



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG.II

2009 SEP 28 PM 4:09

REGIONAL HEARING
CLERK

SEP 24 2009

CERTIFIED MAIL-
RETURN RECEIPT REQUESTED

Ron Felber, President
Oakite Products, Inc.
Chemetall US, Inc.
675 Central Avenue
New Providence, New Jersey 07974

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

Dear Mr. Felber:

Enclosed please find a Complaint and Notice of Opportunity For Hearing, and supporting documents in the above-referenced proceeding. This Complaint alleges violations of the Toxic Substances Control Act (TSCA), 15 U.S.C. Section 2601 *et seq.*, and the regulations promulgated pursuant to TSCA set forth at 40 C.F.R. Part 710.

You have the right to a formal hearing to contest any of the allegations in the Complaint and/or to contest the penalty proposed in the Complaint. If you wish to contest the allegations or the penalty proposed in the Complaint, you must file an Answer within ***thirty (30)*** days of your receipt of the enclosed Complaint to the Environmental Protection Agency's ("EPA") Regional Hearing Clerk at the following address:

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

If you do not file an Answer within thirty (30) days of receipt of this Complaint and have not obtained a formal extension for filing an Answer from the Regional Judicial Officer, a default order may be entered against you and a judgment granting the entire proposed penalty may then be entered.

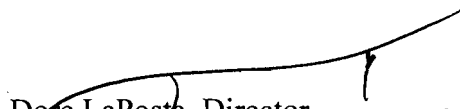
Whether or not you request a formal hearing, you may request an informal conference with EPA to discuss any issue relating to the alleged violations (including whether there is a basis in law or fact for such violations) and the amount of the proposed penalty. EPA encourages all parties against which it files a Complaint to pursue the possibility of settlement and to have an informal conference with EPA. A request for an informal conference *does not*, however, substitute for a written Answer, affect what you may choose to say in an Answer, or extend the thirty (30) days by which you must file an Answer requesting a hearing.

Enclosed please also find copies of the "Consolidated Rules of Practice" (40 C.F.R. Part 22), the rules of practice which govern this proceeding, and, for general information and use, both an "Information Sheet for U.S. EPA Small Business Resources" and a "Notice of SEC Registrants' Duty to Disclose Environmental Legal Proceedings," which may or may not apply to you.

EPA encourages the use of Supplemental Environmental Projects, where appropriate, as part of any settlement. I am enclosing a brochure on "EPA's Supplemental Environmental Projects Policy." Please note that these are only available as part of a negotiated settlement and are not available if this case has to be resolved by a formal adjudication.

If you have any questions or wish to schedule an informal settlement conference, please contact the attorney whose name is listed in the Complaint.

Sincerely,



Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

Enclosures

cc: Karen Maples, Regional Hearing Clerk (w/o enclosures)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REGION II
2009 SEP 23 PM 4:09

REGIONAL HEARING
CLERK

-----X
: :
In the Matter of : : COMPLAINT AND NOTICE OF
: : OPPORTUNITY FOR HEARING
: :
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). : :
-----X

COMPLAINT

Complainant, on behalf of the Administrator of the United States Environmental Protection Agency (“EPA”), by and through her attorneys, hereby alleges as and for her Complaint against Respondents:

Predicate Allegations

1. This is an administrative proceeding, commenced under the authority of Section 16(a)(1) of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2615(a)(1), to assess a civil penalty against Respondents for violations of a provision of Section 15 of TSCA, 15 U.S.C. § 2614.
2. This tribunal has jurisdiction over this proceeding pursuant to Section 16(a)(2) of TSCA, 15 U.S.C. § 2615(a)(2), and 40 C.F.R. § 22.1(a)(5).
3. This “COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING” (“Complaint”) constitutes the written notice required by Section 16(a)(2)(A) of TSCA, 15 U.S.C. § 2615(a)(2)(A), for the assessment of a civil penalty for any violation of Section 15 of TSCA, 15 U.S.C. § 2614.

4. Complainant, the Director of the Division of Enforcement and Compliance Assistance of EPA, Region 2, has been duly delegated the authority to institute this proceeding.

5. Section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B), states, in part, that “[i]t shall be unlawful for any person to... fail or refuse to...submit reports, notices or other information...as required by this chapter [Chapter 53, 15 U.S.C. §§ 2601 to 2692] or a rule thereunder...”

6. Pursuant to Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1), any person who violates any provision of, *inter alia*, Section 15 of TSCA, 15 U.S.C. § 2614, shall be liable to the United States for a civil penalty in an amount not to exceed \$25,000 for each such violation.

7. Under authority of the Federal Civil Penalties Inflation Adjustment Act of 1990, 104 Stat. 890, Public Law 101-410 (codified at 28 U.S.C. § 2461 note), as amended by the Debt Collection Improvement Act of 1996, 110 Stat. 1321, Public Law 104-134 (codified at 31 U.S.C. § 3701 note), EPA has promulgated regulations, codified at 40 C.F.R. Part 19, that, *inter alia*, increase the maximum penalty EPA might obtain pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), to \$32,500 for any violation occurring after March 15, 2004 but before January 12, 2009.

8. Pursuant to Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1), “[e]ach day a violation of [Section 15 of TSCA, 15 U.S.C. § 2614] continues shall, for purposes of [Section 16(a) of TSCA, 15 U.S.C. § 2615(a)], constitute a separate violation of section 2614 [15 U.S.C. § 2614]....”

Inventory Update Reporting Requirements

9. In pertinent part, 40 U.S.C. § 710.48(a) states that “[a]ny person who manufactured (including imported) for commercial purposes [with such terms defined in Section 3(7) of TSCA, 15 U.S.C. § 2602(7), and in 40 C.F.R. §§ 704.3 and 710.3] 25,000 [pounds] (11,340 [kilograms]) or more of a chemical substance [defined in Section 3(2) of TSCA, 15 U.S.C. § 2602(2), and in 40 C.F.R. § 710.3] described in [40 C.F.R.] § 710.45 at any single site owned or controlled by that person at any time during calendar year 2005...is subject to [40 C.F.R. Part 710, Subpart C] reporting.”

10. In pertinent part, 40 C.F.R. § 710.45 requires reporting pursuant to 40 C.F.R. Part 710, Subpart C, for “[a]ny chemical substance which is in the Master Inventory File [defined in 40 C.F.R. § 710.43] at the beginning of a submission period described in [40 C.F.R.] § 710.53....”

11. Forty C.F.R. § 710.52(c) sets forth the information to be reported pursuant to the 40 C.F.R. Part 710, Subpart C, reporting requirements.

12. In pertinent part, 40 C.F.R. § 710.53 states that “[a]ll information reported to EPA in response to the requirements of this subpart [40 C.F.R. Part 710, Subpart C] must be submitted during an applicable submission period. The first submission period [for calendar year 2005; 40 C.F.R. § 710.48(a)] is from August 25, 2006 to March 23, 2007. *** Any person described in [40 C.F.R.] § 710.48(a) must report during each submission period for each chemical substance described in [40 C.F.R.] § 710.45 that the person manufactured (including imported) during the preceding calendar year....”

13. Pursuant to 40 C.F.R. § 710.59, the information required to be reported under 40 C.F.R. Part 710, Subpart C, must be submitted on an EPA form identified as a “Form U,” which may be obtained in accordance with the instructions set forth in 40 C.F.R. § 710.59(c).

Respondents’ Identities

14. Respondents are:

- a) Oakite Products, Inc., doing business as Chemetall Oakite (hereinafter “OPI”);
and
- b) Chemetall US, Inc. (hereinafter “CUS”; collectively “Respondents”).

15. Since at least December 19, 1991, OPI has been a corporation organized pursuant to and existing under the laws of the State of Delaware.

16. Since at least January 1, 2009, CUS has been a corporation organized pursuant to and existing under the laws of the State of Delaware.

17. Each of the Respondents is a “person” as defined by 40 C.F.R. §§ 704.3 and 710.3.

18. Respondents are in the business of developing, manufacturing and supplying specialty chemical products and processes for a variety of industries, including aerospace, agriculture, appliance, aluminum finishing, automotive, chemical processing, food and pharmaceutical, heavy equipment, metal fabrication and finishing, micro-electronics, military and defense, plastics recycling, pulp and paper, and transportation.

Respondents’ Facilities

19. Respondents, individually or collectively, maintain a headquarters facility, the address of which is 675 Central Avenue, New Providence, New Jersey 07974 (hereinafter “Respondents’ headquarters”).

20. During calendar year 2005, OPI owned and/or controlled a facility the address of

which is 16961 Knott Avenue, La Mirada, California 90638 (hereinafter the “California facility”).

21. During calendar year 2005, OPI owned and/or controlled a facility the address of which is 13177 Huron River Drive, Romulus, Michigan 48174 (hereinafter the “Michigan facility”).

22. Each of the California facility and the Michigan facility constitutes a “site” as defined in 40 C.F.R. §§ 704.3 and 710.3.

23. On or about May 14, 2008, under authority of Section 11 of TSCA, 15 U.S.C. § 2610, duly designated representatives of the Administrator of EPA conducted an inspection of and at Respondents’ headquarters in order to determine compliance with TSCA and the regulations promulgated pursuant thereto.

COUNT 1: INVENTORY UPDATE VIOLATIONS: California facility

24. Complainant realleges paragraphs 1 through 23, above, with the same force and effect as if fully set forth below.

25. 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).

26. Each of the aforementioned (¶ 25, above) three chemical substances was 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.

27. Each of the aforementioned (¶ 25, above) three chemical substances was “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.

28. Each of the aforementioned (¶ 25, above) three chemical substances was listed on the Master Inventory File on, and as of, August 25, 2006.

29. Pursuant to 40 U.S.C. § 710.48(b), for calendar year 2005, OPI was subject to the 40 C.F.R. Part 710, Subpart C, reporting requirements for the manufacture of the aforementioned (¶

25, above) three chemical substances at the California facility.

30. Pursuant to 40 C.F.R. § 710.53, OPI, using the Form U, was required to report to EPA during the period from August 25, 2006 to March 23, 2007 the applicable information set forth at 40 C.F.R. § 710.52(c) [henceforth such information as required by said provision referred to as the “requisite IUR information”] for each of the aforementioned (¶ 25, above) three chemical substances.

31. OPI failed to report to EPA during the period from August 25, 2006 to March 23, 2007 the requisite IUR information for each of the aforementioned (¶ 25, above) three chemical substances.

32. OPI’s failure to have reported the requisite IUR information to EPA for the aforementioned (¶ 25, 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.

33. Forty C.F.R. § 710.53 is a rule promulgated under Section 8(a) of TSCA, 15 U.S.C. § 2607(a).

34. A failure or refusal to comply with 40 C.F.R. § 710.53 is made unlawful by, and thus constitutes a violation of, Section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B).

35. Each of OPI’s aforementioned (¶ 32, above) three failures to have provided the requisite IUR information to EPA constitutes a separate and distinct violation of Section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B).

36. 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 (¶ 25, above) three chemical substances that occurred during calendar year 2005 at the California facility and for which OPI is (or was) or may be (or may have been) liable.

37. For each of the aforementioned (¶ 35, above) three violations of Section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B), Respondents are jointly and severally liable to the United States pursuant to Section 16(a)(1) of TSCA, 15 U.S.C. § 2614(a)(1), as amended.

COUNT 2: INVENTORY UPDATE VIOLATIONS: Michigan facility

38. Complainant realleges paragraphs 1 through 23, above, with the same force and effect as if fully set forth below.

39. 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 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).

40. 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).

41. Each of the aforementioned (§s 39 and 40, above) 17 chemical substances was 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.

42. Each of the aforementioned (§ 39, above) 16 chemical substances was “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.

43. 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.

44. Each of the aforementioned (§s 39 and 40, above) 17 chemical substances was listed on the Master Inventory File on, and as of, August 25, 2006.

45. Pursuant to 40 U.S.C. § 710.48(b), for calendar year 2005 OPI was subject to the 40 C.F.R. Part 710, Subpart C, reporting requirements:

a) for the manufacture of the aforementioned (§ 39, above) 16 chemical substances at the Michigan facility; and

b) for the importation of the aforementioned (§ 40, above) chemical substance at the Michigan facility.

46. Pursuant to 40 C.F.R. § 710.53, OPI, using the Form U, was required to report to EPA during the period from August 25, 2006 to March 23, 2007 the requisite IUR information for each of the aforementioned (§s 39 and 40, above) 17 chemical substances.

47. OPI failed to report to EPA during the period from August 25, 2006 to March 23, 2007 the requisite IUR information for each of the aforementioned (§s 39 and 40, above) chemical substances.

48. OPI’s failure to have reported the requisite IUR information to EPA for the aforementioned (§s 39 and 40, 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.

49. Forty C.F.R. § 710.53 is a rule promulgated under Section 8(a) of TSCA, 15 U.S.C. § 2607(a).

50. A failure or refusal to comply with 40 C.F.R. § 710.53 is made unlawful by, and thus

constitutes a violation of, Section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B).

51. Each of OPI's aforementioned (¶ 48, above) 17 failures to have provided the requisite IUR information to EPA constitutes a separate and distinct violation of Section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B).

52. 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 (¶ 39, above) 16 chemical substances that occurred during calendar year 2005 at the Michigan facility and for which OPI is (or was) or may be (or may have been) liable.

53. CUS has assumed, in whole or in part, the obligations and responsibilities for any liabilities arising from the importation for commercial purposes of the aforementioned (¶ 40, above) chemical substance that occurred during calendar year 2005 at the Michigan facility and for which OPI is (or was) or may be (or may have been) liable.

54. For each of the aforementioned (¶ 51, above) 17 violations of Section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B), Respondents are jointly and severally liable to the United States pursuant to Section 16(a)(1) of TSCA, 15 U.S.C. § 2614(a)(1), as amended.

PROPOSED CIVIL PENALTY

The proposed civil penalty has been determined in accordance with Section 16(a) of TSCA, 15 U.S.C. § 2615(a), which authorizes the assessment of a civil penalty of up to \$25,000 per day for each violation of TSCA or the regulations promulgated under authority of TSCA. *See* paragraphs 6 and 8, above. Pursuant to the "Civil Monetary Penalty Inflation Adjustment Final Rule" (69 *Fed. Reg.* 7121, February 13, 2004), which became effective March 15, 2004, a penalty of up to \$32,500 may be assessed per day for each violation of TSCA occurring after the effective date. *See* paragraph 7 of the Complaint.

For purposes of determining the amount of any penalty to be assessed, Section 16 of TSCA, 15 U.S.C. § 2615, requires 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 on its ability to continue to do 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, with specific reference to EPA's "Guidelines for Assessment of Civil Penalties Under Section 16 of the Toxic Substances Control Act," which was published on September 10, 1980 in the Federal Register (45 *Fed. Reg.* 59,770), and EPA's "The Enforcement Response Policy for

Reporting and Recordkeeping Requirements for TSCA Sections 8, 12 and 13,” effective June 1, 1999. These policies provide rational, consistent and equitable calculation methodologies for applying the statutory penalty factors enumerated above to the particular facts and circumstances of individual cases. Copies of these documents can be found on the Internet at <http://cfpub.epa.gov/compliance/resources/policies/civil/tsc/> or are available upon request to EPA.

Given the facts alleged herein and the statutory factors enumerated above, as known to Complainant up to the time of issuance, Complainant proposes, subject to receipt and evaluation of further relevant information, that Respondent be assessed the following civil penalty for the violations alleged in the Complaint:

COUNT 1: INVENTORY UPDATE REPORTING VIOLATIONS– California facility

Circumstance Level: 1

Extent Category: Significant

Number of Chemicals Not Timely Reported: 3

Gravity-Based Penalty per Chemical: \$21,922

Total Proposed Gravity-Based Penalty for Count 1: $3 \times \$21,922 = \$65,766$

COUNT 2: INVENTORY UPDATE REPORTING VIOLATIONS – Michigan facility

Circumstance Level: 1

Extent Category: Significant

Number of Chemicals Not Timely Reported: 17

Gravity-Based Penalty per Chemical: \$21,922

Total Proposed Gravity-Based Penalty for Count 2: $17 \times \$21,922 = \$372,674$

Total Proposed Gravity-Based Penalty for both counts: **$\$65,766 + \$372,674 = \$438,440$**

In accordance with Agency policy, a gravity-based penalty is rounded to the nearest unit of \$100.

Total Proposed Penalty (rounded off): \$438,400

PROCEDURES GOVERNING THIS ADMINISTRATIVE LITIGATION

The rules of procedure governing this administrative litigation have been set forth in 64 *Fed. Reg.* 40138 (July 23, 1999), entitled, “Consolidated Rules of Practice Governing the Administrative Assessments of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits,” and are codified at 40 C.F.R. Part 22. A copy of these rules accompanies this “Complaint and Notice of Opportunity for Hearing” (hereinafter referred to as the “Complaint”).

A. Answering the Complaint

Where Respondents (one or both) intend to contest any material fact upon which the Complaint is based, to contend that the proposed penalty is inappropriate or to contend that Respondents are entitled to judgment as a matter of law, Respondents must file with the Regional Hearing Clerk of EPA, Region 2, both an original and one copy of a written answer (or separate answers) to the Complaint, and such Answer(s) must be filed within 30 days after service of the Complaint. 40 C.F.R. § 22.15(a).¹ The address of the Regional Hearing Clerk of EPA, Region 2, is:

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

Respondents shall also then serve one copy of the Answer(s) to the Complaint upon Complainant and any other party to the action. 40 C.F.R. § 22.15(a).

Respondents' Answer(s) to the Complaint must clearly and directly admit, deny, or explain each of the factual allegations that are contained in the Complaint and with regard to which Respondent has any knowledge. 40 C.F.R. § 22.15(b). Where Respondents lack knowledge of a particular factual allegation and so state in the Answer(s), the allegation is deemed denied. 40 C.F.R. § 22.15(b). The Answer(s) shall also set forth: (1) the circumstances or arguments that are alleged to constitute the grounds of defense, (2) the facts that Respondents dispute (and thus intend to place at issue in the proceeding) and (3) whether Respondents request a hearing. 40 C.F.R. § 22.15(b).

Respondents' failure affirmatively to raise in an Answer(s) facts that constitute or that might constitute the grounds of a defense(s) may preclude Respondents, at a subsequent stage in this proceeding, from raising such facts and/or from having such facts admitted into evidence at a hearing.

B. Opportunity to Request a Hearing

If requested by Respondents in the Answer(s), a hearing upon the issues raised by the

¹ Respondents may serve answers individually, on behalf of each one or on behalf of both. The use of the term "Respondents" in the plural is not intended to limit how Respondents might answer the Complaint, and its use herein refers to one or both respondent, as made appropriate by the context of such usage.

Complaint and Answer(s) may be held. 40 C.F.R. § 22.15(c). *See generally* Section 16(a)(2)(A) of TSCA, 15 U.S.C. § 2615(a)(2)(A). If, however, Respondents do not request a hearing, the Presiding Officer (as defined in 40 C.F.R. § 22.3) may hold a hearing if the Answer(s) raises issues appropriate for adjudication. 40 C.F.R. § 22.15(c).

Any hearing in this proceeding will be held at a location determined in accordance with 40 C.F.R. § 22.21(d). A hearing of this matter will be conducted in accordance with the applicable provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551-59, and the procedures set forth in Subpart D of 40 C.F.R. Part 22. *See* Section 16(a)(2)(A) of TSCA, 15 U.S.C. § 2615(a)(2)(A), which states, in part: “A civil penalty for a violation of Section...2614 of this title [15 U.S.C. § 2614] shall be assessed by the Administrator by an order made on the record after opportunity...for a hearing in accordance with Section 554 of Title 5 [5 U.S.C. § 554].”

If Respondents fail to request a hearing, such failure may operate to preclude Respondents from obtaining judicial review of an adverse EPA order. *See* 15 U.S.C. § 2615(a)(3), which states, in part: “Any person who requested in accordance with paragraph (2)(A) [15 U.S.C. § 2615(a)(2)(A)] a hearing respecting the assessment of a civil penalty and who is aggrieved by an order assessing a civil penalty may file a petition for judicial review with the United States Court of Appeals for the District of Columbia Circuit or for any other circuit in which such person resides or transacts business.”

C. Failure to Answer

If Respondents fail in the Answer(s) to admit, deny, or explain any material factual allegation contained in the Complaint, such failure constitutes an admission of the allegation. 40 C.F.R. § 22.15(d). If Respondents fail to file a timely [*i.e.* in accordance with the 30-day period set forth in 40 C.F.R. § 22.15(a)] Answer(s) to the Complaint, Respondents may be found in default upon motion. 40 C.F.R. § 22.17(a). Default by Respondents constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondents' right to contest such factual allegations. 40 C.F.R. § 22.17(a). Following a default by Respondents for failure to timely file an Answer(s) to the Complaint, any order issued therefor shall be issued pursuant to 40 C.F.R. § 22.17(c).

Any penalty assessed in the default order shall become due and payable by Respondents without further proceedings 30 days after the default order becomes final pursuant to 40 C.F.R. § 22.27(c). 40 C.F.R. § 22.17(d). If necessary, EPA may then seek to enforce such final order of default against Respondents, and to collect the assessed penalty amount, in federal court.

D. Exhaustion of Administrative Remedies

Where Respondents fail to appeal an adverse initial decision to the Environmental

Appeals Board pursuant to 40 C.F.R. § 22.30, and that initial decision thereby becomes a final order pursuant to the terms of 40 C.F.R. § 22.27(c), Respondents waive the right to judicial review. 40 C.F.R. § 22.27(d).

In order to appeal an initial decision to the Agency's Environmental Appeals Board [EAB; see 40 C.F.R. § 1.25(e)], Respondents must do so "within thirty (30) days after the initial decision is served." 40 C.F.R. § 22.30(a). Pursuant to 40 C.F.R. § 22.7(c), where service is effected by mail, "5 days shall be added to the time allowed by these [rules] for the filing of a responsive document." Note that the 45-day period provided for in 40 C.F.R. § 22.27(c) [discussing when an initial decision becomes a final order] does not pertain to or extend the time period prescribed in 40 C.F.R. § 22.30(a) for a party to file an appeal to the EAB of an adverse initial decision.

INFORMAL SETTLEMENT CONFERENCE

Whether or not Respondents request a formal hearing, EPA encourages settlement of this proceeding consistent with the provisions of the Act and its applicable regulations. 40 C.F.R. § 22.18(b). At an informal conference with a representative(s) of Complainant, Respondents may comment on the charges made in this Complaint, and Respondents may also provide whatever additional information that they deem relevant to the disposition of this matter, including: (1) actions Respondents have taken to correct any or all of the violations herein alleged, (2) any information relevant to Complainant's calculation of the proposed penalty, (3) the effect the proposed penalty would have on Respondents' (individual or collective) ability to continue in business and/or (4) any other special facts or circumstances Respondents wish to raise.

Complainant has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement agreement reached with Respondents or any relevant information previously not known to Complainant, or to dismiss any or all of the charges if Respondents demonstrate that the relevant allegations are without merit and that no cause of action as herein alleged exists. Respondents are referred to 40 C.F.R. § 22.18.

Any request for an informal conference or any questions that Respondents may have regarding this Complaint should be directed to:

Lee A. Spielmann, Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 2
290 Broadway, 16th floor
New York, New York 10007-1866
212-637-3222

The parties may engage in settlement discussions irrespective of whether Respondents have requested a hearing. 40 C.F.R. § 22.18(b)(1). Any request for a formal hearing does not prevent Respondents from also requesting an informal settlement conference; the informal conference procedure may be pursued simultaneously with the formal adjudicatory hearing procedure. A request for an informal settlement conference constitutes neither an admission nor a denial of any of the matters alleged in the Complaint. Complainant does not deem a request for an informal settlement conference as a request for a hearing as specified in 40 C.F.R. § 22.15(c).

A request for an informal settlement conference does not affect Respondents' obligation to file a timely Answer(s) to the Complaint pursuant to 40 C.F.R. § 22.15. No penalty reduction, however, will be made simply because an informal settlement conference is held.

Any settlement that may be reached as a result of an informal settlement conference will be embodied in a written consent agreement. 40 C.F.R. § 22.18(b)(2). In accepting the consent agreement, Respondents waive their right to contest the allegations in the Complaint and waive their right to obtain judicial review of the final order that is to accompany the consent agreement. 40 C.F.R. § 22.18(b)(2). In order to conclude the proceeding, a final order ratifying the parties' agreement to settle will be executed. 40 C.F.R. § 22.18(b)(3).

Respondents' entering into a settlement through the signing of such Consent Agreement and their complying with the terms and conditions set forth in such Consent Agreement terminate this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Respondents' entering into a settlement does not extinguish, waive, satisfy or otherwise affect their obligation and responsibility to comply with all applicable statutory and regulatory requirements pertaining to TSCA Inventory Update reporting, and to maintain such compliance.

RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE

Instead of filing an Answer(s), Respondents may choose to pay **the total amount** of the proposed penalty within 30 days after receipt of the Complaint, provided that Respondents file with the Regional Hearing Clerk, Region 2 (at the New York address noted above), a copy of the check or other instrument of payment. 40 C.F.R. § 22.18(a). Payment of the penalty assessed should be made by sending a cashier's or certified check payable to the "Treasurer, United States of America", in the full amount of the penalty assessed in this Complaint to the following addressee:

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

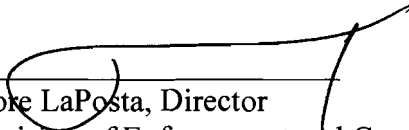
The check shall be identified with a notation of the name and docket number of this case, set forth in the caption on the first page of this document. A copy of the check or other instrument of payment should be provided to the EPA attorney identified on the previous page.

Payment may also be made by electronic fund transfer (EFT). If Respondents choose to make payment by EFT, Respondent shall then provide the following information to his remitter bank:

- a. Amount of Payment [\$438,400.00]
- 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**
- e. Field Tag 4200 of the Fedwire message should read: **D 68010727 Environmental Protection Agency**
- f. Name of Respondent: **Oakite Products, Inc. et al**
- g. Case docket number: **TSCA-02-2009-9148**

Pursuant to 40 C.F.R. § 22.18(a)(3), if Respondents elect to pay the full amount of the penalty proposed in the Complaint within 30 days of receiving the Complaint, then, upon EPA's receipt of such payment, the Regional Administrator of EPA, Region 2 (or, if designated, the Regional Judicial Officer), shall issue a final order. Issuance of this final order terminates this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Further, pursuant to 40 C.F.R. § 22.18(a)(3), the making of such payment by Respondents shall constitute a waiver of Respondent's right both to contest the allegations made in the Complaint and to obtain judicial review of said final order in federal court. Such payment does not extinguish, waive, satisfy or otherwise affect Respondents' obligation and responsibility to comply with all applicable regulations and requirements pertaining to TSCA Inventory Update reporting, and to maintain such compliance.

Dated: September 24, 2009
New York, New York



Dore LaPosta, Director
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency, Region 2
290 Broadway
New York, New York 10007-1866

TO: Ronald J. Felber, President and CEO
Oakite Products, Inc.
675 Central Avenue
New Providence, New Jersey 07974-1560

Ronald J. Felber, President and CEO
Chemetall US, Inc.
675 Central Avenue
New Providence, New Jersey 07974-1560

CERTIFICATE OF SERVICE

This is to certify that on this day, I caused to be mailed a true and correct copy of the foregoing "Complaint and Notice of Opportunity for Hearing," captioned *In the Oakite Products, Inc., d/b/a Chemetall Oakite, and Chemetall US, Inc.*, and bearing Docket Number TSCA-02-2009-9148 (hereinafter referred to as the "Complaint"), together with a copy of the "Consolidated Rules of Practice Governing the Administrative Assessments of Civil Penalties, Issuance of Compliance or Corrective Action Compliance Orders, and the Revocation, Termination or Suspension of Permits," 40 C.F.R. Part 22, by certified mail, return receipt requested, to the addressees listed below. I also on said date hand carried the original and a copy of the Complaint to the Office of the Regional Hearing Clerk of the United States Environmental Protection Agency, Region 2, 290 Broadway, 16th floor, New York, New York 10007-1866.

Ronald J. Felber, President and CEO
Oakite Products, Inc.
675 Central Avenue
New Providence, New Jersey 07974-1560

Ronald J. Felber, President and CEO
Chemetall US, Inc.
675 Central Avenue
New Providence, New Jersey 07974-1560

Dated: SEP 28, 2009
New York, New York

Mildred N. Bag