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**SENT BY EMAIL ONLY**

August 8, 2023

Ms. Diana Huson, Chair  
Planning and Economic Development Committee  
Region of Niagara  
1815 Sir Isaac Brock Way  
P.O. Box 1042  
Thorold, ON  
L2V 4T7

Dear Sirs/Mesdames:

**Cytec Canada Inc.**  
**Approval of City of Niagara Falls Official Plan Amendment No. 147**  
**Report PDS 24-2023**  
**Our File No. 500673**

We are the solicitors for Cytec Canada Inc. (“Cytec”) – part of the Solvay Group.

We have reviewed the Region’s Planning Report PDS 24-2023 which recommends approval of City of Niagara Falls OPA 147 (“OPA 147”) as modified. Cytec maintains its objection to OPA 147 relating to the employment conversion to residential uses in the vicinity of its major chemical manufacturing facility, specifically those policies and modifications proposed for 9304 McLeod Road, including Policy 8.35, also Special Policy Area “87”; and Map 4, together with any other policies and/or modifications that permit the residential conversion of the 9304 McLeod Road lands (“the impugned policies”). This letter should be read in conjunction with our letters of August 3, 2022, March 16, 2023, April 26, 2023 and June 20, 2023 contained within Appendix 2 of the Region Planning Report.

We request that the Committee recommend refusal of the impugned policies contained within OPA 147 to Regional Council.

The world class Cytec facility is located in Niagara Falls on Garner Road. The facility manufactures phosphine, which is used for amongst other matters, as a dopant in the



semiconductor industry. Phosphine is a colourless, flammable toxic gas. Cytec supplies approximately 65% of the phosphine world market. Multimillion dollars have been invested into Cytec's facility – including approximately 165 million dollars during the last expansion – and Cytec continues to investigate growth opportunities for its more than 1000 acre site. Cytec is a significant contributor to the Region economy on its employment site.

The management of a risk safety profile of a major chemical manufacturing facility requires addressing three fundamental objectives: mitigation of adverse effects; minimization of risk to public health and safety; and maintenance of the long term viability of the existing industry. OPA 147 as proposed to be modified fails to meet these objectives.

In Cytec's case, the appropriate planning program provides for a 2 km radius from the facility -- the Cytec arc -- together with height restrictions beyond and proximate to the arc. The Cytec arc and the prohibition of residential uses and sensitive land uses within the arc was first approved on April 10, 2002 by Order of the Ontario Municipal Board (now the Ontario Land Tribunal) by then Vice-Chair Hubbard, later Chair of the Ontario Land Tribunal on the lands for the Grand Niagara Resort complex (south of the Welland River). The City of Niagara Falls Official Plan approvals for: a) the Garner South Secondary Plan for Warren Woods to the north east; b) the site specific OPA for Heartland Forest to the east; and c) the recently approved Grand Niagara Secondary Plan to the south have all carried forward the Cytec arc together with prohibition of sensitive land uses within the arc and appropriate height restrictions. Those same provisions should be incorporated into the land use designations for the lands currently under review.

Most importantly for Region decisionmakers is the incorporation of the Cytec 2 km radius into the Niagara Region Official Plan ("NOP") by the Province's Notice of Decision dated November 4, 2022 through Modification 24. Modification 24 states:

"New policy 4.2.4.10 is added:

Notwithstanding policy 7.12.2.5, development applications within a **two kilometre radius of the Cytec Canada Inc. facility** in Niagara Falls **shall** be subject to policy 4.2.1.11 of this Plan, except for the lands currently designated Neighbourhood Commercial in the local official plan.

[My Emphasis]



Policy 7.12.2.5 as modified by modification 24 being notwithstanding is the grandfathering or “Clergy Principle” clause. By such exclusion in policy 4.2.4.10, neither City or Region planning can rely on the “in the mill” argument for the approval of OPA 147. This is because OPA 147 was adopted by City of Niagara Falls Council on April 18, 2023, approximately 4 ½ months later than the Minister concluded the Region’s municipal comprehensive review by the Decision on the NOP on November 4, 2022.

Policy 4.2.1.11 was specifically included by reference within modification 24 by the Province. That policy restricts the timing of the employment conversions. The first sentence of the Policy 4.2.1.11 states: “Conversion of lands within *employment areas* shall not be permitted except during the Region’s *municipal comprehensive review*.”

Region planning at page 9 of its Report alleges and suggests: “given that Employment Areas is a defined term within the NOP and that the land within Special Policy Area 87 are not mapped as Employment Areas on Schedule G of the NOP, it is the position of Regional staff that Policy 4.2.1.11 does not apply to Special Policy Area 87.”

This position is untenable, illogical, and does not bear up to legal scrutiny. As the Region’s municipal comprehensive review is completed, the Region is **legally** required to refuse the residential conversion proposed in OPA 147 within the 2 km radius of the Cytec facility.

The position advanced by Region planning ignores the fact that Cytec’s submission on employment conversions to the Province included specific reference to the lands at 9304 McLeod which was the catalyst for the Minister’s modification 24. Yet, Region planning suggests that the Minister included specific reference to a policy that is not applicable! That is incredulous to say the least. In fact, Region planning is inappropriately and, in our opinion, illegally endeavouring to read down the planning direction of the Province.

Region planning at page 9 of its Report states that Employment Areas is a defined term within the NOP. The definition in the NOP states: “**Employment Areas:** Areas designated in an official plan for clusters of business and economic activities including but not limited to manufacturing, warehousing, offices, and associated retail and ancillary facilities (PPS, 2020).” The definition is not limited to the NOP – it references “an official plan.” This includes the City of Niagara Falls Official Plan which currently designates the lands for employment uses (which is why OPA 147 is a conversion exercise). In light of the definition, policy 4.2.1.11 specifically referred to by the Minister in modification 24 is and remains engaged as clearly intended.



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Moreover, the definition in the NOP specifically incorporates PPS 2020, and by such reference also further emphasizes all those policies at 1.2.6 and 13.2 of the PPS 2020 which require the prohibition of sensitive land uses to maintain land use compatibility for uses such as Cytec.

We have also reviewed the proposed modifications by Regional Planning to Special Policy Area 87. The modifications do not address Cytec's concerns. Risk assessment is a precondition prior to residential conversion, not a post rationalization process. Moreover, the clearance is proposed to be by the City which has already demonstrated its views on the matters by its haste to draft approve the residential subdivision on the 9304 McLeod Road lands on June 20, 2023. Also, the modifications purport to subject the risk assessment to the D-6 guidelines which do not provide a complete risk assessment to provide for land use compatibility between a major chemical facility and sensitive land uses. We note that other guidelines exist which are more directly applicable. Cytec should be consulted on any terms of reference for any risk assessment being carried out.

For all these reasons, the fit and appropriate decision by Regional Council would be to refuse the impugned policies in OPA 147 and we request that this Committee so make that recommendation to Regional Council.

We respectfully request notice of the decision of Regional Council as follows:

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Yours very truly,

A handwritten signature in dark ink, appearing to read 'Jeff Wilker', written in a cursive style.

Jeffrey J. Wilker

JJW/jjw



cc: Michelle Sergi, Commissioner, Planning & Development Services, Niagara Region  
cc: Alexandria Tikky, Senior Project Manager, Niagara Region  
cc: Ann-Marie Norio, Regional Clerk, Niagara Region  
cc: Kira Dolch, Director of Planning, Building and Development, City of Niagara Falls  
cc: Brad Campbell, Site Director, Cytec  
cc: Ken Milo, Environmental Rehabilitation Officer, Cytec  
cc: Glenn Wellings, Wellings Planning Consultants,