

Chemtura CORP
Form 10-K
March 12, 2010
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U.S. SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-K

(Mark One)

- ☒ **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the fiscal year ended December 31, 2009

OR

- ☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from to

Commission File No. 1-15339

Chemtura Corporation

(Exact name of registrant as specified in its charter)

Delaware

52-2183153

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(State or other jurisdiction of incorporation or organization)

(I.R.S. Employer Identification Number)

1818 Market Street, Suite 3700, Philadelphia, Pennsylvania
199 Benson Road, Middlebury, Connecticut
(Address of principal executive offices)

19103
06749
(Zip Code)

Registrant's telephone number, including area code: **(203) 573-2000**

Securities registered pursuant to Section 12(b) of the Act:

Title of each class
Common Stock, \$0.01 par value

Name of each exchange on which registered
NONE

Securities registered pursuant to Section 12(g) of the Act: **NONE**

Indicate by check mark whether the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act: Yes ☐ No ☒

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes ☐ No ☒

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☐ No ☒

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☐ No ☒

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer or a smaller reporting company. See definition of "accelerated filer," "large accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check off):

Large accelerated filer ☐

Accelerated filer ☒

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Non-accelerated filer ☐
(Do not check if a smaller reporting company)

Smaller reporting company ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ☐ No ☒

The aggregate market value of the voting and non-voting common equity held by non-affiliates of the registrant, computed as of June 30, 2009, based on the value of the last sales price of these shares as quoted on Pink Sheets Electronic Quotation Service was \$57,973,041.

The number of voting shares of Common Stock of the registrant outstanding as of January 29, 2010 was 242,935,715.

DOCUMENTS INCORPORATED BY REFERENCE

Part III of this Form 10-K will be filed with the Securities and Exchange Commission as an amendment to this Form 10-K in accordance with General Instruction G(3).

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PART I.

Item 1. Business

CERTAIN DISCLOSURES INCLUDED IN THIS ANNUAL REPORT ON FORM 10-K FOR THE FISCAL YEAR ENDED DECEMBER 31, 2009 CONSTITUTE FORWARD-LOOKING STATEMENTS THAT ARE SUBJECT TO RISK AND UNCERTAINTY. SEE ITEM 7. - MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS - FORWARD-LOOKING STATEMENTS.

WHEN WE USE THE TERMS CORPORATION, COMPANY, CHEMTURA, REGISTRANT, WE, US AND OUR, UNLESS OTHERWISE INDICATED OR THE CONTEXT OTHERWISE REQUIRES, WE ARE REFERRING TO CHEMTURA CORPORATION AND ITS CONSOLIDATED SUBSIDIARIES.

OVERVIEW

Chemtura Corporation, together with its consolidated subsidiaries is dedicated to delivering innovative, application-focused specialty chemical and consumer products offerings. Our principal executive offices are located in Philadelphia, Pennsylvania and Middlebury, Connecticut. We operate in a wide variety of end-use industries, including automotive, transportation, construction, packaging, agriculture, lubricants, plastics for durable and non-durable goods, electronics, and pool and spa chemicals.

(a) GENERAL DEVELOPMENT OF BUSINESS

Chemtura, incorporated in Delaware in 1999, is the successor to Crompton & Knowles Corporation (Crompton & Knowles), which was incorporated in Massachusetts in 1900 and engaged in the manufacture and sale of specialty chemicals beginning in 1954. Crompton & Knowles traces its roots to the Crompton Loom Works incorporated in the 1840s. We expanded our specialty chemical business through acquisitions in the United States and Europe, including the 1996 acquisition of Uniroyal Chemical Company, Inc. (Uniroyal), the 1999 merger with Witco Corporation (Witco) and the 2005 acquisition of Great Lakes Chemical Corporation (Great Lakes).

We are a global diversified producer of specialty chemicals, polymer products and crop protection chemicals and a leading U.S. supplier of pool and spa chemicals. Most of our chemical products are sold to industrial manufacturing customers for use as additives, ingredients, or intermediates that add value to their end products. Our crop protection products are sold through dealers and distributors to growers. Our pool and spa chemicals are sold through local dealers, large retailers and mass merchants. We are a market leader in many of our key product lines. Of our \$2.5 billion of net sales in 2009, approximately 49% were to customers in the United States and Canada, 31% to Europe and Africa, 15% to Asia/Pacific and 5% to Latin America.

Liquidity and Bankruptcy Proceedings

We entered 2009 with significantly constrained liquidity. The fourth quarter of 2008 saw an unprecedented reduction in orders for our products as the global recession deepened and customers saw or anticipated reductions in demand in the industries they served. The impact was more pronounced on those business segments that served cyclically exposed industries. As a result, our sales and overall financial performance deteriorated resulting in non-compliance with the two financial maintenance covenants under our Amended and Restated Credit Agreement, dated as of July 31, 2007 (the 2007 Credit Facility) as of December 31, 2008. On December 30, 2008, we obtained a 90-day waiver of compliance with these covenants from the lenders under the 2007 Credit Facility.

Our liquidity was further constrained in the fourth quarter of 2008 by changes in the availability under our accounts receivable financing facilities in the United States and Europe. The eligibility criteria and reserve requirements under our prior U.S. accounts receivable facility (the U.S. Facility) tightened in the fourth quarter of 2008 following a credit rating downgrade, significantly reducing the value of accounts receivable that could be sold under the U.S. Facility compared with the third quarter of 2008. Additionally, the availability and access to our European accounts receivable financing facility (the European Facility) was restricted in late December 2008 because of our financial performance resulting in the inability to sell additional receivables under the European Facility.

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The crisis in the credit markets compounded the liquidity challenges we faced. Under normal market conditions, we believe we would have been able to refinance our \$370 million notes maturing on July 15, 2009 (the 2009 Notes) in the debt capital markets. However, with the deterioration of the credit market in the late summer of 2008 combined with our deteriorating financial performance, we did not believe we would be able to refinance the 2009 Notes on commercially reasonable terms, if at all. As a result, we sought to refinance the 2009 Notes through the sale of one of our businesses.

On January 23, 2009, our special-purpose subsidiary entered into a new three-year U.S. accounts receivable financing facility (the 2009 U.S. Facility) that restored most of the liquidity that we had available to us under the prior U.S. accounts receivable facility before the fourth quarter of 2008 events described above. However, despite good faith discussions, we were unable to agree to terms under which we could resume the sale of accounts receivable under our European Facility during the first quarter of 2009. The balance of accounts receivable previously sold under the European Facility continued to decline, offsetting much of the benefit to liquidity gained by the new 2009 U.S. Facility. During the second quarter of 2009, with no agreement to restart the European Facility, the remaining balance of the accounts receivable previously sold under the facility were settled and the European Facility was terminated.

January 2009 saw no improvement in customer demand from the depressed levels in December 2008 and some business segments experienced further deterioration. Although February and March of 2009 saw incremental improvement in net sales compared to January 2009, overall business conditions remained difficult as sales declined by 43% in the first quarter of 2009 compared to the first quarter of 2008. As awareness grew of our constrained liquidity and deteriorating financial performance, suppliers began restricting trade credit and, as a result, liquidity dwindled further. Despite moderate cash generation through inventory reductions and restrictions on discretionary expenditures, our trade credit continued to tighten, resulting in unprecedented restrictions on our ability to procure raw materials.

In January and February of 2009, we were in the midst of the asset sale process with the objective of closing a transaction prior to the July 15, 2009 maturity of the 2009 Notes. Potential buyers conducted due diligence and worked towards submitting their final offers on several of our businesses. However, with the continuing recession and speculation about our financial condition, potential buyers became progressively more cautious. Certain potential buyers expressed concern about our ability to perform our obligations under a sale agreement. They increased their due diligence requirements or decided not to proceed with a transaction. In March 2009, we concluded that although there were potential buyers of our businesses, a sale was unlikely to be closed in sufficient time to offset the continued deterioration in liquidity or at a value that would provide sufficient liquidity to both operate the business and meet our impending debt maturities.

By March 2009, dwindling liquidity and growing restrictions on available trade credit resulted in production stoppages as raw materials could not be purchased on a timely basis. At the same time, we concluded that it was improbable that we could resume sales of accounts receivable under our European Facility or complete the sale of a business in sufficient time to provide the immediate liquidity we needed to operate. Absent such an infusion of liquidity, we would likely experience increased production stoppages or sustained limitations on our business operations that ultimately would have a detrimental effect on the value of our business as a whole. Specifically, the inability to maintain and stabilize our business operations would result in depleted inventories, missed supply obligations and damaged customer relationships.

Having carefully explored and exhausted all possibilities to gain near-term access to liquidity, we determined that debtor-in-possession financing presented the best available alternative for us to meet our immediate and ongoing liquidity needs and preserve the value of the business. As a result, having obtained the commitment of a \$400 million senior secured super-priority debtor-in-possession credit agreement (the DIP Credit Facility), Chemtura and 26 of our subsidiaries organized in the United States (collectively, the Debtors) filed for relief under Chapter 11 of Title 11 of the United States Bankruptcy Code (the Bankruptcy Code) on March 18, 2009 (the Petition Date) in the United States Bankruptcy Court for the Southern District of New York (the Bankruptcy Court). The Chapter 11 cases are being jointly administered by the Bankruptcy Court. Our non-U.S. subsidiaries and certain U.S. subsidiaries were not included in the filing and are not subject to the requirements of the Bankruptcy Code. Our U.S. and worldwide operations are expected to continue

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without interruption during the Chapter 11 reorganization process.

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The Debtors own substantially all of our U.S. assets. The Debtors consist of Chemtura and the following subsidiaries:

- A&M Cleaning Products LLC
- Aqua Clear Industries, LLC
- ASEPSIS, Inc.
- ASCK, Inc.
- BioLab, Inc.
- BioLab Company Store, LLC
- Biolab Franchise Company, LLC
- BioLab Textile Additives, LLC
- CNK Chemical Realty Corporation
- Crompton Colors Incorporated
- Crompton Holding Corporation
- Crompton Monochem, Inc.
- GLCC Laurel, LLC
- Great Lakes Chemical Corporation
- Great Lakes Chemical Global, Inc.
- GT Seed Treatment, Inc.
- HomeCare Labs, Inc
- ISCI, Inc.
- Kem Manufacturing Corporation
- Laurel Industries Holdings, Inc.
- Monochem, Inc.
- Naugatuck Treatment Company
- Recreational Water Products, Inc.
- Uniroyal Chemical Company Limited
- Weber City Road LLC
- WRL of Indiana, Inc.

The principal U.S. assets and business operations of the Debtors are owned by Chemtura, BioLab, Inc. and Great Lakes Chemical Corporation.

The Chapter 11 cases were filed to gain liquidity for continuing operations while the Debtors restructure their balance sheets to allow us to continue as a viable going concern. While we believe we will be able to achieve these objectives through the Chapter 11 reorganization process, there can be no certainty that we will be successful in doing so.

Under Chapter 11 of the Bankruptcy Code, the Debtors are operating their U.S. businesses as a debtor-in-possession (DIP) under the protection of the Bankruptcy Court from their pre-filing creditors and claimants. Since the filing, all orders of the Bankruptcy Court sufficient to enable the Debtors to conduct normal business activities, including first day motions and the interim and final approval of the DIP Credit Facility and amendments thereto, have been entered by the Bankruptcy Court. While the Debtors are subject to Chapter 11, all transactions outside the ordinary course of business will require the prior approval of the Bankruptcy Court.

As a consequence of the Chapter 11 cases, substantially all pre-petition litigation and claims against the Debtors have been stayed. Accordingly, no party may take any action to collect pre-petition claims or to pursue litigation arising as a result of pre-petition acts or omissions except pursuant to an order of the Bankruptcy Court.

On August 21, 2009, the Bankruptcy Court established October 30, 2009 as the deadline for the filing of proofs of claim against the Debtors (the Bar Date). Under certain limited circumstances, some creditors may be permitted to file proofs of claim after the Bar Date. Accordingly, it is possible that not all potential proofs of claim were filed as of the filing of this Annual Report.

The Debtors have received approximately 15,300 proofs of claim covering a broad array of areas. Approximately 8,000 proofs of claim have been asserted in unliquidated amounts or contain an unliquidated component that are treated as being asserted in unliquidated amounts. Excluding proofs of claim in unliquidated amounts, the aggregate amount of proofs of claim filed totaled approximately \$23.6 billion. See Note 21 - Legal Proceedings and Contingencies in the Notes to Consolidated Financial Statements for a discussion of the types of proofs of claim filed against the Debtors.

Having carefully explored and exhausted all possibilities to gain near-term access to liquidity, we determined that de

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We are in the process of evaluating the amounts asserted in and the factual and legal basis of the proofs of claim filed against the Debtors. Based upon our initial review and evaluation, which is continuing, a significant number of proofs of claim are duplicative and/or legally or factually without merit. As to those claims, we have filed and intend to file objections with the Bankruptcy Court. However, there can be no assurance that these claims will not be allowed in full.

Further, while we believe we have insurance to cover certain asserted claims, there can be no assurance that material uninsured obligations will not be allowed as claims in the Chapter 11 cases. Because of the substantial number of asserted contested claims, as to which review and analysis is ongoing, there is no assurance as to the ultimate value of claims that will be allowed in these Chapter 11 cases, nor is there any assurance as to the ultimate recoveries for our stakeholders, including our bondholders and shareholders. The differences between amounts recorded by the Debtors and proofs of claim filed by the creditors will continue to be investigated and resolved through the claims reconciliation process.

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We have recognized certain charges related to expected allowed claims. As we complete the process of evaluating and resolving the proofs of claim, appropriate adjustments to our Consolidated Financial Statements will be made. Adjustments may also result from actions of the Bankruptcy Court, settlement negotiations, rejection of executory contracts and real property leases, determination as to the value of any collateral securing claims and other events. Any such adjustments could be material to our financial condition or results of operations in any given period. For additional information on liabilities subject to compromise, see Note 4 - Liabilities Subject to Compromise and Reorganization Items, Net in the Notes to Consolidated Financial Statements.

As provided by the Bankruptcy Code, the Debtors have the exclusive right to file and solicit acceptance of a plan of reorganization (the Plan) for 120 days after the Petition Date with the possibility of extensions thereafter. On February 23, 2010, the Bankruptcy Court granted our application for an extension of the period during which we have the exclusive right to file a Plan from February 11, 2010 to June 11, 2010. The Bankruptcy Court had previously granted our applications for extensions of the exclusivity period on July 28, 2009 and October 27, 2009. There can be no assurance that a Plan will be filed by the Debtors or confirmed by the Bankruptcy Court, or that any such Plan will be consummated. After a Plan has been filed with the Bankruptcy Court, the Plan, along with a disclosure statement approved by the Bankruptcy Court, will be sent to all creditors and other parties entitled to vote to accept or reject the Plan. Following the solicitation period, the Bankruptcy Court will consider whether to confirm the Plan. In order to confirm a Plan, the Bankruptcy Court must make certain findings as required by the Bankruptcy Code. The Bankruptcy Court may confirm a Plan notwithstanding the non-acceptance of the Plan by an impaired class of creditors or equity security holders if certain requirements of the Bankruptcy Code are met.

On February 9, 2010, the Bankruptcy Court gave interim approval of an Amended and Restated Senior Secured Super-Priority Debtor-in-Possession Credit Agreement (the Amended and Restated DIP Credit Agreement) by and among the Debtors, Citibank N.A. and the other lenders party thereto. The Amended and Restated DIP Credit Agreement provides for a first priority and priming secured revolving and term loan credit commitment of up to an aggregate of \$450 million. The proceeds of the loans and other financial accommodations incurred under the Amended and Restated DIP Credit Agreement were used to, among other things, refinance the obligations outstanding under the DIP Credit Facility and provide working capital for general corporate purposes. The Amended and Restated DIP Credit Agreement provided a substantial reduction in our financing costs through interest rate reductions and the avoidance of the extension fees that would have been payable under the DIP Credit Facility in February and May 2010. It also provided us with greater flexibility to operate our business. The Amended and Restated DIP Credit Agreement closed on February 12, 2010 with the drawing of the \$300 million term loan. On February 18, 2010, the Bankruptcy Court entered a final order providing full access to the Amended and Restated DIP Credit Agreement. The Amended and Restated DIP Credit Agreement matures on the earlier of 364 days after the closing, the effective date of a Plan or the date of termination in whole of the Commitments (as defined in the Amended and Restated DIP Credit Agreement).

The ultimate recovery by the Debtors' creditors and our shareholders, if any, will not be determined until confirmation and implementation of a Plan. No assurance can be given as to what recoveries, if any, will be assigned in the Chapter 11 cases to each of these constituencies. A Plan could result in our shareholders receiving little or no value for their interests and holders of the Debtors' unsecured debt, including trade debt and other general unsecured creditors, receiving less, and potentially substantially less, than payment in full for their claims. Because of such possibilities, the value of our common stock and unsecured debt is highly speculative. Accordingly, we urge that appropriate caution be exercised with respect to existing and future investments in any of these securities. Although the shares of our common stock continue to trade on the Pink Sheets Electronic Quotation Service (Pink Sheets) under the symbol CEMJQ, the trading prices may have little or no relationship to the actual recovery, if any, by the holders under any eventual Bankruptcy Court-approved Plan. The opportunity for any recovery by holders of our common stock under such Plan is uncertain as all creditors' claims must be met in full, with interest where due, before value can be attributed to the common stock and, therefore, the shares of our common stock may be cancelled without any compensation pursuant to such Plan.

Continuation of our operations as a going concern is contingent upon, among other things, our ability (i) to comply with the terms and conditions of the Amended and Restated DIP Credit Agreement; (ii) to obtain confirmation of a Plan under the Bankruptcy Code; (iii) to return to profitability; (iv) to generate sufficient cash flow from operations; and (v) to obtain financing sources to meet our future obligations. These matters raise substantial doubt about our ability to continue as a going concern. The Consolidated Financial Statements do not reflect any

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adjustments relating to the recoverability and classification of recorded asset amounts or the amounts and classification of liabilities that might result from the outcome of these uncertainties. Additionally, a Plan could materially change amounts reported in the Consolidated Financial Statements, which do not give effect to all adjustments of the carrying value of assets and liabilities that may be necessary as a consequence of completing a reorganization under Chapter 11 of the Bankruptcy Code.

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Proposed Divestiture

On December 23, 2009, we entered into a Share and Asset Purchase Agreement with SK Atlas, LLC and SK Capital Partners II, LP (collectively SK), New York-based private equity concerns focusing on the specialty materials, chemicals and healthcare industries, whereby SK has agreed to acquire our global polyvinyl chloride (PVC) additives business. The sale will include certain assets, the stock of a European subsidiary and the assumption by SK of certain liabilities.

On December 23, 2009, we filed a motion with the Bankruptcy Court (the Sale Motion), pursuant to Section 363 of the Bankruptcy Code, seeking, among other things, approval of an auction process and bidding procedures that would govern the sale of the PVC additives business to SK or another bidder with the highest or otherwise best offer and approval of the sale of the PVC additives business in accordance with the auction process and bidding procedures. On January 14, 2010, the Bankruptcy Court entered an order (the Bidding Procedures Order) establishing an auction process and bidding procedures (the Auction) to govern the sale of the PVC additives business. On January 15, 2010, we entered into Amendment No. 3 of the DIP Credit Facility that provided for, among other things, the consent of our DIP lenders to the sale of the PVC additives business. The lenders under the Amended and Restated DIP Credit Agreement also consented to this transaction. Pursuant to the Bidding Procedures Order, the Auction was held on February 22, 2010. At the Auction, Artek Aterian Holding Company and its sponsors, Aterian Investment Partners Distressed Opportunities, LP and Artek Surfin Chemicals Ltd. (collectively, Artek), emerged as the bidder with the highest and otherwise best bid for the PVC additives business.

On February 23, 2010, pursuant to the Bidding Procedures Order and following the Auction, we entered into a Share and Asset Purchase Agreement (Artek SAPA) with Artek whereby Artek agreed to acquire our PVC additives business for cash consideration of \$16 million and to assume certain liabilities, including certain pension and environmental liabilities. The purchase price is subject to certain adjustments including a post-closing net working capital adjustment. On February 23, 2010, the Bankruptcy Court held a hearing on the Sale Motion pursuant to Section 363 of the Bankruptcy Code and issued an order approving, among other things, the sale of the PVC additives business to Artek. The transaction is expected to close in the second quarter of 2010. The Artek SAPA resulted in an incremental \$14 million of cash proceeds and favorable sales contract modifications compared to the initial share and asset purchase agreement with SK.

The PVC additives business subject to the Artek SAPA had net sales of \$236 million in 2009, and \$374 million in 2008 and \$357 million in 2007.

(b) FINANCIAL INFORMATION ABOUT INDUSTRY SEGMENTS

Information as to the sales, operating profit, depreciation and amortization, assets, capital expenditures and earnings on investments carried on the equity method attributable to each of our business segments during each of our last three fiscal years is set forth in Note 22 - Business Segments in the Notes to Consolidated Financial Statements.

Effective for the quarter ended March 31, 2009, we made component realignments within our reporting segments, which were also renamed. These modifications reflect the changes to our organizational structure announced on January 19, 2009. The renamed reporting segments are: Consumer Performance Products, Industrial Performance Products (petroleum additives, urethanes and antioxidants), Crop Protection Engineered Products and Industrial Engineered Products (flame retardants and brominated performance products, organometallics, PVC

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additives and surfactants). Industrial Engineered Products is the former Polymer Additives segment excluding our antioxidant product line and Industrial Performance Products is the former Performance Specialties segment now including our antioxidant product line. The Other segment has been eliminated and absorbed into the Industrial Performance Products and Industrial Engineered Products segments. The presentation of the Consumer Products and Crop Protection segments is unchanged. Prior period segment data has been restated to conform to the current period presentation.

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The table below illustrates each segment's net sales for the year ended December 31, 2009 as well as each segment's major products, end-use markets and brands.

	Consumer Performance Products	Industrial Performance Products	Crop Protection Engineered Products	Industrial Engineered Products
2009 Net Sales	\$457 million	\$999 million	\$332 million	\$753 million
Key Products	<ul style="list-style-type: none"> • Swimming Pool & Spa Chemicals • Cleaning Products 	<ul style="list-style-type: none"> • Petroleum Additives • Urethanes • Antioxidants • UV Stabilizers • Elastomer Additives 	<ul style="list-style-type: none"> • Seed Treatment • Fungicides • Miticides • Insecticides • Growth Regulants • Herbicides 	<ul style="list-style-type: none"> • Brominated Performance Products • Flame Retardants • Fumigants • Organometallics • PVC Additives • Surfactants