

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

FILED
KENNETH J. MURPHY
CLERK
98 OCT 9 PM 2:46

U.S. DISTRICT COURT
SOUTHERN DIST. OHIO
EAST. DIV. COLUMBUS

UNITED STATES OF AMERICA,)
Plaintiff,)
v.)
CYTEC INDUSTRIES INC.;)
R. BAKER AND SON ALL)
INDUSTRIAL SERVICES, INC.;)
FARLEY ENVIRONMENTAL)
COMPANY, INC.; and)
MOUNTAIN STATES CENTRAL, INC.,)
Defendants.)

Civil No. **C2 98-1020**

JUDGE KINNEARY
MAGISTRATE JUDGE KING
98 DEC 23 PM 2:38
FILED
KENNETH J. MURPHY
CLERK
U.S. DISTRICT COURT
SOUTHERN DIST. OHIO
EAST. DIV. COLUMBUS

CONSENT DECREE

WHEREAS, Plaintiff, the United States of America ("United States"), by authority of the Attorney General of the United States, acting at the request of the Administrator of the Environmental Protection Agency ("EPA"), filed a complaint in this action, alleging that Defendants Cytec Industries Inc. ("Cytec"), R. Baker and Son All Industrial Services, Inc. ("Baker"), Farley Environmental Company, Inc. ("Farley") and Mountain States Central, Inc. ("Mountain States") violated the National Emission Standards for Hazardous Air Pollutants for asbestos (the "asbestos NESHAP"), 40 C.F.R. Part 61, Subpart M and Section 112 of the Clean Air Act, 42 U.S.C. § 7412, in the course of demolition activities at the Cytec facility in Marietta, Ohio, from on or about July 2, 1996, to on or about August 5, 1996;

WHEREAS, the United States and Cytec and Baker agree that settlement of the aforesaid claims without further litigation is in the public interest and that entry of this Consent Decree is the most appropriate means of resolving these matters;

WHEREAS, settlement and entry of this Consent Decree does not constitute admission or acknowledgment of liability by Cytec or Baker, nor does it constitute adjudication by the Court of any issue or fact or law, but is intended solely to settle all claims asserted between the United States and Cytec and Baker on the terms set forth herein;

NOW THEREFORE, upon consent and agreement of the United States and Cytec and Baker, and the Court having considered the matter and being duly advised,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

I. JURISDICTION

1. This Court has jurisdiction of the subject matter of this action and over the parties hereto. The pleadings state claims upon which relief may be granted against Cytec and Baker.

II. DEFINITIONS

2. "Settling Defendants" shall mean Cytec Industries Inc. and R. Baker and Son All Industrial Services, Inc.

3. "Plaintiff" shall mean the United States of America.

4. Except as otherwise set forth herein, terms used in this Consent Decree that are defined in Sections 112(a) and 302(a) of the Clean Air Act, 42 U.S.C. §§ 7412(a) and 7603(a), or in 40 C.F.R. §§ 61.02 and 61.141 shall have the meaning contained therein. References to the Clean Air Act and the asbestos NESHAP regulations in this Consent Decree shall also include any amendments thereto.

5. "Regulated Asbestos-Containing Material" ("RACM"), means asbestos material, as defined in 40 C.F.R. § 61.141.

6. "Asbestos Removal Operation" means any renovation and/or demolition activity or operation as defined in and regulated by 40 C.F.R. Part 61, Subpart M.

III. APPLICATION AND SCOPE

7. The requirements of this Consent Decree apply to and are binding upon each Settling Defendant and their successors and assigns. Any change in ownership or corporate or other legal status of a Settling Defendant, including but not limited to, any transfer of all or substantially all of the assets or real or personal property of a Settling Defendant, shall in no way alter such Settling Defendant's responsibilities under this Agreement.

8. The requirements of this Consent Decree shall apply to all facilities and operations located in the United States of America, including Puerto Rico, where any Settling Defendant is the owner or operator of a demolition or renovation

activity, as defined in the asbestos NESHAP regulations at 40 C.F.R. § 61.141. With respect to their respective facilities and operations, each Settling Defendant shall comply with all applicable provisions of the Clean Air Act relating to asbestos removal, the asbestos NESHAP regulations, and all other applicable federal, state and local asbestos-related regulatory requirements.

9. Each Settling Defendant shall provide a copy of paragraphs 1 through 21 of this Consent Decree to all contractors and subcontractors retained by or on behalf of that Settling Defendant to perform asbestos demolition and/or renovation operations covered by this Consent Decree.

IV. ASBESTOS CONTROL PROGRAM

A. Inspection, Sampling and Analysis

10. Prior to commencing any Asbestos Removal Operation, Settling Defendant(s) shall ensure that a diligent and complete survey and inspection for the presence and condition of RACM has been conducted at the building or structure or any discrete part thereof. The diligent and complete survey and inspection shall include review of the original blueprints and specifications, if available, for references to asbestos used in construction or repairs; visual inspection of areas throughout the building or structure or discrete part thereof to identify those areas that may contain asbestos; representative sampling of

areas that could reasonably be suspected to contain RACM; and laboratory analysis of suspect material to confirm whether or not the material is RACM. In lieu of representative sampling, any area suspected of containing RACM shall be treated as if it contains asbestos unless and until sampling by a trained asbestos inspector and analysis by an accredited laboratory demonstrate that it does not contain asbestos. For purposes of this paragraph, Settling Defendant(s) may rely upon surveys and written inspection reports conducted by a certified asbestos inspector or an asbestos inspector trained in accordance with Section IV.D. of this Consent Decree.

11. A narrative summary of the inspection and survey results, including a graphic representation that indicates the areas sampled and identifies all areas where the presence of RACM is confirmed, shall be maintained on-site during the Asbestos Removal Operation by the Asbestos Site Coordinator, described in Paragraph 14. Upon request, copies of the inspection and survey shall also be made available to the appropriate federal, state and/or local air pollution control agencies by the Asbestos Site Coordinator.

B. Notification

12. Pursuant to 40 C.F.R. § 61.145, if any Settling Defendant contracts or otherwise arranges to conduct a demolition or renovation activity to which the asbestos NESHAP applies, that

Defendant shall give timely and complete notice or ensure that such notice is given to the appropriate EPA Region prior to commencement of any work that may potentially disturb the RACM. Such notification, which the Settling Defendant shall make as required by 40 C.F.R. § 61.145(b), is in addition to any notification required to be given to state and/or local pollution control agencies. If RACM or additional RACM is discovered after the project has begun and the amount discovered places the total RACM above the threshold amounts provided in the asbestos NESHAP, 40 C.F.R. § 61.145(a)(1), the Settling Defendant shall notify or ensure that notification is provided to the appropriate EPA Region and all appropriate state and/or local pollution control authorities.

C. Internal Program

13. Within 60 days of the entry of this Consent Decree, each Settling Defendant shall designate an Asbestos Program Manager ("APM") and notify EPA Region 5 of the identity of such APM. The APM shall have the following duties and responsibilities:

a. The APM shall be familiar with all federal and state environmental laws and regulations governing asbestos notification, removal, handling, transporting and disposal, as well as general practices and procedures for detecting and sampling for asbestos, abating and/or encapsulating asbestos and

controlling asbestos fiber releases, including applicable worker protection and equipment decontamination procedures; and

b. The APM shall successfully complete training courses in asbestos inspection and the supervision of asbestos demolition and renovation operations, as described in Part D of this Section.

14. At each facility located in the United States, including Puerto Rico, where the Settling Defendant is an owner or operator of a demolition or renovation activity, as defined in 40 C.F.R. § 61.141, each Settling Defendant shall designate at least one Asbestos Site Coordinator ("ASC"). The ASC, who shall be trained in accordance with the requirements in Part D of this Section, shall be the primary contact by or through whom any employee, contractor or subcontractor performing work at any Asbestos Removal Operation receives asbestos-related guidance and instructions on behalf of the Settling Defendant. The ASC shall have the following specific responsibilities:

a. The ASC shall review and maintain at the location of the Asbestos Removal Operation the survey, inspection report and graphic representation required under Part A of this Section and shall provide copies to project contractors, subcontractors and/or foreman, whether or not those persons are expected to become involved directly with asbestos. Before any demolition begins, the ASC shall confirm, as required by the asbestos NESHAP

regulations, 40 C.F.R. § 61.145, that all surveys and inspections required under this Consent Decree are properly performed, and that all programs required by the asbestos NESHAP regulations are in effect and are being carried out;

b. The ASC shall survey the Asbestos Removal Operation before any work begins, to determine what advance preparation may be necessary to ensure compliance with this Consent Decree, the asbestos NESHAP and other applicable environmental laws and regulations concerning asbestos. Before any demolition begins, the ASC shall confirm, as required by the asbestos NESHAP regulations, 40 C.F.R. § 61.145, that the demolition project is designed so that the Asbestos Removal Operations conducted by the Settling Defendant and its contractors and subcontractors will be accomplished in accordance with the Asbestos NESHAP and all other applicable federal, state, and local asbestos-related laws and regulations;

c. The ASC shall manage and coordinate all of the respective Settling Defendant's internal Asbestos Removal Operations conducted at the Asbestos Removal Operation for which she or he is responsible including, without limitation, oversight of all asbestos inspections and surveys required under Part A of this Section and review and approval of public notices, bid specifications and change orders for all Asbestos Removal Operations. The ASC shall ensure that asbestos concerns are

fully reflected in all contractual documents, shall participate in applicable pre-bid and post award conferences and walk-throughs, and shall review and approve all construction plans and activities that may impact on RACM;

d. The ASC shall provide, or cause to be provided as set forth below, a summary review of relevant asbestos-related information to each individual engaged in the asbestos removal at an Asbestos Removal Operation before the individual begins work. Such information shall include the results of the asbestos survey and inspection of the Asbestos Removal Operation, the health effects caused by exposure to asbestos, and the regulatory requirements in the asbestos NESHAP and other applicable asbestos federal, state and/or local environmental regulations. The summary review shall also include a description of how to identify RACM and require that the presence of such material or suspect material shall be reported immediately to the ASC, and that such material may not be handled, moved or disturbed except by an individual who is trained and certified to do so. Each individual engaged in the asbestos removal must verify in writing that he or she has received the foregoing information, including the date. Copies of such verifications shall be maintained by the ASC in the project file. To comply with this subsection at any Asbestos Removal Operation, the Settling Defendants may require, by contract, that the general contractor provide the

requisite asbestos-related information to each individual engaged in the asbestos removal and obtain the required written verification;

e. The ASC shall inspect all Asbestos Removal Operations at the Asbestos Removal Operation to determine compliance with the asbestos NESHAP and other applicable asbestos-related statutory or regulatory requirements. If any violations of such requirements are discovered, the ASC shall immediately correct or order the correction of such violations. If an immediate remedy is not possible, the ASC shall promptly issue a stop work order that shall remain in effect until the violations are corrected.

f. The ASC shall be the primary site contact for EPA and state and/or local agency asbestos inspectors, as well as the liaison between inspectors and individuals employed on site;

g. The ASC shall keep a daily log detailing all asbestos-related activities at the Site, to be incorporated in the project file;

h. The ASC shall maintain on-site copies of the asbestos NESHAP and other federal, state and/or local asbestos environmental regulations, written notifications to EPA and state and/or local air pollution control agencies, the project contract specifications and change orders related to or affecting RACM, and all records dealing with asbestos removal and disposal

required under applicable federal, state and local environmental laws, as well as all other records required under this Consent Decree that pertain to the Site. The ASC shall also verify that each individual employed directly in asbestos activities at the Site has been trained in accordance with the requirements of Part D of this section and has received any certification or permit required by state or local law; and

i. The Settling Defendants may assign one or more responsibilities of the ASC to one or more qualified employees of a contractor provided that the contractor agrees in writing to assume such responsibility. However, the assignment of such responsibilities shall not relieve the Settling Defendant(s) of liability if the assigned responsibilities are not performed satisfactorily.

j. When Baker has not been contracted for asbestos removal, Baker does not need to designate an ASC for the purposes of this Consent Decree. However, nothing in this Consent Decree relieves Baker of any obligations under the Clean Air Act and the asbestos NESHAP.

k. Each Settling Defendant and its contractors and subcontractors shall give the ASC full authority to carry out his or her responsibilities, including the authority to issue stop work orders and to be the primary liaison with respect to operations covered and records required by this Consent Decree.

15. With respect to each of Cytec's facilities located in the United States of America, including Puerto Rico, where Cytec is the owner or operator of a demolition or renovation activity as defined in the asbestos NESHAP, 40 C.F.R. § 61.141, Cytec shall retain an Independent Asbestos Abatement Specialist ("IAAS") in connection with any Asbestos Removal Operation. The IAAS, who shall be trained in accordance with the requirements in Part D of this Section, shall oversee the work of the ASC at any Asbestos Removal Operation. Where the ASC has completed an EPA-approved training course for on-site supervisors prior to their effective designation and maintains current certification as on-site supervisor for the duration of any Asbestos Removal Operation, Cytec need not employ an IAAS in connection with the Asbestos Removal Operation.

D. Required Asbestos Training

16. Each Settling Defendant's APM shall successfully complete an EPA-approved training course for asbestos inspection and the supervision of asbestos demolition and renovation operations on an annual basis, as required by paragraph 13 of this Consent Decree.

17. ASCs employed by Baker shall successfully complete an EPA-approved training course for on-site supervisors prior to their effective designation and maintain current certification as on-site supervisor for the duration of any Asbestos Removal

Operation. ASCs employed by Cytec shall successfully complete an asbestos awareness and regulatory compliance training program.

18. IAASs shall successfully complete an EPA-approved training course for on-site supervisors prior to their effective designation and maintain current certification as on-site supervisor for the duration of any Asbestos Removal Operation.

19. All persons employed or retained to survey, inspect and sample facilities for the presence of RACM shall successfully complete an EPA-approved training course for asbestos inspectors prior to retention and maintain current certification as on-site supervisor for the duration of any Asbestos Removal Operation.

20. All individuals retained to perform asbestos stripping, removal, handling, clean-up, air monitoring, transportation, or disposal activities shall have successfully completed an EPA-approved training course for asbestos abatement workers and be certified or licensed to do such work, as required by state or local law prior to the date of retention.

21. EPA-approved trainers and courses are listed at 55 Fed. Reg. 7202 (February 28, 1990) or in such subsequent lists as may hereafter be provided by EPA, or as otherwise approved by EPA.

V. SETTLEMENT AMOUNT

22. Within 30 days of entry of this Consent Decree,

Cytec and Baker shall pay civil penalties in the amounts of \$176,135 and \$49,518, respectively. Such payments shall be in full satisfaction of the United States' claims for a civil penalty against each Settling Defendant for the violations alleged in the Complaint filed in this action through the date of lodging of this Consent Decree. Penalty payments made under this Consent Decree are not tax deductible.

23. Settling Defendant Cytec's payment of the amount set forth for it in paragraph 22 shall be made by Electronic Funds Transfer ("EFT" or wire transfer) to the United States Department of Justice lock box bank, referencing DOJ No. 90-5-2-1-2223 and USAO File No. . Payment shall be made in accordance with the instructions provided by the United States. EFTs must be received at the U.S. DOJ lock box bank by 11:00 A.M. (eastern time) in order to be credited on that day. A copy of the transmittal notice shall be mailed to each party identified in Section X (Notices, Records, and Submissions) of this Consent Decree.

24. Settling Defendant Baker's payment of the amount set forth for it in paragraph 22 shall be made by cashier's or certified check made payable to "Treasurer, United States of America," and shall be sent to:

United States Attorney's Office
Southern District of Ohio
Attention: Collections
280 N. High Street, Fourth Floor

Columbus, Ohio 43215.

25. If a Settling Defendant does not pay its civil penalty, as specified in Paragraph 22 of this Consent Decree, when due, then without further order of this Court, this Consent Decree shall be considered an enforceable judgment for purposes of post-judgment collection under Rule 69 of the Federal Rules of Civil Procedure and other applicable statutory authority.

26. If either Settling Defendant fails to comply with any provision of this Consent Decree, it shall pay stipulated penalties of five hundred dollars (\$500) for each day of each violation.

27. Stipulated penalties shall be paid within 15 days of written demand by EPA for such penalties, by cashier's or certified check made payable to "Treasurer, United States of America," and shall be sent to:

United States Attorney's Office
Southern District of Ohio
Attention: Collections
-280 N. High Street, Fourth Floor
Columbus, Ohio 43215

28. The United States shall be deemed a judgment creditor for purposes of collection of any penalties owed it by a Settling Defendant under this Consent Decree.

29. In accordance with 28 U.S.C. § 1961, interest shall accrue on the unpaid balance of any penalties at the federal judgment interest rate. The rate shall be that in effect

on the due date of the civil penalty provided for in paragraph 22 above and, in the case of stipulated penalties, at the time such payment(s) become due. Interest shall be computed beginning the date the penalty in question is due. If interest is due, the applicable Settling Defendant shall submit a statement with its payment to the Collections Unit of the U.S. Attorney's Office for the Southern District of Ohio, 280 N. High Street, Fourth Floor, Columbus, Ohio 43215, setting forth its calculation of interest. The U.S. Attorney's Office will advise the applicable Settling Defendant in the event such calculation requires adjustment.

30. If either Settling Defendant files a voluntary petition in bankruptcy, or is adjudicated bankrupt under the Bankruptcy Code of the United States, or is the subject of a petition in federal or state court for the appointment of a trustee or receiver in bankruptcy or insolvency, or makes a general assignment for the benefit of creditors, immediate notice shall be given to the Collections Unit of the U.S. Attorney's Office, 280 N. High Street, Fourth Floor, Columbus, Ohio 43215 and to U.S. EPA ORC Region 5 at 77 West Jackson, C-14J, Chicago, Illinois 60604. At the option of the United States, upon the occurrence of any of the above listed events, the full balance of all outstanding penalties owed by that Settling Defendant, together with accrued interest, may be declared immediately due and payable.

VI. ACCESS

31. During the duration of this Consent Decree, EPA and/or state or local air pollution control agency inspectors or representatives and their authorized contractors and representatives may enter on, through and about the site of any demolition and/or renovation operation subject to this Consent Decree at reasonable times, to take samples and photographs and to inspect and copy such records as may be necessary to determine compliance with the provisions of the Consent Decree. This right of access is in addition to and is not a limitation on the rights of access afforded by any statute, regulation or other law.

VII. NON-WAIVER PROVISION

32. This Consent Decree in no way affects or relieves the Settling Defendants of their respective responsibilities to comply with all applicable federal, state or local laws or regulations, including the asbestos NESHAP regulations at 40 C.F.R. Part 61, Subpart M. Any violation of the asbestos NESHAP regulations shall also constitute a violation of the terms of this Consent Decree and shall be subject to statutory penalties.

33. Subject to paragraph 22, notwithstanding any other provision of this Consent Decree, nothing herein shall be construed to limit the right of the United States to seek or obtain any remedy, sanction or relief that may be available to it by virtue of the Settling Defendants' failure to comply with this

Consent Decree, the Clean Air Act or the asbestos NESHAP regulations.

VIII. DISMISSAL AND TERMINATION

34. This Consent Decree shall be terminated three (3) years after the date of its entry by the Court or whenever all penalties provided for in this Consent Decree have been paid, whichever is later.

IX. RETENTION OF JURISDICTION

35. The Court shall retain jurisdiction to modify and enforce the provisions of this Consent Decree, to resolve disputes arising hereunder, and to entertain any application and issue any order as may be necessary or appropriate for the construction and effectuation of its terms. Any modification of this Consent Decree must be in writing and agreed to by the parties and approved by the Court.

36. The Court shall retain jurisdiction after termination of this Consent Decree to enforce the provisions of this Consent Decree with respect to events occurring prior to such termination.

X. NOTICES, RECORDS, AND SUBMISSIONS

37. Except as otherwise provided herein, all notices, records and submissions required by this Consent Decree shall be in writing, shall be maintained by the Settling Defendants for

the duration of the Consent Decree and shall be made available to EPA upon request.

38. Unless a change of address notice is timely submitted or this Consent Decree states otherwise, all notices and/or submissions in connection with this Consent Decree shall be addressed as follows:

For EPA:

Asbestos Program Manager
Air and Toxics and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Avenue, AE-17J
Chicago, Illinois 60604

For Cytec:

Linda Doucette-Ashman, Esq.
Cytec Industries Inc.
5 Garret Mountain Plaza
West Patterson, NJ 07424

Heidi B. Eisman
Thompson Hine & Flory
3900 Key Center
127 Public Square
Cleveland, Ohio 44114

For Baker:

David Baker
R. Baker & Son All Industrial Services, Inc.
250 North Washington Avenue
Staten Island, New York 10303

David W. Reger
Bressler, Amery & Ross
P.O. Box 1980
Morristown, New Jersey 07962

39. The parties agree that final approval and entry of this Consent Decree is subject to the public notice requirement

of 28 C.F.R. § 50.7. The United States reserves the right to withdraw its consent to the Consent Decree if the comments regarding the Consent Decree disclose facts or considerations that indicate that the Consent Decree is inappropriate, improper or inadequate. The Settling Defendants consent to the entry of this Consent Decree without further notice.

XI. COSTS AND FEES

40. Each party shall bear its own costs, fees and disbursements in this action.

XII. SIGNATORIES

41. Each of the undersigned representatives of the Settling Defendants certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally the party represented by him or her. The undersigned Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division, U.S. Department of Justice, also certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally the United States to this agreement.

XIII. EFFECTIVE DATE

42. This Consent Decree shall become effective on the date of entry by the Court.

Entered this 9th **V O D** day of October, 1998.

Joseph P. Kennedy
United States District Court Judge

25th day of December, 1998.

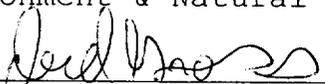
THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States of America v. Cytec Industries Inc., et al., Civil Action No.

FOR THE UNITED STATES OF AMERICA

UNITED STATES DEPARTMENT OF JUSTICE

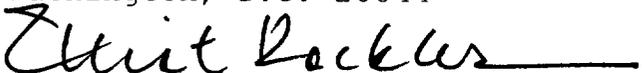
LOIS J. SCHIFFER
Assistant Attorney General
Environment & Natural Resources Division

Date: 7-20-98



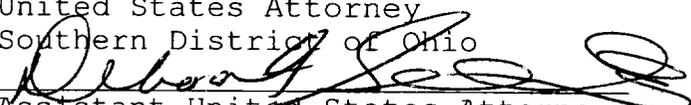
JOEL M. GROSS
Deputy Section Chief
Environmental Enforcement Section
P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044

Date: 7/20/98



ELLIOT M. ROCKLER
Trial Attorney
Environmental Enforcement Section
PO Box 7611, Ben Franklin Station
Washington, DC 20044
(202) 514-2653

Date: 10/5/98

SHARON J. ZEALEY
United States Attorney
Southern District of Ohio


Assistant United States Attorney
2 Nationwide Plaza
280 N. High St., Fourth Floor
Columbus, Ohio 43215
(614) 469-5715

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY

Date: September 14, 1998

David A. Ulrich

DAVID A. ULRICH
Acting Regional Administrator
U.S. Environmental Protection Agency -
Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Date: Aug. 26, 1998

Brad J. Beeson

BRAD BEESON
Assistant Regional Counsel
Office of Regional Counsel
U. S. Environmental Protection Agency -
Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States of America v. Cytec Industries Inc., et al., Civil Action No.

FOR CYTEC INDUSTRIES INC.

Date: 7/22/98

E. F. Jochman *EFJ*
Vice President

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States of America v. Cytec Industries Inc., et al., Civil Action No.

FOR R. BAKER AND SON ALL INDUSTRIAL SERVICES, INC.

Date: 7/1/98

R. Baker

