



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUN 10 2011

BY HAND DELIVERY

Sybil Anderson
Headquarters Hearing Clerk (1900L)
Office of Administrative Law Judges
United States Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington D.C. 20460

RECEIVED BY OALJ
2011 JUN 10 AM 10:48
OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

Re: Complainant's Response to Respondent's Request for Oral Argument on Complainant's Motion for Accelerated Decision on Liability
Docket No. TSCA-HQ-2010-5022

Dear Ms. Anderson:

Enclosed please find an original and two (2) copies of Complainant's Response to Respondent's Request for Oral Argument on Complainant's Motion for Accelerated Decision on Liability.

Please file the original Response and return one date-stamped copy to Complainant.

Thank you for your attention to this matter.

Sincerely,

Mark A.R. Chalfant
Counsel for Complainant

Enclosures

Cc: John J. McAlesse, III, MORGAN LEWIS & BOCKIUS LLP (via overnight delivery and email)
Ronald J. Tenpas, MORGAN LEWIS & BOCKIUS LLP (via email only)
William S. Pufko, MORGAN LEWIS & BOCKIUS LLP (via email only)
The Honorable Susan L. Biro, U.S. EPA Office of Administrative Law Judges
(hand delivery only)

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTER OF:)
)
)
Elementis Chromium Inc.,)
f/k/a Elementis Chromium, LP,)
)
Respondent.)
)
)
_____)

Docket No. TSCA-HQ-2010-5022

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COMPLAINANT'S RESPONSE TO RESPONDENT'S REQUEST
FOR ORAL ARGUMENT ON COMPLAINANT'S MOTION
FOR ACCELERATED DECISION ON LIABILITY

Complainant, the United States Environmental Protection Agency (Complainant or EPA), pursuant to 40 C.F.R. §§ 22.16 and 22.20(a), respectfully submits this response to Respondent Elementis Chromium Inc.'s¹ Request for Oral Argument on Complainant's Motion for Accelerated Decision on Liability.

Complainant opposes Respondent's request and states as follows:

1. Respondent's Request for Oral Argument is for all intents and purposes a motion even though Respondent styled its filing as a request.
2. Respondent failed to contact counsel for Complainant in contravention of the Presiding Officer's April 28, 2011 Prehearing Order, which requires, "Prior to filing any motion, the moving party is directed to contact the other party or parties to determine whether the other

¹By Order dated March 28, 2011, the caption of the instant case was amended to be consistent with Respondent's current corporate name. (Order on Resp't. Mot. for Judgment on the Pleadings at 1).

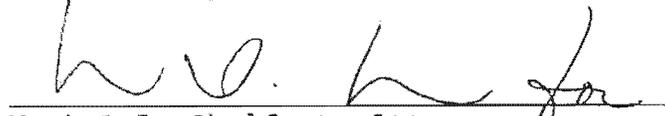
party has any objection to the granting of the relief sought in the motion. The motion shall then state the position of the other party or parties." Prehearing Order at 5.

3. Section 22.16(a) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permit, provides, "[a]ll motions, except those made orally on the record during a hearing, shall: (1) Be in writing; (2) State the grounds therefor, with particularity; (3) Set forth the relief sought; and (4) Be accompanied by an affidavit, certificate, other evidence, or legal memorandum relied upon." 40 C.F.R. § 22.16(a).
4. Pursuant 40 C.F.R. § 22.16(a), Respondent was required to state the grounds for its motion with particularity.
5. Respondent's Request for Oral Argument states no grounds for its motion.
6. Complainant's Motion for Accelerated Decision on Liability, Respondent's Reply, and Complainant's Response to Respondent's Reply provide the Presiding Officer with an ample explanation of the arguments along with factual evidence, affidavits and analysis of supporting case law to rule on the motion without a hearing. No further clarification is necessary.

7. Therefore, oral argument is unnecessary and would be inconsistent with judicial economy.
8. For the reasons stated above, Respondent's Request for Oral Argument should be denied because it does not comply with the Presiding Officer's April 28, 2011 Prehearing Order or with the Consolidated Rules of Practice. In addition, the pleadings previously filed by the parties provide sufficient elaboration of the arguments.
9. Although Complainant believes there are no genuine issues of material fact, if the Presiding Officer determines that oral argument would aid the Presiding Officer in ruling on Complainant's Motion for Accelerated Decision, Complainant is available to participate in oral argument.

Respectfully submitted,

June 10, 2011
Date


Mark A.R. Chalfant, Attorney
Waste and Chemical Enforcement Division
Office of Civil Enforcement
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
(MC 2249A)
Washington, D.C. 20460-0001
303-312-6177

Counsel for Complainant

CERTIFICATE OF SERVICE

I certify that the foregoing *Complainant's Response to Respondent's Request for Oral Argument on Complainant's Motion for Accelerated Decision on Liability* in Docket No. TSCA-HQ-2010-5022, dated June 10, 2011, was sent this day in the following manner to the addresses listed below:

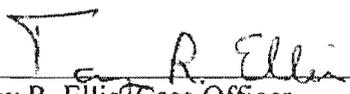
Original by hand and email to: Sybil Anderson
Headquarters Hearing Clerk
U.S. Environmental Protection Agency
Office of Administrative Law Judges
Franklin Court, Suite 350
1099 14th Street, N.W.
Washington, DC 20005

Copy by overnight delivery and email to:

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

Copy by hand to:

Presiding Judge: The Honorable Susan L. Biro
U.S. Environmental Protection Agency
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Franklin Court, Suite 350
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Washington, DC 20005



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Date: 6-10-11