

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). :
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Docket Number:
TSCA-02-2009-9148

Hon. Barbara A. Gunning,
Presiding Officer

U.S. ENVIRONMENTAL
PROTECTION AGENCY REGION 2
2009 DEC 15 AM 8:36
REGIONAL HEARING
CLERK

STATUS REPORT AND MOTION TO EXTEND TIME FOR FILING

This following status report is submitted in compliance with this Court's November 23, 2009 Prehearing Order. In addition, Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, EPA, Region 2 (EPA), through her attorney, requests this Court grant a two-month extension of time for the parties to file their prehearing exchanges, an extension concurred in by Respondent. For the reasons set forth below, EPA submits that good cause exists for granting this motion.

This is a case administratively prosecuted under Section 16(a) of the Toxic Substances Control Act, 15 U.S.C. § 2615(a), in which EPA seeks a civil penalty of \$438,400 for alleged violations occurring at Respondents' facilities in La Mirada, California, and Romulus, Michigan. The complaint, served in late September 2009, alleges violations of the TSCA Master Inventory update reporting requirements, 40 C.F.R. § 710.53. Respondents served their answer in late

October 2009. The prehearing order of this Court directs that the parties meet before December 23, 2009, that Complainant file a status report no later than January 8, 2010 and that the prehearing exchange process commence with Complainant's initial submission on January 29, 2010 (Respondents' to follow on February 26th, and Complainant's rebuttal, if any, on March 12th).

The parties met for an informal settlement conference today, December 11, 2009. While no settlement agreement was reached, the parties discussed and explored a variety of settlement possibilities, with EPA having proposed tentative settlement figures and Respondents having suggested several innovative and potentially promising supplemental environmental projects (SEPs). The parties agreed to continue settlement discussion, with Respondents to follow up on their SEP proposals with more detailed written proposals. The parties expressed a definite interest in settlement, and, in that spirit, negotiations will be continuing.

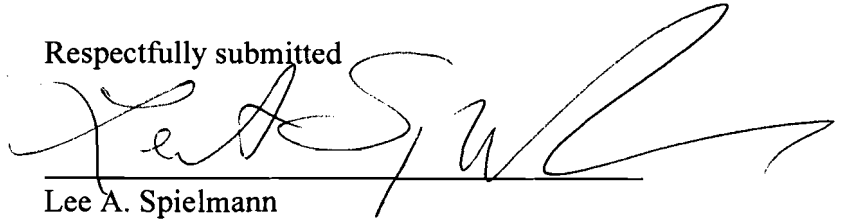
In light of the above, specifically that Respondents have presented several SEP proposals, Complainant requests that this Court extend the schedule for the parties to engage in prehearing exchange by two months. Respondents' counsel noted his joining with this request. The extension would be sought so that Respondents have an adequate opportunity to factually elaborate upon their various SEP proposals and concomitantly so that EPA has an adequate opportunity to evaluate them for their merits and to ensure the proposals fall within the parameters of the Agency's SEP policy. The parties wish to explore this settlement route without having to concern themselves with or divert their efforts and energy to quickly approaching litigation deadlines (especially considering that the end-of-year holidays will shortly be upon us).

Complainant submits that the circumstances demonstrate that the good cause requirement of 40 C.F.R. § 22.7(b) exists for the granting of this motion. This case has just commenced, there have not been any litigation developments (such as the filing of any motions) and this is the first request for an extension. The evidentiary record has not been formally developed, and no hearing date has been set. Certainly the requested extension would not prejudice either party. The parties are simply seeking additional time so that *bona fide* settlement proposals involving SEPs can be formally made and then properly analyzed by EPA. Under these circumstances, a two-month extension of time should not be unreasonable, and is warranted by any reasonable measurement.

Therefore, EPA respectfully moves this Court, pursuant to 40 C.F.R. §§ 22.4(c)(2), 22.7(b), 22.16(a) and 22.19(a), for an order: **a)** vacating so much of the November 23rd prehearing order as directed the parties to serve their prehearing exchanges by the dates therein set forth, and **b)** extending the deadline for each submission set forth in said order by a period of two months, *i.e.* EPA would be required to file its initial prehearing exchange by March 29, 2010, Respondents would be required to file their prehearing exchange by April 26th, and any rebuttal by EPA would have to be filed by May 10th.

Dated: December 11, 2009
New York, New York

Respectfully submitted

A handwritten signature in black ink, appearing to read 'Lee A. Spielmann', written over a horizontal line.

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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 "STATUS REPORT AND MOTION TO EXTEND TIME FOR FILING," dated December 11, 2009, 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
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Dated: December 11, 2009
New York, New York


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