

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
**Region 2**

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: :  
In the Matter of : :  
: :  
Oakite Products, Inc., d/b/a : :  
Chemetall Oakite, : :  
and Chemetall US, Inc., : :  
: :  
Respondents. : :  
: :  
Proceeding under Section 16(a) of : :  
Toxic Substances Control Act, : :  
15 U.S.C. § 2615(a). : :  
-----X

Docket Number:  
TSCA-02-2009-9148

Hon. Barbara A. Gunning,  
Presiding Officer

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. 2  
2010 AUG 10 PM 3:45  
REGIONAL HEARING  
CLERK

RESPONSE TO RESPONDENT'S AUGUST 4, 2010 MOTION

This response to Respondent's August 4, 2010 motion, "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," is being submitted on behalf of the Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, EPA, Region 2 (EPA), pursuant to 40 C.F.R. § 22.16(b).

As to the proposed extension of time Respondent seeks for it to file its prehearing exchange, Complainant does not oppose the requested relief. Complainant does not object to Respondent being given 45 days to file its prehearing exchange as well as for EPA to be given an additional 15 days to file a rebuttal (this Court's June 4, 2010 order directed Respondent to file its prehearing exchange by August 10, 2010; Complainant was given until August 25<sup>th</sup> to file any

rebuttal).<sup>1</sup> While a settlement in principle had been reached in late spring (one which included, as Respondent's motion noted, "two major supplemental environmental projects"; third page of said motion), the drafting and concomitant internal Agency review of the CAFO has taken longer than originally anticipated, and the undersigned agrees that Respondent should not, as a matter of basic fairness, be required to file its prehearing exchange because of the delay resulting from factors over which Respondent had neither control nor responsibility. Complainant deems it reasonable and appropriate that Respondent be granted this additional 45-day period before it is required to file its prehearing exchange.

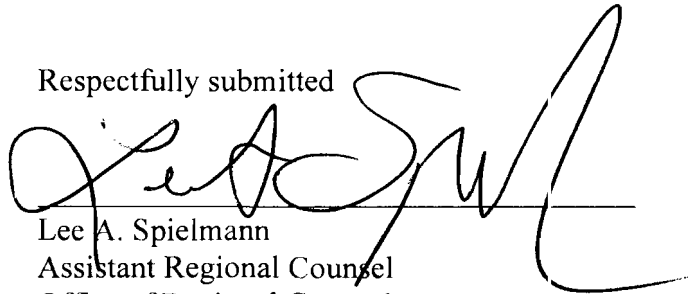
As for the other relief Respondent seeks (having the Court set specific deadlines, including interim ones, for the parties to conclude the settlement process), Complainant, while not opposed to one overall deadline for the parties to reach conclusion, is reluctant to concur in the deadlines proposed by Respondent in its August 4<sup>th</sup> motion. Given that many vacations are scheduled for August, given that the Labor Day holiday is some four weeks away, Complainant questions whether the proposed September 15<sup>th</sup> date in Respondent's motion leaves sufficient time for the settlement to be effected. Rather Complainant believes the parties should be given slightly more time. Accordingly, Complainant would not oppose this Court setting a deadline for the parties to have a signed CAFO within two months, *i.e.* by October 4, 2010; to the undersigned, this appears to be a more realistic schedule. As for the proposed interim deadlines Respondent proposes (items # 1 and 2 on the last two pages of Respondent's motion), Complainant prefers that such deadlines not be set in order to give the parties greater flexibility during the review process.

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<sup>1</sup> Complainant's initial prehearing exchange was filed May 26, 2010.

Dated: August 6, 2010  
New York, New York

Respectfully submitted



Lee A. Spielmann  
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***In re Oakite Products, Inc. et al.***  
**Docket No. TSCA-02-2009-9148**

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing "RESPONSE TO RESPONDENT'S AUGUST 4, 2010 MOTION," dated August 6, 2010, in the following manner to the respective addressees listed below:

Original and One Copy  
By Inter-Office Mail:

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

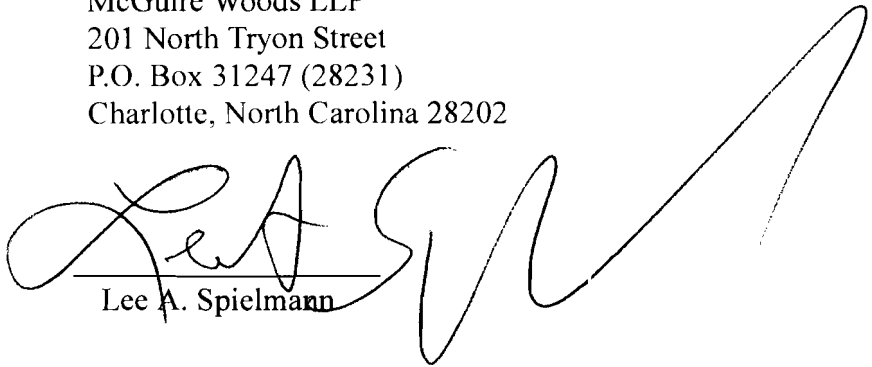
Copy by Fax Transmission,  
202-565-0044, and  
Pouch Mail:

Honorable Barbara A. Gunning  
Administrative Law Judge  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
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Dated: August 6, 2010  
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Lee A. Spielmann