

OHIO E.P.A.

AUG 21 2003

ENTERED DIRECTOR'S JOURNAL

Issuance Date: AUG 21 2003

Effective Date: AUG 21 2003

**BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

Cytec Industries Inc.	:	Director's Final
5 Garret Mountain Plaza	:	Findings and Orders
West Paterson, NJ 07424	:	

**I. JURISDICTION**

These Director's Final Findings and Orders (Orders) are hereby issued to Cytec Industries Inc. ("Cytec"), pursuant to the authority vested in the Director of Environmental Protection (director) under Ohio Revised Code (ORC) Sections 3734.02(H) and 6111.03 and Ohio Administrative Code (OAC) Rule 3745-27-13.

**II. PARTIES**

These Orders shall apply to and be binding upon Cytec and its successors in interest liable under Ohio law. No changes in ownership relating to the Facility, as hereafter defined; will, in any way, alter Cytec's responsibilities under these Orders. Cytec's obligations under these Orders may only be altered by the written approval of the director.

**III. DEFINITIONS**

Unless otherwise stated, all terms used in these Orders shall have the same meaning as used in ORC Chapters 3734 and 6111 and the rules promulgated thereunder. Unless otherwise stated, all citations of the OAC shall refer to the rules currently in effect.

**IV. FINDINGS**

The director has determined the following findings of fact:

1. Cytec is the owner of the American Cyanamid Sanitary Landfill ("Facility") located at approximately 750 Bacon Road in Lake County, Ohio. The Facility was operated between 1938 and 1972 and consists of about 11.5 acres separated into two parts by a stream. The northern area is approximately three acres and the southern area is approximately eight and a half acres.

I certify this to be a true and accurate copy of the official documents filed in the records of the Ohio Environmental Protection Agency

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2. On May 2, 2002, Ohio EPA received a request in accordance with OAC Rule 3745-27-13 from Blasland, Bouck & Lee, Inc. on behalf of Cytec to perform activities at the Facility. Revisions to the request were received on May 2, 2003. The request consists of a detailed plan titled *Proposed Plan to Upgrade Storm Water Controls Former American Cyanamid Landfill*. Cytec proposes to consolidate all waste materials from the northern area of the Facility into the southern area. About 40,000 cubic yards of material will be relocated from the northern area to the southern area.
3. Pursuant to ORC Section 3734.02(H) and OAC Rule 3745-27-13, no person shall engage in filling, grading, excavating, building, drilling, or mining on land where a hazardous waste facility or solid waste facility was operated without prior authorization from the director.
4. Pursuant to OAC Rule 3745-27-13, the director shall not grant an authorization to engage in filling, grading, excavating, drilling, building, or mining on land where a solid waste facility was operated unless he determines that such authorization will not result in violation of applicable laws and regulations administered by the director, will not create a nuisance, and is unlikely to adversely affect the public safety or health or the environment.
5. The activities described in Finding Number 2, above, if performed in accordance with the May 2, 2002, request, as revised on May 2, 2003, and in accordance with the following Orders, will not result in a violation of applicable laws and regulations, will not create a nuisance, and are unlikely to adversely affect the public health or safety or the environment.

#### V. ORDERS

1. Cytec is hereby authorized to perform all relocation, construction, and closure activities and implement all Best Management Practices at the Facility in accordance with the document titled *Proposed Plan to Upgrade Storm Water Controls Former American Cyanamid Landfill* ("Authorized Plan"), as received on May 2, 2002, and revised on May 2, 2003, and with these Orders.
2. If the director concludes at any time that any applicable laws have been or are likely to be violated or continued implementation of the Authorized Plan may cause a threat to human health or safety or the environment, then the director may revoke this authorization.
3. The director, or an authorized representative, and the Health Commissioner of the Lake County Health Department, or an authorized representative, may enter upon

the premises during relocation, construction, and closure activities at any reasonable time for the purpose of making inspections, conducting tests, or examining records or reports pertaining to the relocation, construction, and closure of the Facility.

4. If unanticipated difficulties become apparent due to field conditions encountered during relocation, construction, and closure activities which require a change to any details as contained in the Authorized Plan, Cytec shall contact an Ohio EPA, DSIWM, NEDO or DSW, NEDO representative in order to obtain concurrence for the change. Cytec shall send written notification of any changes to the Authorized Plan which have been concurred with by Ohio EPA. Such notification shall include a description of the proposed change and a notation of the date, time, and method of concurrence by Ohio EPA and shall be submitted not later than seven days after receiving concurrence to Ohio EPA DSIWM, NEDO. Any changes made to the Authorized Plan shall be fully documented in the certification report required by Order Number 8, below.
5. If any unexpected wastes are encountered during the relocation of the northern area that render the project infeasible for Cytec to complete, the northern and southern areas shall be closed in accordance with the specifications outlined in the Authorized Plan, excluding the final conceptual design contours for the Facility as set forth in the Authorized Plan. Ohio EPA DSIWM, NEDO shall be provided notification of such a determination of infeasibility by Cytec prior to implementing closure in accordance with this provision.
6. During the relocation of all waste from the northern area and during all construction activities in the southern area, Cytec shall notify Ohio EPA, DSW, NEDO of the status of implementation via weekly communication, and will confer as necessary, with Ohio EPA, DSW, NEDO for guidance on creek stabilization and creek riparian zone restoration and protection.
7. Cytec shall complete implementation of the Authorized Plan by December 31, 2004, unless weather conditions prevent Cytec from completing these activities by this date. In the event that weather conditions delay completion of the project, Cytec may request an alternative deadline to complete the activities authorized herein upon determination that the December 31, 2004, deadline cannot be satisfied.
8. Within 60 days after the completion of the final closure activities for the Facility, Cytec shall submit to the director and to the Lake County Health Department, the certification report described in the Authorized Plan.

9. Sedimentation controls shall not be removed until the Lake County Health Department and Ohio EPA concur that adequate vegetative growth has been established on the final cover system.
10. Nothing in these Orders shall be construed to authorize any activity, method, or waiver from the requirements of ORC Chapter 3734 and 6111 or the regulations promulgated thereunder, except as expressly provided herein. These Orders shall not be interpreted to release Cytec from responsibility under ORC Chapters 3704, 3734, or 6111; under the Federal Clean Water Act or the Comprehensive Environmental Response, Compensation, and Liability Act; or from other applicable requirements for remedying conditions resulting from any release of contaminants to the environment.

#### **VII. OTHER APPLICABLE LAWS**

Unless specifically addressed in these Orders, all actions taken shall be undertaken in accordance with the requirements of all applicable federal, state, and local laws and regulations. Unless specifically addressed in these Orders, nothing contained herein shall be construed as waiving or compromising in any way the applicability and enforcement of any other statutes or regulations applicable to the Facility.

#### **VIII. RESERVATION OF RIGHTS**

Nothing contained herein shall be construed to prevent Ohio EPA from seeking legal or equitable relief to enforce the terms of these Orders or from taking other administrative, legal, or equitable action as deemed appropriate and necessary, including seeking penalties against Cytec for noncompliance with these Orders.

Nothing contained herein shall be construed to prevent Ohio EPA from exercising its lawful authority to require Cytec to perform additional activities pursuant to ORC Chapter 3734 or any other applicable law in the future. Nothing herein shall restrict the right of Cytec to raise an administrative, legal, or equitable claim or defense with respect to such further actions which Ohio EPA may seek to require of Cytec. Nothing in these Orders shall be construed to limit the authority of Ohio EPA to seek relief for violations at the facility.

#### **IX. WAIVER**

Cytec hereby waives its right to appeal the issuance, terms, and service of these Orders, and hereby waives any and all rights it might have to seek judicial or administrative review of said Orders either in law or equity.

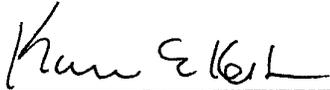
Notwithstanding the preceding, Ohio EPA and Cytec agree that in the event that these Orders are appealed by any other party to the Environmental Review Appeals Commission or any court, Cytec retains the right to intervene and participate in such appeal. In such event, Cytec shall continue to comply with these Orders notwithstanding such appeal and intervention unless said Orders are stayed, vacated, or modified.

## XII. SIGNATORIES

Each undersigned representative of a signatory to these Orders certifies that he or she is fully authorized to enter into the terms and conditions of these Orders and to legally bind such signatory to this document.

### IT IS SO ORDERED AND AGREED:

Cytec Industries Inc.

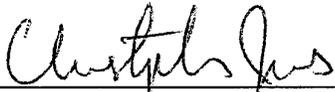


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Karen E. Koster, Vice President,  
Safety, Health, and Environment

8/11/03

\_\_\_\_\_  
Date

Ohio Environmental Protection Agency



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Christopher Jones, Director