

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II

2010 NOV - 3 P. 12: 30

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2  
PUBLIC HEARING  
OFFICE

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In the Matter of : **CONSENT AGREEMENT AND**  
 : **FINAL ORDER**  
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Oakite Products, Inc., d/b/a :  
Chemetall Oakite, :  
and Chemetall US, Inc., :  
 :  
Respondents. :  
 :  
Proceeding under Section 16(a) of : **Docket No.**  
Toxic Substances Control Act, : **TSCA-02-2009-9148**  
15 U.S.C. § 2615(a). :  
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**PRELIMINARY STATEMENT**

This administrative proceeding for the assessment of a civil penalty was instituted pursuant to Section 16(a) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615(a). The United States Environmental Protection Agency ("EPA"), under authority of TSCA, has promulgated regulations governing the periodic reporting of chemical substances manufactured or imported for commercial purposes in order to update the inventory established pursuant to Section 8(a) of TSCA, 15 U.S.C. § 2607(a). The Director of the Division of Enforcement and Compliance Assistance of the EPA, Region 2 ("Complainant"), on behalf of the Administrator of the EPA, issued against Respondents a "Complaint And Notice Of Opportunity For Hearing" ("Complaint") on September 24, 2009. The Complaint sets forth two separate counts, alleging violations of reporting requirements as set forth in 40 C.F.R. Part 710, Subpart C, and it further asserts the alleged violations rendered Respondents liable to the United States pursuant to Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1). Respondents timely served the answer on or about October 29, 2009. It admits some of the underlying predicate allegations and denies allegations pertinent to a finding of liability. Further asserting two affirmative defenses, it requests a hearing.

Complainant and Respondents agree, by entering into this Consent Agreement and Final Order ("CA/FO"), that settlement of this matter upon the terms set forth in this CA/FO is an appropriate means of resolving the claims against Respondents without further litigation. This CA/FO is being issued pursuant to, and under authority of, 40 C.F.R. § 22.18(b). No adjudicated findings of fact or conclusions of law have been made by any tribunal of competent jurisdiction. For the purposes of this CA/FO and for purposes of implementing the settlement set forth herein, Respondents neither admit nor deny the EPA Findings of Fact or the EPA Conclusions of Law that have been set forth below.

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EPA FINDINGS OF FACT

1. The named respondents are: Oakite Products, Inc., doing business as Chemetall Oakite (hereinafter "OPI"); and Chemetall US, Inc. (hereinafter "CUS"), each of which is/was at all times relevant to the times set forth below a corporation organized pursuant to the laws of the State of Delaware.<sup>1</sup>

2. Respondent, which has maintained and continues to do so, a headquarters facility the address of which is 675 Central Avenue, New Providence, New Jersey 07974, has been and continues to be in the business of developing, manufacturing and supplying specialty chemical products and systems to many industries.

3. During calendar year 2005, OPI owned and/or controlled each of the following facilities: a) one facility the address of which is 16961 Knott Avenue, La Mirada, California 90638 (hereinafter the "California facility"), and b) another facility, the address of which is 13177 Huron River Drive, Romulus, Michigan 48174 (hereinafter the "Michigan facility").

4. In calendar year 2005, at the California facility, OPI manufactured for commercial purposes each of the following three chemical substances (each followed by its Chemical Abstracts Service Registry Number ["CAS Number"; 40 C.F.R. § 704.3]) in an amount greater than the amount set forth in 40 C.F.R. § 710.48(a):

- a) Zinc dihydrogen phosphate (13598-37-3);
- b) Phosphoric acid monoethanolamine salt (29868-05-1); and
- c) Sodium dihydrogen phosphate (7558-80-7).

5. In calendar year 2005, at the Michigan facility, OPI manufactured for commercial purposes each of the following chemical substances (each followed by its CAS Number) in an amount greater than the amount set forth in 40 C.F.R. § 710.48(a):

- a) Sodium dihydrogen phosphate (7558-80-7);
- b) Zinc nitrate (7779-88-6);
- c) Manganese dihydrogen phosphate (18718-07-5);
- d) Zinc dihydrogen phosphate (13598-37-3);
- e) Manganese nitrate (10377-66-9);
- f) Potassium oleate (also known as potassium cis-9-octadecenoic acid; 143-18-0);
- g) Phosphonic acid, P,P,P - [nitrilotris (methylene)] tris sodium salt (also known

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<sup>1</sup> The "Introductory Response" of the Answer states, in relevant part: "Effective January 1, 2009, Oakite Products, Inc. [OPI] changed its corporate name to Chemetall US, Inc. [CUS]. \*\*\* 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." In light of this admission, the singular term "Respondent" will hereinafter be used.



- as sodium aminotris (methylenephosphonate); 20592-85-2);
- h) Sodium silicate (1344-09-8);
- i) Potassium tetraborate (also known as boric acid, dipotassium salt; 1332-77-0);
- j) Potassium tallate (61790-44-1);
- k) Triethanolamine borate (also known as boric acid, compd. with 2,2',2"-nitrilotris (ethanol); 68413-80-9);
- l) Dipotassium octenyl succinate (also known as butanedioic acid, 2(octen-1-yl)-, potassium salt (1:2); 58641-28-4);
- m) Ethanol (64-17-5);
- n) Chromium phosphate (also known as chromic phosphate; 7789-04-0);
- o) Ammonium dihydrogen phosphate (also known as monoammonium phosphate; 7722-76-1); and
- p) 3-aminopropyl silanetriol (also known as silanetriol, 1-(3-aminopropyl)-; 58160-99-9).

6. In calendar year 2005, at the Michigan facility, OPI imported for commercial purposes sodium hydrogen phosphate (also known as disodium phosphate; CAS Number 7558-79-4) in an amount greater than the amount set forth in 40 C.F.R. § 710.48(a).

7. OPI failed to report to EPA during the period from August 25, 2006 to March 23, 2007 the information required to be reported pursuant to 40 C.F.R. § 710.52(c) [hereinafter such information, required to be submitted pursuant to 40 C.F.R. § 710.59 on a form identified as "Form U," referred to as the "IUR information"] for each of the aforementioned (§ 4, above) three chemical substances.

8. OPI failed to report to EPA during the period from August 25, 2006 to March 23, 2007 the requisite IUR information for: a) each of the aforementioned (§ 5, above) chemical substances manufactured at the Michigan facility, and b) the sodium hydrogen phosphate imported for commercial purposes at the Michigan facility (§ 6, above).

9. Each of the aforementioned (§§ 4, 5 and 6, above) chemical substances was listed on the TSCA Master Inventory File (as defined in 40 C.F.R. § 710.43) on, and as of, August 25, 2006.

10. OPI submitted to EPA a Form U with the IUR information for the aforementioned (§§ 4, 5 and 6, above) chemical substances on or about September 24, 2008.

#### EPA CONCLUSIONS OF LAW

1. Each of the following was/is a person within the meaning of 40 C.F.R. §§ 704.3 and 710.3: a) OPI, from about December 1991 up to January 1, 2009, and b) CUS, since January 1, 2009.

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2. Each of the aforementioned (¶s 4 and 5 of the “EPA Findings of Fact” section, above) chemical substances was: a) a “chemical substance” within the meaning of Section 3(2) of TSCA, 15 U.S.C. § 2602(2), and of 40 C.F.R. § 710.3, and b) “manufactured for commercial purposes” within the meaning of Section 3(7) of TSCA, 15 U.S.C. § 2602(7), and in 40 C.F.R. §§ 704.3 and 710.3.

3. Sodium hydrogen phosphate was “imported for commercial purposes” within the meaning of Section 3(7) of TSCA, 15 U.S.C. § 2602(7), and in 40 C.F.R. §§ 704.3 and 710.3.

4. OPI’s failure to have reported the requisite IUR information to EPA for the aforementioned (¶ 4 of the “EPA Findings of Fact” section, above) three chemical substances during the period from August 25, 2006 to March 23, 2007 constitutes three separate failures or refusals to comply with 40 C.F.R. § 710.53, with each such failure constituting a separate and distinct violation of Section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B).

5. OPI’s failure to have reported the requisite IUR information to EPA for the aforementioned (¶s 5 and 6 of the “EPA Findings of Fact” section, above) 17 chemical substances during the period from August 25, 2006 to March 23, 2007 constitutes 17 separate failures or refusals to comply with 40 C.F.R. § 710.53, with each such failure constituting a separate and distinct violation of Section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B).

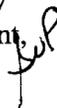
6. CUS has assumed, in whole or in part, the obligations and responsibilities for any liabilities arising from the manufacture for commercial purposes of the aforementioned (¶ 4 of the “EPA Findings of Fact” section, above) three chemical substances that occurred during calendar year 2005 at the California facility and for which OPI is/was or may be/may have been liable.

7. CUS has assumed, in whole or in part, the obligations and responsibilities for any liabilities arising from the manufacture/importation for commercial purposes of the aforementioned (¶s 5 and 6 of the “EPA Findings of Fact” section, above) 17 chemical substances that occurred during calendar year 2005 at the Michigan facility and for which OPI is/was or may be/may have been liable.

8. For each of the aforementioned (¶s 4, 5, 6 and 7 of this section, above) 20 violations of Section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B), OPI/CUS is liable to the United States pursuant to Section 16(a)(1) of TSCA, 15 U.S.C. § 2614(a)(1).

#### **AGREEMENT ON CONSENT**

Based upon the foregoing, and pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and 40 C.F.R. § 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. Part 22, it is hereby agreed by and between Complainant, and voluntarily accepted by Respondent, that Respondent



for purposes of this Consent Agreement and in the interest of settling this matter expeditiously without the time, expense or uncertainty of a formal adjudicatory hearing on the merits: (a) admits the jurisdictional allegations of the Complaint; (b) neither admits nor denies the non-jurisdictional allegations of the Complaint; (c) neither admits nor denies the "EPA Findings of Fact" or "EPA Conclusions of Law" as set forth in this document; (d) consents to the assessment of the civil penalty as set forth below; (e) consents to the issuance of the Final Order accompanying this Consent Agreement; and (f) waives its right to seek or obtain judicial review of, or otherwise contest, said Final Order.

Pursuant to 40 C.F.R. § 22.31(b), the executed CA/FO shall become effective and binding when it is filed with the Regional Hearing Clerk of the United States Environmental Protection Agency, Region 2 (such date henceforth referred to as the "effective date").

It is further hereby agreed by and between Complainant and Respondent, and voluntarily accepted by Respondent, that there shall be compliance with the following terms and conditions:

1. Respondent shall pay a civil penalty to EPA in the amount of **NINETY THREE THOUSAND (\$93,000.00) DOLLARS**, to be paid in accordance with the terms and schedule set forth in paragraph 2, below. Payment in accordance with the provision set forth below shall be made by cashier's check, certified check or by electronic fund transfer (EFT). If payment is made by cashier's check or by certified check, such check shall be made payable to the "**Treasurer, United States of America,**" and shall be identified with a notation thereon listing the following: ***In the Matter of Oakite Products, Inc. et al., Docket Number TSCA-02-2009-9148.*** If payment is made by check (cashier's or certified), such check shall be mailed to the following address:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, Missouri 63197-9000

Alternatively, if Respondent chooses to make payment by EFT, Respondent shall then provide the following information to its remitter bank:

a) Amount of Payment

b) SWIFT address: **FRNYUS33, 33 Liberty Street, New York, New York 10045**

c) Account Code for Federal Reserve Bank of New York receiving payment: **68010727**

d) Federal Reserve Bank of New York ABA routing number: **021030004**

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e) Field Tag 4200 of the Fedwire message should read: **D 68010727  
Environmental Protection Agency**

f) Name of Respondent: **Chemetall US, Inc.**

g) Case docket number: **TSCA-02-2009-9148**

2. Payment in the full amount (\$93,000, as set forth above (¶ 1 of this section) shall be received (if made by check) or effected (if implemented by EFT) within forty-five (45) days of the Regional Administrator signing the Final Order accompanying this Consent Agreement.

If Respondent makes payment by cashier's check or certified check, such check shall be *received* at the above-listed address on or before the date specified. If Respondent makes payments by the EFT method, then the EFT for the payment shall be *received* on or before the date specified.

3. Whether Respondent makes payment by cashier's check, certified check or by the EFT method, Respondent shall promptly thereafter furnish reasonable proof that such payment has been made, and such proof shall be furnished to each of:

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

Karen Maples, Regional Hearing Clerk  
Environmental Protection Agency, Region 2  
290 Broadway, 16<sup>th</sup> floor  
New York, New York 10007-1866

4. Failure to timely (as set forth above) make payment within the time period set forth above may result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection.

5. Furthermore, if payment is not made on or before the date when such payment is made due under the terms of this document, interest for said payment shall be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, on the overdue amount from the date said payment was to have been made through the date said payment has been received. In addition, a late payment handling charge of \$15.00 will be assessed for each thirty (30) calendar day period or any portion thereof, following the date payment was to have been made, in which payment of the amount remains in arrears. In addition, a 6% per annum penalty will be applied to any principal amount that has not been

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received by the EPA within ninety (90) days of the date for which payment was required hereto to have been made.

6. The civil penalty provided for in this section and any charge that accrues as a result of untimely payment of the civil penalty by Respondent constitute a penalty within the meaning of 26 U.S.C. § 162(f).

#### **SUPPLEMENTAL ENVIRONMENTAL PROJECT**

7. Recognizing the importance of minimizing the opportunities for the mishandling of hazardous materials and of taking steps to help ensure long-term compliance with environmental regulations, Respondent and EPA hereby agree that Respondent shall implement two Supplemental Environmental Projects ("SEPs"), each of which intended to secure significant environmental or public health protection and improvements. The SEPs, agreed to as part of the settlement of the aforementioned violations alleged by EPA, consist of:

- a. At the Michigan facility, Respondent shall construct, maintain and operate a "scrubber system SEP" as described in paragraphs 8 and 9 of this Consent Agreement, below;
- b. At the Michigan facility, Respondent shall construct, maintain and operate a "bulk/spill SEP" as described in paragraphs 12 and 13 of this Consent Agreement, below.

8. The scrubber system SEP shall be used for both the chemical processing area and the bulk tank storage area. Respondent shall construct and install the scrubber system SEP by undertaking and performing the following tasks:

- a. Respondent shall replace their current system with a packed bed scrubber that will discharge through only one stack, will increase pollutant removal efficiency to greater than 99%, and will add a system of automated controls to replace manual controls currently used in the event of a power outage or other unexpected interruption in operations at the Michigan facility;
- b. Respondent shall install ductwork and other related items to capture and treat emissions from the Michigan facility's bulk tank storage area, an area from where such emissions are currently emitted directly to the atmosphere.

9. Respondent's expenditures for the scrubber system SEP shall include purchase of various equipment and materials (including the packed bed scrubber, polyvinyl chloride [PVC] ductwork, a centrifugal fan, an exhaust stack, controls, and roof flashing), labor costs, and consulting fees associated with having the necessary revisions made to the Michigan facility's air permit. *JWP*

10. In connection with the construction and installation of the scrubber system SEP, Respondent shall comply with the following baseline requirements: **a)** submit to the appropriate official of the State of Michigan an application for the modification of the air permit within sixty (60) days of the effective date; **b)** commence construction of the scrubber system SEP by May 15, 2011; and **c)** complete construction of the scrubber system SEP by September 15, 2011 (unless Respondent demonstrates to EPA in writing that good cause exists such that such work cannot be completed by said date, and the parties then agree in writing to extend the time deadlines set forth herein).

11. For the construction and installation of the scrubber system SEP, Respondent shall expend not less than the sum of **ONE HUNDRED THIRTY FOUR THOUSAND (\$134,000.00) DOLLARS.**

12. For the bulk/spill SEP, Respondent shall replace the current off-loading system (in which, during the off-loading of tank trucks delivering liquid raw materials, magnetic covers are currently placed over storm drain grates and booms are installed at the property's downgradient perimeter boundary to create an impervious bermed area in which any released materials can be captured and contained on the above-ground surface) at the Michigan facility by regrading the area so that all flow runs to a subsurface, sealed sump. For this SEP, Respondent shall install additional stormwater drains, connect all new and existing stormwater drains with sealed underground piping to the new sump, and install an automated shut off valve on the sump that will prevent any unloading of tanker trucks unless the valve is in the closed position (as would be shown by an indicator light at the unloading area). Further, as part of the bulk/spill SEP, Respondent shall also replace the current truck entrance gate with an automated gate that can only be opened by an authorized employee inside the Michigan facility.

13. Respondent's expenditures for the bulk/spill SEP shall include engineering and design fees, purchase of various equipment and materials (including but not limited to, piping, drain structures, the shut off valve, the entrance gate, and associated control systems), and labor and construction costs.

14. Respondent shall complete all work on the bulk/spill SEP by September 30, 2011 (unless Respondent demonstrates to EPA in writing that good cause exists such that such work cannot be completed by said date, and the parties then agree in writing to extend the time deadline set forth herein).

15. For the construction and installation of the bulk/spill SEP, Respondent shall expend not less than the sum of **TWO HUNDRED SIXTY TWO THOUSAND SIX HUNDRED (\$262,600.00) DOLLARS.**

16. The expenditures for each SEP shall not include costs for accounting, labor not related to implementation of the respective SEP and any other costs not required for the construction and completion thereof.

17. Respondent hereby certifies that, as of the date of the execution of the Final Order accompanying this Consent Agreement, Respondent is not required to perform or implement either the scrubber system SEP or the bulk/spill SEP by any federal, state or local law, regulation or executive order; nor is Respondent required to perform or implement either such SEP by any agreement, grant or as injunctive relief in this or any other action, suit or proceeding or in compliance with any state or local requirements. Respondent further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action, suit or proceeding (judicial or administrative) for either of said SEPs. Respondent certifies that it had not committed to perform or undertake either (or both) SEP(s) prior to the commencement of this administrative proceeding.

18. Respondent hereby certifies that it shall not claim as a deduction or charitable contribution, nor shall it capitalize or otherwise take any credit for purposes of federal, state or local taxes, for the monies expended in the performance of the SEPs as set forth above.

19. If in the future EPA believes that any of the information to which Respondent has certified, pursuant to paragraphs 17 and 18, above, was inaccurate, EPA will so advise Respondent of its belief and the basis therefor, and will afford Respondent an opportunity to submit comments to EPA. If EPA then determines that a certification was inaccurate, Respondent shall pay an additional civil penalty in the amount of TWO HUNDRED SEVENTY-NINE THOUSAND (\$279,000.00) DOLLARS within sixty (60) days of receipt of EPA's determination. This payment shall not preclude EPA (or the United States on behalf of EPA) from initiating a separate criminal investigation pursuant to 18 U.S.C. § 1001 *et. seq.*, or any other applicable law.

20. Any public statement, oral or written, in print, film, on the Internet or in any other medium (digital, electronic or otherwise) made by Respondent that makes reference to either (or both) SEP shall include the following language: "This SEP [or these SEPs] was [were] undertaken in connection with the settlement of an administrative enforcement action taken by the United States Environmental Protection Agency."

21. Each of the SEPs to be completed by Respondent, as described above, has been accepted by Complainant solely for the purpose of settlement of this administrative proceeding.

22. For each of the scrubber system SEP and the bulk/spill SEP, Respondent shall submit reports to EPA (to the addressee set forth below) as follows:

- a. Quarterly status reports that must be submitted by January 31, 2011, April 30, 2011 and July 31, 2011. Each such report shall contain: (1) a detailed description of the portion(s) of the SEP that has/ve been constructed and installed; (2) when any such portion(s) of the SEP has been constructed and installed; (3) a description of any problems encountered in the construction and installation of any such portion(s) of the SEP; any proposed resolution to the aforementioned problems; and (5) itemized costs and expenditures made for the construction and installation of any such portion(s).

b. An SEP Completion Report must be submitted by November 1, 2011. Each such report shall contain: (1) a detailed description of the SEP as implemented; (2) a description of any operating or other problems encountered and how such problems were resolved; (3) itemized costs that are eligible for credit as an SEP expenditure, with such costs documented by copies of such records as purchase orders, receipts or canceled checks (or other documentation that specifically identifies and itemizes the individual costs of the goods and services for which payment was made); (4) a certification that the SEP has been fully implemented pursuant to the provisions of this Consent Agreement; and (5) a description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible).

23. In itemizing costs pursuant to sub-paragraph "b," above, of paragraph 22, above, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where a report (either quarterly or completion report, for either the scrubber system SEP or the bulk/spill SEP) includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this paragraph, "acceptable documentation" shall include invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is to be/has been made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.

24. For any report or other document prepared by or on behalf of Respondent and submitted pursuant to a requirement of this Consent Agreement, Respondent shall, by a responsible official or officer thereof, sign and certify under penalty of law that the information contained in such document or report is true, accurate and devoid of misrepresentations by signing and attesting to the following statement:

I certify that, to the best of my knowledge and belief, I have examined and am familiar with the information submitted in this report [or document] and all attachments thereto, and that, to the best of my knowledge and belief, the information contained in this report [document], and all attachments thereto, is true, accurate and complete. I make this statement having relied in good faith upon information, statements and representations furnished to me by employees or contractors of Respondent. I am aware that there are significant penalties and sanctions prescribed by law for submitting material false or misleading information or for wilfully concealing material information.

25. For any report or other document prepared by or on behalf of Respondent and submitted pursuant to a requirement of this Consent Agreement, Respondent shall submit same to the following addressee:

*SEP*

Chester Norman, Enforcement Officer  
Pesticides and Toxic Substances Branch  
U.S. Environmental Protection Agency, Region 2  
2890 Woodbridge Avenue  
Edison, New Jersey 08837

26. Respondent shall maintain in one central location legible copies of documentation concerning the development, implementation, construction and financing of each SEP (whether such documentation was prepared by or on behalf of Respondent) (hereinafter referred to as "primary documentation"). Respondent shall also maintain in one central location legible copies of documentation supporting or otherwise pertaining to information contained in documents or reports submitted to EPA pursuant to this Consent Agreement (hereinafter referred to as "secondary documentation"). Respondent shall grant an authorized representative of EPA access to any primary documentation and/or supporting documentation and shall provide copies of same to EPA within twenty (20) days of Respondent receiving a request for copies of any such (primary or secondary) documentation, or within such additional time as EPA may approve in writing. The provisions of this paragraph shall remain in effect for a period of three (3) years from the time of the satisfactory completion of either the scrubber system SEP or the bulk/spill SEP, whichever completion occurs later.

27. For each of the scrubber system SEP and the bulk/spill SEP, following EPA's receipt of a quarterly status report (submitted pursuant to paragraph 22, sub-paragraph "a," above), EPA shall: (1) accept the report(s); or (2) reject the report(s) and notify the Respondent, in writing, regarding any deficiencies in the report(s) itself along with a grant of additional time (as set forth below) for Respondent to correct any deficiencies and re-submit the report to EPA. If, after allowing Respondent said such additional time to correct any deficiencies, finds that the same type of deficiencies remain, stipulated penalties as set forth pursuant to sub-paragraph "c" of paragraph 33, below shall be due and payable by Respondent.

a. If EPA elects to reject the report(s) and then notifies Respondent in writing of deficiencies therein, EPA shall permit Respondent the opportunity to object in writing to the notification of deficiency or disapproval given pursuant to this paragraph within ten (10) days of receipt of such notification. EPA and Respondent shall have an additional thirty (30) days from the receipt by EPA of the notification of objection to reach agreement on changes necessary to the report(s).

b. If agreement cannot be reached on any such issue within the aforementioned 30-day period, EPA shall provide a written statement of its decision on adequacy of the completion of the SEP to Respondent, which decision shall be final and binding upon Respondent.

28. For each of scrubber system SEP and the bulk/spill SEP, following EPA's receipt of the SEP Completion Report (submitted pursuant to paragraph 23, sub-paragraph "b," above), EPA shall: (1) accept the report; or (2) reject the report and notify the Respondent, in writing,

regarding any deficiencies in said report. Should EPA have any concerns about the satisfactory implementation and/or completion of either (or both) SEP(s), EPA will communicate those concerns to Respondent in writing and provide it with an opportunity to respond and/or correct any deficiency(ies). If EPA makes a determination that either (or both) SEP has been satisfactorily completed, EPA shall provide Respondent with written confirmation of the determination within a reasonable amount of time. In the event that there is a disagreement between EPA and Respondent regarding the satisfactory completion of either (or both) SEP(s), the provisions of paragraph 29, below, shall apply.

29. If EPA and Respondent disagree with regard to the satisfactory completion of either (or both) SEP(s), EPA will inform Respondent in writing as to how the SEP in question has not been satisfactorily completed and/or as to any other concerns EPA has. EPA will permit Respondent an opportunity to object in writing to EPA's conclusions that either (or both) SEP(s) has not been satisfactorily and/or to any other concerns EPA has; EPA will also provide Respondent with an opportunity to correct any deficiencies noted. Once EPA has notified Respondent that either (or both) SEP(s) has not been satisfactorily completed or of any other concerns in the SEP Completion Report(s), the parties shall have an additional thirty (30) days to reach agreement. If EPA and Respondent are unable to reach agreement on any such issue within this 30-day period (or such time as the parties may agree to), Respondent may request that Complainant (or her representative) review the matter. Within a reasonable time thereafter, EPA will provide a written decision to Respondent, which decision shall be final and binding upon Respondent. In the event the either (or both) SEP(s) has not been satisfactorily implemented and completed as contemplated in this Consent Agreement (and if the parties have not agreed to extend the time for satisfactory implementation and completion), stipulated penalties as set forth pursuant to paragraph 33, below, shall be due and payable by Respondent.

30. Whether Respondent has complied with and satisfied the terms of this Consent Agreement with regard to the satisfactory implementation and completion of either (or both) SEP(s), *i.e.* the timely and satisfactory implementation and completion of each of the scrubber system SEP and the bulk/spill SEP as required pursuant to the terms and condition of this Consent Agreement, whether Respondent has made good faith, timely efforts to implement and complete each such SEP and whether the money(ies) Respondent has expended are properly creditable to the SEP(s) shall be the sole determination of EPA.

31. Respondent agrees that failure to comply with the terms and conditions of this Consent Agreement for the satisfactory implementation and completion of either (or both) SEP(s) shall constitute a violation of this Consent Agreement for which Respondent shall be liable and shall pay a stipulated penalty(ies) in accordance with paragraph 33, below.

32. Respondent agrees that failure to timely submit any report required to be submitted under this Consent Agreement shall constitute a violation of this Consent Agreement for which Respondent shall be liable and shall pay a stipulated penalty(ies) in accordance with paragraph 33, below.

33. Respondent shall pay a stipulated penalty(ies) in accordance with the provision of this paragraph:

a. If either SEP (or both) has not been satisfactorily and timely completed, Respondent shall pay a stipulated penalty in the amount of TWO HUNDRED SEVENTY-NINE THOUSAND (\$279,000.00) DOLLARS;

b. If EPA determines in its sole discretion that either SEP (or both) has been completed but (1) Respondent has spent less than ninety (90%) percent of the required expenditure (as set forth in paragraph 11 [for the scrubber system SEP] and/or paragraph 15 [for the bulk/spill SEP]), and (2) Respondent certifies with appropriately supporting documentation the costs were spent for the SEP(s) as required in this Consent Agreement, and (3) EPA accepts that such expenditures are creditable for the SEP(s), then Respondent shall pay a stipulated penalty in the amount determined as follows: 1- (amount expended for the SEP(s)/amount required to be spent for the SEP(s)) multiplied by \$279,000.

c. Notwithstanding any other provision of this Consent Agreement, Respondent shall pay stipulated penalties on a per-day, per-violation basis for each of these violations: (1) failure to comply with any schedule set forth in this Consent Agreement to submit records and documentation to EPA, including a quarterly status report(s) and the Completion Report; (2) failure to revise any reports or documents on schedule following Respondent's receipt of comments by EPA; and (3) failure to provide or maintain records. If deviation from the due dates in this Consent Agreement for the documents/reports/records described in this paragraph, has not been approved by EPA in writing pursuant to paragraph 42, below, and if Respondent is determined by EPA to be liable to EPA for a stipulated penalty, such liability shall commence on the first day of noncompliance and continue through the final date of completion of the activity for which compliance is achieved. Simultaneous penalties shall accrue for separate violations of the Consent Agreement. The stipulated penalties shall accrue as follows:

<u>Period of Failure to Comply</u>	<u>Penalty Per Day</u>
1st to 10th day	\$500
11 <sup>th</sup> to 30 <sup>th</sup> day	\$1,000
31st to 60th day	\$2,000
Each day in excess of 60 days	\$3,000

d. Payment of any stipulated penalties shall be made in accordance with the instructions set forth in paragraph 1 of the "Agreement on Consent" section, above.

e. Respondent shall not pay stipulated penalties if: (1) each SEP is satisfactorily completed and Respondent has spent at least ninety (90%) percent of the required total SEP expenditure, or (2) Respondent has not satisfactorily completed either SEP (or both) but EPA determines that Respondent has made good faith and timely efforts to attain *SEP*

completion and Respondent certifies, with appropriate documentation, that it has expended at least ninety (90%) percent of the required total SEP expenditure (and EPA accepts that what Respondent has expended therefor is creditable for implementation of the SEPs).

34. Unless Respondent provides EPA with a written explanation in accordance with paragraph 35, below, all stipulated penalties are due and payable within thirty (30) calendar days of Respondent's receipt from EPA of a written demand for payment of the penalties. All stipulated penalty payments shall be made by cashier's or certified check or EFT in accordance with the payment instructions in paragraph 1 of the "Agreement on Consent" section, above. Penalties shall accrue as provided above regardless of whether EPA has notified Respondent of the violation or made a demand for payment, but need only be paid upon demand. Any payment of stipulated penalties shall be in addition to any other payments required under any other paragraph of this Consent Agreement. Nothing in this Consent Agreement, including payment of penalties identified herein, shall preclude EPA (or the United States at the behest of EPA) from initiating a separate criminal investigation pursuant to the provisions of Title 18 of the United States Code. Failure to pay any stipulated penalty in full may result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection and/or other appropriate action.

35. After receipt of a demand from EPA for stipulated penalties pursuant to paragraph 33, above, Respondent shall have fifteen (15) calendar days in which to provide Complainant with a written explanation of why it believes that a stipulated penalty is not appropriate for the cited violation(s) of this Consent Agreement (including any technical, financial or other information that Respondent deems relevant).

36. Complainant may, in her sole discretion, reduce or eliminate any stipulated penalty due under this CA/FO if Respondent has, in writing, demonstrated to EPA's satisfaction good cause for such action by EPA. If, after review of Respondent's submission pursuant to the preceding paragraph, Complainant determines that Respondent has failed to comply with the provisions of this Consent Agreement, and Complainant does not, in her sole discretion, eliminate the stipulated penalties demanded by EPA, Complainant will notify Respondent, in writing, that either the full stipulated penalty or a reduced stipulated penalty must be paid by Respondent. Respondent shall pay the stipulated penalty amount indicated in EPA's notice within thirty (30) calendar days of its receipt of such written notice from EPA. Failure of Respondent to pay any stipulated penalty demanded by EPA pursuant to this Consent Agreement may result in further action by EPA.

37. At any time prior to Respondent's payment of stipulated penalties, the Director, may, for good cause as independently determined by her, reduce or eliminate the stipulated penalty(ies). If the Director makes such determination, EPA shall notify Respondent in writing of any such action.

38. If any event occurs which causes or may cause delays in the completion of the SEP as

required under this Consent Agreement, or otherwise causes the need to modify the terms of the SEP or this Consent Agreement, Respondent shall notify EPA in writing within thirty (30) days of the delay or Respondent's knowledge of the anticipated delay or event causing the need to modify the SEP or this Agreement, whichever is earlier. The notice shall describe in detail the anticipated length of delay, the precise cause of delay or need to modify, the measures taken by Respondent to prevent or minimize delay or need to modify, and the timetable by which those measures will be implemented. Respondent shall adopt all reasonable measures to avoid or minimize any such delay or need to modify the SEP or this Consent Agreement. Failure by Respondent to comply with the notice requirements of this paragraph shall render this paragraph void and of no effect as to the particular incident involved and may constitute a waiver of Respondent's right to request an extension of its obligation under this Consent Agreement based on such incident.

39. If the parties agree that the delay or anticipated delay in compliance with this Consent Agreement or need to modify the SEP or this Consent Agreement has been or will be caused by circumstances entirely beyond the control of Respondent, the time for performance hereunder may be extended for a period no longer than the delay resulting from such circumstances.

40. In the event that EPA does not agree that a delay in achieving compliance with the requirements of this Consent Agreement or need to modify the SEP or this Consent Agreement has been or will be caused by circumstances beyond the control of Respondent, EPA will notify Respondent in writing of its decision within a reasonable amount of time and any delays in completion of the SEP shall not be excused.

41. The burden of proving that any delay or need to modify is caused by circumstances entirely beyond the control of Respondent shall rest with Respondent. Increased cost or expenses associated with the implementation of actions called for by this Consent Agreement shall not, in any event, be a basis for changes in this Consent Agreement or extensions of time under paragraph 42 of this section, below. Delay in achievement of one interim step shall not necessarily justify or excuse delay in achievement of subsequent steps.

42. EPA may grant an extension of the date(s) of performance or such other dates as are established in this Consent Agreement with regard to any of the SEP components, if Respondent has first demonstrated in writing good cause for such extension. If Respondent submits a request for extension, such request shall be accompanied by supporting documentation and submitted to EPA no later than thirty (30) calendar days prior to any due date set forth in this Consent Agreement, or other deadline established pursuant to this Consent Agreement. Such extension, if any, shall be approved in writing within a reasonable amount of time after EPA's receipt of Respondent's request.

43. Nothing in this agreement shall be construed as prohibiting, prejudicing or otherwise affecting the right of EPA (or the United States on behalf of EPA) to seek any other relief or remedies (legal or equitable) for any violation(s) by Respondent of this Consent Agreement or the provisions of the Toxic Substances Control Act or any regulation promulgated pursuant

thereto.

OTHER GENERAL PROVISIONS

44. Respondent shall maintain compliance with applicable 40 C.F.R. Part 710, Subpart C, regulations governing the reporting to EPA of chemical substances manufactured and/or imported for commercial purposes at the California facility and Michigan facility.

45. Complainant shall mail to Respondent (to the representative designated below or to such other representative as Respondent has so informed EPA, Region 2, in writing that it has designated for such purpose) a copy of the fully executed CA/FO, and Respondent consents to service of the CA/FO upon him by an employee of EPA other than the Regional Hearing Clerk:

Benne C. Hutson, Esq.  
McGuireWoods LLP  
201 N. Tryon Street  
Suite 3000  
Charlotte, North Carolina 28202

46. Respondent has read this Consent Agreement, understands its terms, and consents to the issuance of the Final Order accompanying this Consent Agreement, consents to making full payment of the civil penalty in accordance with the terms and schedule set forth above and consents to all other terms and conditions set forth in this Consent Agreement.

47. This Consent Agreement is not intended, and shall not be construed, to waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable federal laws and regulations governing the reporting to EPA of chemical substances manufactured and/or imported for commercial purposes at the California facility and Michigan facility, nor is it intended or to be construed to waive, extinguish or otherwise affect Respondent's obligation to comply with all other applicable state and local laws and regulations regarding such chemical substances.

48. This Consent Agreement is being voluntarily and knowingly entered into by the parties to resolve and settle the administrative claims alleged in the Complaint bearing docket number TSCA-02-2009-9148 upon full payment of the penalty amount, full payment of any other charges required to be paid pursuant to this Consent Agreement, compliance with all the terms and conditions of this Consent Agreement and upon the accuracy of each of Respondent's certifications in this proceeding. Notwithstanding any of the above, nothing herein shall affect the right of the EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation(s) of law resulting from, pertaining to or otherwise in connection with Respondent's manufacture and importation for commercial purposes of chemical substances.

49. Respondent hereby waives its right to seek or to obtain judicial review or a hearing

on the allegations made in the Complaint, and on the terms and conditions set forth in the Consent Agreement and its accompanying Final Order and/or on the EPA Findings of Fact or EPA Conclusions of Law, above.

50. This Consent Agreement and any provision herein shall not be construed as an admission of liability in any adjudicatory or administrative proceeding, except in an action, suit or proceeding to enforce any of the terms and conditions of the Consent Agreement and the accompanying Final Order.

51. Respondent shall not contest the validity of any term in this Consent Agreement in any action brought by the United States on behalf of EPA to enforce the Final Order or to enforce a judgment relating to this Consent Agreement and the accompanying Final Order.

52. Nothing in this Consent Agreement is intended or is to be construed as a release from any other action under any law and/or regulation administered by EPA.

53. The provisions of this Consent Agreement shall be binding upon EPA and upon Respondent, its officers, officials, agents, authorized representatives and its successors or assigns.

54. Respondent voluntarily waives any right or remedy it might have pursuant to 40 C.F.R. § 22.8 to be present during discussions with, or to be served with and reply to any memorandum or other communication addressed to, the Regional Administrator of EPA, Region 2, where the purpose of such discussion, memorandum or other communication is to recommend that such official accept this Consent Agreement and issue the accompanying Final Order.

55. Each party shall bear its own costs and fees in connection with this proceeding.

56. Each undersigned signatory to this Consent Agreement certifies that: a) he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all the terms and conditions set forth in this Consent Agreement, and b) he or she is duly and fully authorized to bind the party on behalf of whom (which) he or she is entering this Consent Agreement to comply with and abide by all the terms and conditions of this Consent Agreement.

***In the Matter of Oakite Products Inc. et al***  
**Docket Number TSCA-02-2009-9148**

**RESPONDENT CHEMETALL US, INC:**

BY: 

NAME: GREGORY V. POFF  
[PLEASE PRINT]

TITLE: CORPORATE VICE PRESIDENT

DATE: OCTOBER 18, 2010

**COMPLAINANT:**

  
Dore LaPosta, Director  
Division of Enforcement and Compliance  
Assistance  
U.S. Environmental Protection Agency -  
Region 2

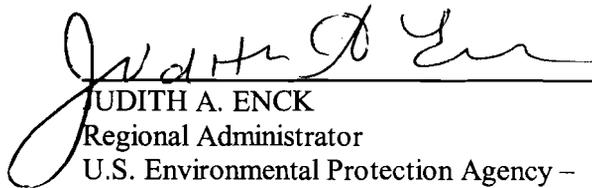
DATE: OCTOBER 27, 2010

*In the Matter of Oakite Products, Inc. et al*  
Docket Number TSCA-02-2009-9148

**FINAL ORDER**

The Regional Administrator of EPA, Region 2, concurs in the foregoing Consent Agreement in the case of *In the Matter of Oakite Products, Inc., d/b/a Chemetall Oakite, and Chemetall US, Inc.*, bearing Docket Number TSCA-02-2009-9148. Said Consent Agreement, having been duly accepted and entered into by the parties, shall be, and hereby is, ratified and incorporated into this Final Order, which shall become effective when filed with the Regional Hearing Clerk of EPA, Region 2. 40 C.F.R. § 22.31(b). This Final Order is being entered pursuant to the authority of 40 C.F.R. § 22.18(b)(3) and shall constitute an order issued under Section 16(a) of the Toxic Substances Control Act, 15 U.S.C. § 2615(a).

DATED: <sup>Nov.</sup> ~~Oct~~ 2, 2010  
New York, New York

  
JUDITH A. ENCK  
Regional Administrator  
U.S. Environmental Protection Agency –  
Region 2