for each project, supporting documentation for the cost estimate for each project and a description of each project for your use in drafting the CAFO. I am not aware of any other information or items we have been asked to provide.

8/4/2010

EXHIBIT "D"

**Hutson, Benne C.**

**From:** Hutson, Benne C.  
**Sent:** Friday, July 16, 2010 11:17 AM  
**To:** Spielmann.Lee@epamail.epa.gov  
**Cc:** barry.martin@chemetall.com; greg.poff@chemetall.com  
**Subject:** RE: Chemetall/TSCA Settlement

Lee:

I apologize for the delay in acknowledging receipt of your E-mail as I am still digging out from vacation.

When do you expect to send me a draft of the CAFO? I do not want to press up too close to the Court's filing deadline if that is possible.

Thanks.

Benne

---

**From:** Spielmann.Lee@epamail.epa.gov [mailto:Spielmann.Lee@epamail.epa.gov]  
**Sent:** Thursday, July 01, 2010 11:56 AM  
**To:** Hutson, Benne C.  
**Subject:** Re: Chemetall/TSCA Settlement

Thanks for your message. A consent agreement has been drafted and is being reviewed. I hope to send it to you sometime next week or so (I am out the 6th through the 8th).

Lee

**From:** "Hutson, Benne C." <BHutson@mcguirewoods.com>  
**To:** Lee Spielmann/R2/USEPA/US@EPA  
**Cc:** "greg.poff@chemetall.com" <greg.poff@chemetall.com>, "barry.martin@chemetall.com" <barry.martin@chemetall.com>  
**Date:** 06/30/2010 04:29 PM  
**Subject:** Chemetall/TSCA Settlement

Lee:

I am heading out on vacation starting tomorrow and returning July 12. As we will have less than a month to complete the CAFO when I get back, I am writing to confirm the agreed upon settlement terms, information we have provided for inclusion in the CAFO and that there are no other outstanding items due from us. If there are any inaccuracies in this, please let me know right away so we can get those resolved immediately upon my return and eliminate any chance that the Court's deadline will not be met.

The basic terms of the settlement are as follows:

8/4/2010