

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTER OF:

Elementis Chromium, LP,

Respondent.

Docket No. TSCA-HQ-2010-5022

**COMPLAINANT'S MOTION IN RESPONSE TO RESPONDENT'S MOTION FOR  
JUDGMENT ON THE PLEADINGS**

Pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. § 22.16(b), Complainant, the United States Environmental Protection Agency (EPA or the Agency), hereby opposes Respondent's Motion for Judgment on the Pleadings for the reasons set forth in Complainant's Memorandum of Law in Opposition to Respondent's Motion for Judgment on the Pleadings (Memorandum of Law).

Complainant timely filed a claim against Respondent and properly pleaded its case by stating a claim upon which relief may be granted and therefore, as discussed in Complainant's



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## I. INTRODUCTION

Elementis Chromium, Inc.<sup>1</sup> (Respondent or Elementis) failed to inform the Administrator of substantial risk information it possessed about hexavalent chromium, a known carcinogen, even though it had a mandatory duty to report this information under the express language of section 8(e) of the Toxic Substances Control Act (TSCA or the Act). This information, obtained from a study of modern chromium production facilities, including a facility owned by Elementis at the time of the study, shows increased respiratory cancer risk to workers due to occupational exposure in modern plants like Elementis' facility. Elementis became aware of this information as early as 2002 when it received a report summarizing the study's results. Yet, Elementis failed to inform the Administrator of the 2002 report or its conclusions until it responded in 2008 to a subpoena issued by EPA pursuant to the Agency's TSCA information gathering authorities. Respondent now seeks to benefit from the very delay that it is wholly responsible for; it is Respondent's nearly six-year delay in informing the Administrator of the report that gives rise to this action to enforce TSCA's section 8(e)'s statutory reporting obligation.

Section 8(e) of TSCA imposes a mandatory duty on persons, such as Respondent, who manufacture, process, or distribute in commerce a chemical substance or mixture to immediately inform the Administrator of substantial risk information concerning chemical hazards. Section 8(e) expressly states:

Any person who manufactures, processes, or distributes in commerce a chemical substance or mixture and who obtains information which reasonably supports the conclusion that such substance or mixture presents a substantial risk of injury to health or the environment shall immediately inform the Administrator of such information unless such person has actual knowledge that the Administrator has been adequately informed of such information.

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<sup>1</sup> According to Respondent's Answer, on September 10, 2010, Elementis Chromium, LP was merged into Elementis Chromium GP Inc. Answer at 1. Elementis Chromium GP Inc. then changed its name to Elementis Chromium Inc. Id. This merger and name change occurred after EPA filed the Complaint on September 2, 2010.