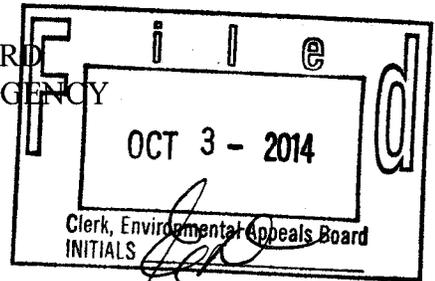


BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.



In re:)
))
Elementis Chromium, Inc.) TSCA Appeal No. 13-03
f/k/a Elementis Chromium, L.P.,))
))
Docket No. TSCA-HQ-2010-5022))

ORDER REQUESTING ADDITIONAL INFORMATION

In preparation for the upcoming oral argument, currently scheduled for October 30, 2014, the Environmental Appeals Board (“Board”) expects the parties to be prepared to address questions related to all the issues currently briefed in their pleadings. The Board, however, is particularly interested in the statute of limitations issue that Elementis Chromium, Inc. (“Elementis”) has raised. In their briefs, the parties focus on the applicability of the continuing violation exception to the statute of limitations in 28 U.S.C. § 2462. The Board requests that the parties be prepared to address the statute of limitations issue also in light of the language of section 16(a)(1) of the Toxic Substances Control Act (“TSCA”) that provides that “[e]ach day * * * a violation continues shall, for the purposes of this subsection, constitute a separate violation of section 2614 or 2689 of this title.” TSCA § 16(a)(1), 15 U.S.C. § 2615(a)(1). More specifically, be prepared to:

1. Explain the relevance, if any, of the continuing violation exception to the statute of limitations in 28 U.S.C. § 2462 to determining whether “a violation continues” under TSCA section 16(a)(1), 15 U.S.C. § 2615(a)(1).

2. Address section 16(a)(1)'s designation that each day that a violation continues is a "separate violation." Specifically, explain whether, in order to recover penalties in this case, the Agency is required to demonstrate that the continuing violation exception to the statute of limitations applies, or whether section 16(a)(1)'s "separate violations" language on its own authorizes the Agency to recover penalties for violations.

3. Address the following scenario: If the Board were to conclude that Elementis' failure to submit to the EPA Administrator the epidemiology study in question here constitutes a series of separate violations, for what period would Elementis be liable for per day penalties? For example, would Elementis be liable only for the five year period immediately preceding the filing of the complaint (as adjusted by the tolling agreement); or, would Elementis also be liable for violations that occurred outside this five year window based on the continuing violation exception to the statute of limitations in 28 U.S.C. § 2462? *See CSC Holdings, Inc. v. Redisi*, 309 F.3d 988, 992 (7th Cir. 2002).

The parties are required to submit additional briefing addressing these questions and any other unanswered questions that may surface during oral argument by no later than Monday November 7, 2014.

So Ordered.¹

Dated: October 3, 2014

ENVIRONMENTAL APPEALS BOARD

By: Kathie A. Stein

Kathie A. Stein
Environmental Appeals Judge

¹ The two-member panel deciding this matter is composed of Leslye M. Fraser and Kathie A. Stein.

CERTIFICATE OF SERVICE

I certify that copies of the foregoing Order Requesting Additional Information in the matter of Elementis Chromium, Inc., TSCA Appeal No. 13-03, were sent to the following persons in the manner indicated:

By First Class Mail:

John J. McAleese, III
McCarter & English, LLP
1735 Market Street, Suite 700
Philadelphia, PA 19103

Ronald J. Tenpas
Morgan, Lewis & Bockius, LLP
1111 Penn. Ave., NW
Washington, DC 20004-2541

By Pouch Mail:

Mark A.R. Chalfant [Mail Code: 8ENF-UFO]
Waste and Chemical Enforcement Division
Office of Civil Enforcement
U.S. EPA Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

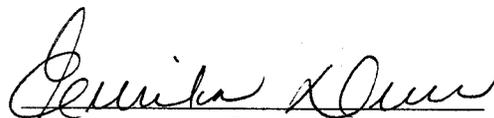
By Interoffice Mail:

Erin K. Saylor [Mail Code: 2249A]
Waste and Chemical Enforcement Division
Office of Civil Enforcement
U.S. Environmental Protection Agency
1200 Penn. Ave., NW
Washington, DC 20460

Brian Grant [Mail Code: 2333A]
Pesticides and Toxic Substances Law Office
Office of General Counsel
U.S. Environmental Protection Agency
1200 Penn. Ave., NW
Washington, DC 20460

Sybil Anderson [Mail Code: 1900R]
U.S. Environmental Protection Agency
Office of Administrative Law Judges
Ronald Reagan Building, Room M1200
1300 Penn. Ave., NW
Washington, DC 20460

Dated: 10/3/2014


Annette Duncan
Secretary