UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, DC 20460

October 21, 2010

OFFICE OF
THE ADMINISTRATIVE
LAW JUDGES

John J. McAleese, III, Esquire
Ronald J. Tenpas, Esquire
William S. Pufko, Esquire
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103

Re: Elementis Chromium, LP
Docket No. TSCA-HQ-2010-5022

Dear Mr. Pufko:

This Office, the Office of Administrative Law Judges, offers an Alternative Dispute Resolution (ADR) process to facilitate the settlement of adjudicative cases. Please inform my staff assistant, Maria Whiting-Beale by **November 4, 2010**, as directed below, whether you accept or decline this offer to participate in ADR in an effort to settle the above cited case. The ADR process will be conducted pursuant to the Administrative Dispute Resolution Act of 1996, 5 U.S.C. §§ 571 *et seq.*, by a Judge of this Office serving as a neutral. The process will be entirely voluntary and completely confidential; both of these points, together with general procedures, are reviewed below.

Voluntary ADR will be used in a case only if both EPA and Respondent accept ADR; the choice to use or not to use ADR does not prejudice either party. If ADR is utilized, either party may terminate the ADR process at any time.

Initial Procedures A Judge in this Office will serve as a neutral. The ADR Judge will ordinarily begin by arranging a telephone conference with the parties to establish procedures.

Types of mediation available Our office offers the following types of ADR: mediation, facilitation, and neutral evaluation. The parties are encouraged to discuss with the neutral Judge the type of ADR they prefer, and come to an agreement with the neutral Judge as to which type of ADR will be employed in the case. If, during the course of ADR, the parties mutually decide that they would prefer another type of ADR, they may jointly request that the neutral Judge adjust the process accordingly.

> *Facilitation* is a method in which the neutral Judge acts as a facilitator, promoting communication and understanding of the issues, in a less active role than as a mediator. The focus of the facilitator Judge is to provide structure and moderate the discussion among the parties to assist them in coming to a settlement. Facilitation

may be particularly useful in cases where there is more than one respondent, where the parties are represented by counsel who are very experienced in settling environmental enforcement cases and who agree that settlement is very likely, where a Supplemental Environmental Project is likely to be proposed, or other cases where flexibility in the ADR process is needed. *Neutral Evaluation* is a method in which the neutral Judge, to assist the parties in reaching a settlement, hears each party's position and arguments, either in writing, orally or both, may request the parties to submit documents or other information, then gives an oral opinion on the strong and weak points of each party's case, and may, if requested by the parties, provide an opinion of the likely outcome of the case if it went to hearing. Neutral Evaluation may be particularly useful in cases in which the respondent has one or more affirmative defenses, or where a crucial issue in the case is a question of law.

*Mediation* is a method in which the neutral Judge, as mediator, hears each party's position and arguments, either in writing, orally or both, may ask the parties questions, may request the parties to submit documents or other information, helps identify the factual and legal issues, enables each party to understand the other party's position and arguments, keeps the focus on the facts and issues that may lead toward settlement, and helps the parties explore their options, including practical concerns, to assist the parties in reaching a settlement. The mediator may give an opinion on the strengths and/or weaknesses of a case, if requested by the parties. Mediation is particularly useful for cases in which the respondent is not represented by counsel (*pro se*), where the parties dispute the facts of the case, or where the parties do not agree to neutral evaluation or facilitation.

Authorization to Commit For the ADR process to be effective, the persons communicating with the neutral must either have authority to commit his or her side to a settlement, or have ready access to somebody with such authority.

Confidential The ADR process will be conducted in a confidential manner, in accord with Section 574 of the Administrative Dispute Resolution Act of 1996. The Judge who serves as the neutral will not disclose to anyone the contents of any of the parties' ADR communications.

Method of communication All ADR discussions and conferences are held by telephone, except in exceptional cases in which the parties can demonstrate, and the neutral Judge agrees, that an in-person or video settlement conference, or a view by the parties and neutral Judge of the of the facility or site at issue, is necessary.

Non-binding The neutral Judge has no authority to impose a decision or settlement of the case on the parties. The purpose of ADR is to facilitate a settlement between the parties.

Impartial The neutral Judges, as all Judges in this Office, render their decisions and opinions independent of any supervision or direction by any prosecuting or investigating employee or agent of the Environmental Protection Agency, and independent of the influence of any interested person outside the Agency, pursuant to Sections 554(d) and 557 of the Administrative Procedure Act (APA). The Judges are certified as administrative law judges by the Office of Personnel Management and are appointed in accordance with 5 U.S.C. § 3105. The Judges are not subject to evaluation by the Environmental Protection Agency, or by any component or employee of EPA. These measures ensure the fair and impartial resolution of proceedings.

Duration Unless terminated earlier by either party, the ADR process will continue for 60 days from the date of the case assignment to the ADR Judge; after that time, if no settlement has been reached, the case will be assigned to another Judge to commence the litigation process.

Follow Up At the termination of the ADR process, I will send the parties a questionnaire to elicit their views and experience with the process. The contents of individual questionnaires will be kept confidential and will be made available to the neutrals and others only in a composite format.

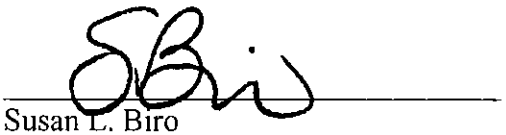
Again, please inform Maria Whiting-Beale by **October 19, 2010**, whether you accept or decline participation in the ADR process that I have described. It is preferred that you inform Ms. Whiting-Beale by e-mail at <whiting-beale.maria@epa.gov> or by facsimile at (202) 565-0044. However, you may inform her by calling this Office, 202 564-6271, and leaving a message for her, or by letter received in this Office on or before the due date. The mailing address **if sent by mail is:** U.S. EPA, Office of Administrative Law Judges, Mail Code 1900L, 1200 Pennsylvania Avenue, NW, Washington, DC 20460-2001. **For hand-delivery by Federal Express or another delivery service** which x-rays packages as a routine security procedure, the address is: U.S. EPA, Office of Administrative Law Judges, 1099 14th Street, N.W., Suite 350, Washington, DC 20005. Please also send a copy of your response to the Regional Hearing Clerk.

Your e-mail, fax, letter or phone message must state: (1) your name and phone number, (2) the name(s) of the respondent(s) named in the complaint, (3) the docket number, (4) the name of the party you represent, (5) whether you want ADR or do not want ADR. You may also inform Ms. Whiting-Beale as to whether another party in the case accepts or declines ADR, if that party has requested that you convey that information on that party's behalf. In that event, your e-mail, fax letter or phone message must state, in addition: (1) the name and telephone number of the person who requested you to convey the message, (2) the name of the party represented by that person, and (3) whether that party wants ADR or does not want ADR.

If you have another party in the case convey a message that you want ADR, then you should confirm, on or before the due date stated herein, that this Office has received the message.

If no response is received in this Office by the deadline from you or another party on your behalf, it will be assumed that you **do not** wish to participate in ADR and the case will be assigned immediately to a Judge for litigation. **No extension of the deadline for deciding whether you wish to participate in ADR will be granted.** However, the ADR described above may be available later in the litigation process upon joint motion of all parties to initiate ADR, granted at the sole discretion of the presiding litigation Judge.

Very truly yours,



Susan L. Biro
Chief Administrative Law Judge

cc: Mark A.R. Chalfant, Esquire
Karin Koslow, Esquire
Sybil Anderson, Headquarters Hearing Clerk