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Re: Complainant Environmental Protection Agency's Supplemental Brief
Docket No. TSCA-HQ-2010-5022

Dear Clerk of the Board:

Enclosed please find and served upon you for filing Complainant Environmental Protection Agency's Supplemental Brief in the above matter.

Thank you for your attention to this matter.

Sincerely,

Peter Raack
Counsel for Complainant
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue
Washington, DC 20460
Raack.Pete@epa.gov
202-564-4075

Enclosure

cc: John J. McAleese, III, Esq. (by U.S. mail and email)
Ronald J. Tenpas, Esq. (by U.S. mail and email)
Headquarters Hearing Clerk (by U.S. mail and email)
The Honorable Susan L. Biro (by U.S. mail)

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IN THE MATTER OF:	)	
	)	
Elementis Chromium, Inc., f/k/a Elementis Chromium, L.P.	)	Docket No. TSCA-HQ-2010-5022
	)	
Respondent.	)	

COMPLAINANT ENVIRONMENTAL PROTECTION AGENCY'S SUPPLEMENTAL BRIEF

MARK A.R. CHALFANT
Attorney-Advisor
PETER RAACK
Attorney-Advisor

Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Of Counsel: BRIAN GRANT
Assistant General Counsel
Office of General Counsel
U.S. Environmental Protection Agency

BENJAMIN D. FIELDS
Acting National Coordinator for
Cross-Cutting Administrative Litigation Issues
U.S. Environmental Protection Agency

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

IN THE MATTER OF: Elementis Chromium Inc., f/k/a Elementis Chromium, L.P., Respondent.	))))))))	Docket No. TSCA-HQ-2010-5022

COMPLAINANT ENVIRONMENTAL PROTECTION AGENCY'S SUPPLEMENTAL BRIEF

Complainant respectfully submits this brief pursuant to the Environmental Appeals Board's (Board's or EAB's) October 3, 2014 and October 9, 2014 Orders.[1]

I. ARGUMENT

A. CONTRARY TO RESPONDENT'S ARGUMENT, RESPONDENT WAS REQUIRED TO INFORM THE ADMINISTRATOR OF ITS STUDY BECAUSE IT CONTAINS NEW SUBSTANTIAL RISK INFORMATION.

The Presiding Officer correctly ruled that Respondent failed to inform the Administrator of an industry study of the risk of lung cancer mortality from hexavalent chromium exposure even though that study contains new substantial risk information showing chronic risk in modernized chromium production plants. Initial Dec. at 64-73. Respondent's exhaustive $500,000 study told the Agency for the first time that lung cancer mortality risk persists under exclusively modernized plant conditions despite industry efforts to reduce risk. Thus, Respondent was required to inform the Administrator of the study under TSCA section 8(e). 15 U.S.C. § 2607(e). If Respondent had any doubt, informing the Administrator would not have

[1] Complainant's references to the Board's October 3, 2014 Order include reference to the October 9, 2014 Corrected Order, which is substantively identical. The October 9, 2014 Corrected Order is attached.

imposed an undue burden on the company. Respondent could have done so for the cost of an envelope and postage. Plainly, this is not a case where Respondent would have had to install costly pollution control equipment or undertake an expensive permitting process. In fact, informing the Administrator would have alleviated any concern that years later Respondent may face the imposition of civil penalties in an enforcement action. Protection of human health would be ill-served if a chemical manufacturer such as Respondent could shirk its responsibility to disclose substantial risk information without consequence.

1. The Agency Interprets "Substantial Risk Information" to Include Exposure-Related Information.

The Board asked Complainant how Respondent was to know that it was required under section 8(e) to inform the Administrator of its study. Tr. 85:4-12.[2] Complainant does not believe this is a close call. Respondent produced a major human health study that found excess lung cancer mortality risk relying on new exposure-related information, as discussed below. To the extent the Board has any reservation about whether this report is subject to section 8(e), the Administrator provided a framework in which to answer the Board's question in a policy published in the Federal Register in 1978. CX 17 at 1. In Part V of the 1978 policy entitled, "What Constitutes Substantial Risk Information," the Agency interpreted "substantial risk" using the standard formulation of risk: hazard x exposure = risk. Specifically, the Agency stated, "[a] 'substantial risk of injury to health or the environment' is a risk of considerable concern" because of (a) "the seriousness of the effect" (hazard) and (b) "the fact or probability of its occurrence" (exposure). Id. at 2, 6. The EPA's national TSCA program reiterated the Agency's interpretation in its 1991 reporting guide. CX 21 at 13.

[2] Complainant uses the convention "Tr." to refer to the transcript for the October 30, 2014 argument before the Board, and the convention "Hrg. Tr." to refer to the transcript for the December 12-14, 2011 hearing.

The Agency also stated in the 1978 policy that "any evidence which 'reasonably supports' [the] conclusion" of substantial risk is reportable. CX 17 at 3 (emphasis added). The Agency specially identified "[e]pidemiological studies" such as Respondent's study as a source of information concerning the effects in Part V of the 1978 policy that "will often 'reasonably support' a conclusion of substantial risk." Id.; see also CX 21 at 18 (information can come from various sources, including human [epidemiological] studies). In addition, the TSCA program stated in the 1991 reporting guide that "new-found exposure data" is to be reported. CX 21 at 1, 13. The TSCA program further referred to section 8(e) "submission data" in the guide in discussing section 8(e) information. Id. at 38. Thus, the Agency has alerted the regulated community from the inception of the program that section 8(e) requires that the Administrator be informed of substantial risk information from epidemiological studies relating to both of the elements of risk – hazard and exposure, including new exposure-related information.

In probing the basis for requiring Respondent to inform the Administrator, the Board asked Complainant whether Respondent needed to submit its study[3] if the adverse effect of lung cancer had been well-established already, given the well-established effects exception in the

[3] At oral argument, the Board asked Complainant whether persons typically submit the entire study or only a study's finding in making section 8(e) submissions. Tr. 79:15-20. Counsel for Complainant stated that the EPA typically receives studies in their entirety. Id. Although it is correct that persons sometimes submit the entire study, Complainant wishes to clarify that Part IX titled, "Reporting Requirements," of the 1978 policy requires inter alia a "summary of the adverse effects being reported, describing the nature and the extent of the risk involved" and the "specific source of the information together with a summary and the source of any available supporting technical data." CX 17 at 4; see also CX 21 at 24. This level of information is deemed sufficient by the national TSCA program to inform the Administrator of section 8(e)-reportable substantial risk information and to provide a basis for the program to ask a submitter, if necessary, for clarifying information including the entire study or the underlying exposure data. Complainant was unable to do either in the absence of any submission whatsoever from Respondent.

The Board also asked Complainant about Respondent's concern that a decision finding that the information in Respondent's study was reportable could inundate the Agency with unwanted information. Tr. 89:19-90:2. Although Complainant appreciates this concern, the EPA is well-equipped to handle all 8(e) submissions. There are on average 300 submissions per fiscal year and it is doubtful this decision will overwhelm the Agency because it rests on the straightforward application of longstanding EPA guidance on section 8(e). But even if the number of submissions were to go up, this is substantial risk information that the Agency needs to know about chemicals.

1978 policy. Tr. 84:2-10; see CX 17 at 3. There is no dispute that there is a correlation between hexavalent chromium exposure and lung cancer mortality, and that correlation has been known since 1948. Initial Dec. at 6-7. But the reason that industry and regulators continued to study the risk of lung cancer mortality after changes to the production process were instituted in the late 1950s and 1960s was to determine whether this risk persists under the exposure conditions in the modernized plant environment. See Initial Dec. at 72 (adverse effect of lung cancer in modernized plants not well-established). As the primary author of Respondent's study, Dr. Mundt, testified, "there really was an eagerness to know whether the high risks that had been documented since the [19]50's were attenuated at all, with all of the .... industrial hygiene engineering and process changes throughout these plants .... [given] "exposures had declined." Hrg. Tr. 653 (Mundt). In other words, industry and regulators wanted to know whether workers were still being exposed to hazardous levels of hexavalent chromium, and under what exposure conditions lung cancer mortality risk manifests itself in modernized plants.

2. Respondent's Narrow Focus on a Study's Finding Ignores the Underlying Exposure-Related Information.

The Board asked Respondent whether its study contains any information which reasonably supports a conclusion of substantial risk. Tr. 47:20-48:1. Respondent pointed to the study's risk finding without acknowledging that the finding is based on underlying exposure-related information. Id. at 48:2-22, 53:21. Essentially, Respondent collapsed what qualifies as substantial risk information to a one-line finding that certain high hexavalent chromium levels cause lung cancer in a 153-page report. Id. Consequently, Respondent contends that the only section 8(e)-reportable substantial risk information in Respondent's study is the correlation between hexavalent chromium exposure and lung cancer mortality. However, as the Presiding Officer correctly found, and Complainant argued before the Board, this is an unreasonably

narrow view of what "information [] reasonably supports the conclusion" because it ignores the finding's supporting exposure-related information. Initial Dec. at 38-48; Complainant's EAB Appeal Brief ("Comp't Appeal Br.") at 28-31.

Moreover, even if one focuses solely on Respondent's study's risk "finding," Respondent's view of the "finding" is overly narrow. The study's "finding" is not only the long-established correlation between hexavalent chromium and lung cancer mortality. It is also that this correlation persists in the modernized plant environment investigated in Respondent's study. This is a different "finding" than the Gibb Study's "finding," which was that the correlation exists under the specific exposure conditions analyzed in the Gibb Study. Without information as to the exposure conditions examined by a study, the "finding" is meaningless. Tr. 80:1-15. As a result, even Respondent's unreasonably narrow view cannot stand up to scrutiny.

3. Respondent's Study Enhances the Agency's Understanding of the Linear Dose-Response Relationship over a More Complete Range of Exposure.

The Board asked Complainant whether Respondent was required to inform the Administrator if the relationship between the dose of hexavalent chromium and the body's response – lung cancer – had been well-established as a linear dose-response relationship. Tr. 87:16-17. The Presiding Officer found that the full range of the dose-response relationship, also known as the exposure-response relationship, had not been well-established. Initial Dec. at 72. A dose-response relationship describes how the likelihood and severity of the adverse effects (responses) are related to the amount and condition of exposure to an agent (dose).

The Agency uses a linear dose-response model which assumes that the response is proportional to the dose, i.e., that hexavalent chromium can cause lung cancer at all exposure levels. However, this model is a working theory that is not accepted universally, at least not by industry, which has vigorously criticized the EPA's use of the default model for human

carcinogens. Respondent's own expert, Dr. Gibb, conceded, "I don't know if they [regulated community] ever accepted" the results of the EPA's Gibb Study because "[t]hey argued maybe there was a threshold" rather than a linear dose-response relationship. The evidence in the record suggests that Respondent undertook this study hoping to prove a threshold below which risk does not exist thereby eliminating the need for exposure controls, but was not successful. See Hrg. Tr. 717-18 (Mundt); CX 1 at 24, 31, 92, 98; CX 95 at 2; CX 96 at 2; Initial Dec. at 31, 54.

Complainant's expert, Dr. Speizer, a physician and professor of medicine and public health, explained that it was hypothesized but not firmly established that hexavalent chromium has a linear dose-response relationship over the entire range of exposure. Dr. Speizer testified that it was "pretty well settled" that hexavalent chromium "was a potent chemical," "[h]owever, at low exposure levels, [there] was assumed to be a linear dose-response but it was not clear we knew how potent it would be at lower levels" in modernized plants. Id. at 58, citing Hrg. Tr. 565-66 (Speizer) (emphasis added); see also Hrg. Tr. 1093-94 (Speizer). Thus, the Presiding Officer correctly found that the full range of the dose-response relationship had not been well-established prior to Respondent's study. Importantly, Respondent's study enhances the Agency's understanding of the linear dose-response relationship over a more complete range of exposure. Initial Dec. at 58, citing Hrg. Tr. 1097 (Speizer).

4. Respondent's Study Contains New Substantial Risk Information Derived from Previously Unstudied Exposure Conditions.

The Board asked Complainant why Respondent was required to inform the Administrator of its study if the Agency already knew of the probability of lung cancer from the EPA's Gibb Study, which found risk at lower cumulative exposure levels. Tr. 87:2-6. Both parties agree that lifetime cumulative exposure is the appropriate way to measure chronic lung cancer risk. See Tr. 72:18-22. However, the fact that the Gibb Study's finding was based on lower cumulative

exposures does not alter the fact that the study examined different exposure conditions. At hearing, Complainant's expert, Dr. Speizer, recommended not simply stopping at comparing cumulative exposure across studies, but asking what exposure-related information was used to estimate cumulative exposure in individual studies. In particular, Dr. Speizer testified that one has to be "careful" about what goes into cumulative exposure (duration of exposure x exposure), noting that epidemiological studies generally have robust data about exposure duration from employee work records, but frequently those same studies have data gaps for estimating exposure. Hrg. Tr. 525 (Speizer).

In contending that the only substantial risk information in Respondent's study is the risk finding itself, Respondent asserts that its study contains no new substantial risk information. But this assertion completely disregards the overwhelming evidence in the record and, specifically, the Presiding Officer's findings, that Respondent's study contains new substantial risk information for at least five reasons. See Initial Dec. at 64-71. Complainant discussed these findings in its main brief, and will not repeat its argument here. Comp't Appeal Br. at 34-49. Instead, Complainant summarizes in the footnote below the most compelling evidence of new substantial risk information in Respondent's study about the extent of lung cancer mortality risk in the modernized plant environment using three of the five findings, all five of which constitute substantial risk information.[4]

[4] In the first example, the Presiding Officer ruled that Respondent's study presents a more accurate assessment of risk to workers in the modernized plant environment. Initial Dec. at 64. Unlike the Gibb Study, Respondent's finding was based on exposure data collected exclusively from workers in modernized plants. There is no evidence in the record to contradict the Presiding Officer's determination that certain workers in the Gibb Study did not work in exclusively modernized plant conditions. Id. at 65, citing RX 24 at 3. Despite Respondent's contention that this example is related to risk from industrial processes rather than from a chemical, the Agency expressly stated in the 1978 policy that the method and manner of using a chemical is one of several factors determining its exposure potential. CX 17 at 6, comment 19. In short, Respondent's study contains new substantial risk information about the potential for workers to be exposed to hazardous levels of hexavalent chromium persisting in modernized plants.

Furthermore, in an attempt to defeat Complainant's position, Respondent contended at oral argument that its study does not contain raw exposure data and, thus, Complainant's argument that Respondent's study makes available new substantial risk information is flawed. Tr. 130:9-21. But Respondent's contention misses the mark. Contrary to its contention, Respondent's study, in fact, presents new substantial risk information by relying on critical exposure data related to chronic lung cancer risk that is different from the Gibb Study. This point is illustrated by the substantial risk information findings made by the Presiding Officer, which are drawn from the study itself and contrasted with exposure data available from the Gibb Study. See, e.g., Comp't Appeal Br. at 44-45 (use of exposure data collected from workers exposed exclusively under modernized plant conditions), 45-46 (exclusion of duration of exposure data from short-term workers), 46-47 (dose estimation using urinary excretion data). As such,

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For the second example, the Presiding Office ruled that Respondent's study presents different risk information given the influence of short-term workers in the Gibb Study. Id. at 67. Respondent's finding was based on exposures that are more likely to account for chronic lung cancer risk from a medical perspective, which is important for dose-response modeling. The Gibb Study included many short-term workers; over 50% worked longer than six months, and 42% worked less than 90 days. Id. at 66, citing CX 1 at 30. In contrast, Respondent's study excluded employees with less than one year of employment. Id. at 66, citing CX 1 at 43. Dr. Speizer, the only expert in the field of pulmonary medicine, testified, "[I]t is very hard from a biological perspective to anticipate or expect that the risk of lung cancer might be related to exposures of less than six months." Tr. 83:4-10; see also Initial Dec. at 66, citing Hrg. Tr. 530-31, 1090 (Speizer). The record shows that industry roundly criticized the appropriateness of extrapolating lifetime cumulative exposure from relatively short duration exposures due to the inclusion of short-term workers in the Gibb Study. Initial Dec. at 19-20, citing CX 65. In brief, Respondent's study contains new substantial risk information about chronic lung cancer risk based on longer-term exposure data.

With respect to the third example, the Presiding Officer ruled that Respondent's study used urinalysis data which provide a better measure of dose. Id. at 68. Unlike the Gibb Study, Respondent's finding was based on urine as well as air data, which is also important for dose-response modeling. Expert testimony from both parties' experts established that urine concentrations are a more precise way to estimate exposure, that is, how much hexavalent chromium actually gets into the body (dose). Id. at 69. When asked about a statement in the record that "urine concentration is better estimate of dose," Respondent's expert, Dr. Mundt, testified, "Dose is the amount of material that's internalized and specifically reaches the target organ .... Urine has to reflect what's been internalized .... So it's telling you what amount has actually been in somebody's body rather than what's floating in their work space." Id. at 69, citing Hrg. Tr. 710-11 (Mundt); see also Hrg. Tr. 517-19 (Speizer). There is no evidence in the record that contradicts expert testimony. In sum, Respondent's study contains new substantial risk information about chronic lung cancer risk based on more accurate exposure data.

Respondent's study contains new, section 8(e)-reportable substantial risk information derived from previously unstudied exposure conditions.

Finally, Respondent stated at oral argument that a final agency decision finding that the information in Respondent's study was reportable may create a disincentive to undertaking such studies. Tr. 60:22-61:5. This stated concern is nothing more than a diversion from the main issue of whether Respondent' study contains new substantial risk information. At the time that a study such as the one at issue is undertaken, it is impossible to know whether the study will generate section 8(e)-reportable substantial risk information. To the extent that the mere possibility that a company might have to inform the Administrator of a study is a disincentive to commissioning the study in the first place, it is the enactment of section 8(e) that provides the disincentive, not the outcome of this case. It would completely eviscerate section 8(e) to allow chemical manufacturers such as Respondent to withhold from the EPA studies that do not reach the result the manufacturer hoped for in commissioning the study.

B. THE PRESIDING OFFICER'S CIVIL PENALTY IS APPROPRIATE FOR THE NONCOMPLIANCE IN THIS CASE.

Complainant respectfully requests that the Board affirm the Presiding Officer's $2,571,800 civil penalty for the period October 29, 2002 to November 16, 2008, which is appropriate because it is in accordance with TSCA section 16(a)(2)(B)'s statutory penalty criteria.[5] Neither Respondent's notice of appeal nor its briefs raised the penalty as an issue on appeal, other than arguing that there should be no penalty because there is no liability. See Respondent's Notice of Appeal; Respondent's EAB Appeal Brief ("Resp't Appeal Br.") at 2.

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[5] The parties have conferred since oral argument and are in agreement that the total number of days that the claims were tolled under the four tolling agreements is 200. See CX 83, 85-87. These are additional days to be added to the number of days falling within the five-year period prior to the filing of the September 2, 2010 complaint.

However, at oral argument, Respondent contended that the civil penalty imposed by the Presiding Officer is excessive. Tr. 132:17-20. Respondent's contention is wrong for two reasons. First, failure to comply with section 8(e) is a serious violation because section 8(e) submissions alert the Agency to new substantial risk information which may have a bearing on risk assessment and chemical control efforts. CX 103 at 23. Second, as the Presiding Officer found, Respondent repeatedly "chose" not to inform the Administrator of its study. Initial Dec. at 22, 24 and 28. Thus, it is important for the Board to affirm the Presiding Officer's civil penalty to ensure deterrence against future non-compliance.[6]

Respondent disputed the Presiding Officer's imposition of a civil penalty on the ground that Complainant had not used Respondent's study to make a regulatory change to date.[7] Tr. 132:13-16. In fact, the EPA's Integrated Risk Information System (IRIS) program has recently initiated an effort to update the 1998 Toxicological Profile for hexavalent chromium, which entails revising the inhalation cancer dose-response modeling in light of exposure data that have become available since 1998. U.S. ENVIRONMENTAL PROTECTION AGENCY, http://www.epa.gov/IRIS/publicmeeting/iris_bimonthly-oct2014/index.htm (last visited Nov. 10,

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[6] The record is replete with evidence that supports the Presiding Officer's upward adjustment to the gravity-based penalty for culpability. Id. at 80. The Presiding Officer exhaustively reviewed the evidence in the record and properly made determinations of witness credibility. Id. at 78-88. The Presiding Officer found that Respondent acted in "bad faith" by not timely submitting Respondent's study to the EPA, "particularly when they knew the government was looking for more data," and "when they were actively, roundly criticizing the database" upon which OSHA was basing a new workplace standard in an effort to "alter, delay or derail the regulatory process." Id. at 80. Complainant respectfully requests that the Board uphold the Presiding Officer's entire penalty assessment, including the 10% upward adjustment to the gravity-based component, based on the evidence in the record.

[7] The Presiding Officer observed that the 1980 Civil Penalty Guidelines provide that a violator should be penalized for violative conduct and a violator's luck in whether the prescribed conduct actually caused harm should not be an overriding factor in penalty assessment. Initial Dec. at 76, citing CX 102 at 4; see also All Regions Chem. Labs, Inc. v. E.P.A., 932 F.2d 73,74 (1st Cir. 1991) (finding it is well within the Agency's discretion and authority "to assess penalties in terms of what might have happened .... rather than what did happen"). In any event, the section 8(e) program is not set up in a way that allows those with reportable information to guess as to whether the Agency will immediately take action based on the information and to use that speculation as a factor in deciding whether to comply and what the potential consequence of not complying could be.

2014). The IRIS program has specifically identified Respondent's study as part of the body of recent scientific literature which may allow the EPA to better quantify the dose-response relationship. In any event, the test for determining that information is section 8(e)-reportable substantial risk information is not whether a piece of information by itself would cause a federal agency to change its regulations.

C. COMPLAINANT'S RESPONSES TO BOARD'S OCTOBER 3, 2014 ORDER.

In its October 3, 2014 Order, the Board required the parties to file a supplemental brief to answer specific questions posed in the order and discussed during the October 30, 2014 oral argument. The Board's questions regarding the language in TSCA section 16(a)(1) implicate three separate analyses: (1) the continuing violation exception to the statute of limitations; (2) the discrete violations theory; and (3) the assessment of penalties over a multi-day period. Each of these analyses involves similar considerations and factors, but the analyses for statute of limitations (i.e., the first two analyses identified here) and penalty assessment are distinct and serve different purposes. For those cases, such as this one, where the statute of limitations is an issue because the complaint includes claims pertaining to actions or omissions that occurred in part more than five years from the date of filing, an initial determination must be made as to the timeliness of the claims. Once it is established that the claims are timely, the penalty assessor must determine the appropriate duration over which a penalty should be assessed.

For the reasons stated more fully below, section 8(e) is best read as providing a continuing obligation to submit reportable information. Ongoing noncompliance with this obligation is, therefore, a continuing violation. Section 16(a)(1) confirms Congress intended there to be continuing violations under TSCA. Where the violation is continuing, section 16(a)(1) instructs the EPA to treat the continuing violation as separate daily violations for the

purpose of penalty calculations only. But section 16(a)(1) does not speak to whether a particular violation is continuing (or one-time, or a series of separate violations); that is a separate analysis, and section 16(a)(1) comes into play only for violations that have been found to be continuing. Neither section 16(a) nor any other statutory provision in TSCA imposes a limitation on the period for which daily penalties can be assessed; if a violation is continuing and the EPA commences an enforcement action within five years from the date the continuing violation ceases, the Agency has satisfied the five-year statute of limitations, and the five-year period in 28 U.S.C. § 2462 has no further relevance.[8] In contrast, where a pattern of conduct is more properly viewed as a series of separate violations, then each violation gives rise to a separate count, none of which can have occurred more than five years prior to filing, and the continuing violation language in section 16(a)(1) is unnecessary and inoperative.

Question 1 – Board's October 3, 2014 Order

Where penalties are sought under section 16(a)(1) of TSCA for days of violation beyond five years from filing, there must be an exception to the general federal five-year statute of limitations at 28 U.S.C. § 2462 that allows for those claims to be deemed valid and timely. The continuing violations doctrine provides such an exception by establishing that a claim accrues under § 2462 for ongoing violations "when the course of illegal conduct is complete, not when an action to enforce the violation can first be maintained." In re Harmon Electronics, 7 E.A.D. 1, 20 (EAB 1997). Where a determination has been made that the continuing violations exception

[8] The statute of limitations analysis can inform the penalty calculation and Complainant is not suggesting that these analyses occur in isolation from each other. But the important point is that the authority for the limitations period analysis is distinct from the authority one relies upon for penalty assessment.

applies, the penalty assessor knows that multi-day penalties are available in such a case.[9] In other words, it is not a single, one-day violation nor a series of discrete violations.

The Board has held in both the Lazarus and Newell cases and the Fifth Circuit affirmed in the Newell case, that the language of section 16(a)(1) is relevant to the continuing violations exception as an indication that Congress contemplated the possibility of continuing violations under TSCA. In re Lazarus, Inc., 7 E.A.D. 318 (EAB 1997); In re Newell Recycling Co., Inc., 8 E.A.D. 598 (EAB 1999); Newell Recycling Co., Inc. v. E.P.A., 231 F.3d 204 (5th Cir. 2000). See also Interamericas Investments, Ltd. v. Board of Governors of the Federal Reserve System, 111 F.3d 376, 382 (5th Cir.1997) (concluding in a government penalty enforcement case that the continuing violation exception to 28 U.S.C. § 2462 applied, finding "[w]here the civil penalty provision at hand contemplates per diem penalties for violations, then continuing violations are cognizable under the general statute of limitations"). The Board's conclusions as to TSCA affirm the Agency position held since at least 1980 that continuing violations are authorized under TSCA. CX 102 at 8.[10]

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[9] Under a different set of facts than those presented here, in a case where the conduct occurs over a period but where the entire duration of the violation is within five years of the complaint filing, there is no statute of limitations concern. Thus, the continuing violation exception is not relevant. However, the penalty assessor must still determine whether the violation continues for more than one day, examining many of the same considerations and factors as those under the continuing violations exception to determine the appropriate duration for penalty purposes.

[10] During oral argument, the Board inquired as to whether the Agency had previously indicated that section 8(e) provides an ongoing obligation to submit information. Tr. 115:9-12. To ensure the Board has a complete response before it, Complainant is providing the following information. First, as early as 1980, the Agency stated that TSCA allowed for continuing violations when the Agency published the Guidelines for the Assessment of Penalties under Section 16 of TSCA. CX 102. In 1987, the Agency's Office of Compliance Monitoring published the "Enforcement Response Policy – Recordkeeping and Reporting Rules TSCA Sections 8, 12 and 13." That policy provided that section 8(e) violations can be continuing over multiple days, indicated how multi-day penalties were to be assessed, affirmatively established that section 8(e) violations were not subject to a penalty cap ("The harm continues as long as the violation continues"), and concluded by providing an example of penalty calculation where a company fails to report a study showing human health effects for up to 3,601 days. This policy has since been revised in 1996 and again in 1999, with each version re-affirming the position that section 8(e) provides a continuing obligation and violations of that requirement can result in multi-day penalties. CX 103 (1999 policy).

According to the Board's prior decisions on continuing violations, the inquiry shifts from determining whether Congress indicated in a particular statute that continuing violations could be pursued to whether the specific requirement alleged to have been violated presents an ongoing obligation. See, e.g., Newell at 615-616. Here, section 8(e) provides an ongoing obligation to submit reportable information (giving rise to continuing violations where the obligation is not met). First, the words and phrases in that provision require action without any limitation. For example, the verb "inform" indicates a duty that is ongoing until it is complied with (or, in the case of section 8(e), until the Administrator receives the information from another source). A requirement to communicate knowledge to someone is not inherently limited in any particular manner. See Merriam Webster Dictionary (2014), available at http://www.merriam-webster.com/dictionary/inform) ("inform" defined as "to communicate knowledge to;" "to impart information or knowledge"). Second, when the provision is read, for analytical purposes, without the word "immediately" there can be no doubt that the obligation is ongoing and open-ended: any manufacturer, processor or distributor who obtains reportable information shall inform the Administrator of such information. Therefore, Respondent's entire argument rests on the proposition that by including the word "immediately" Congress was intending to limit violations of section 8(e) to a single day. This interpretation defies common sense; by including "immediately" as a compliance deadline, Congress was signaling the importance it was placing on the information reportable under section 8(e).[11] The Presiding Officer rejected Respondent's

[11] A review of TSCA's provisions reveals that is not just the use of the term "immediately" that demonstrates how important Congress viewed section 8(e) reportable information. Congress expressly stated in section 2 that one of the fundamental purposes of enacting TSCA was to address harmful exposure to chemicals and that to ensure adequate protection from such harm, the responsibility to develop data on the exposure effects of chemicals in commerce should fall on those who manufacture and process the chemicals. TSCA section 2, 15 U.S.C. § 2601. Against this backdrop, the more plausible and natural reading is that section 8(e) provides an ongoing obligation to submit the type of information Congress specifically identified in the congressional "Finding" and United States "Policy" sections of TSCA.

perverse reading that the term "immediately" limits the obligation (and resulting violation) to a single day rather than provide a key indicator of how vital section 8(e) submissions are to TSCA. Complainant urges the Board to reject that reading as well.[12]

Question 2- Board's October 3, 2014 Order

The short answer is that for this case both are relevant here. The language of section 16(a)(1) does not, on its own, establish the timeliness of the complaint here with regard to that portion of the failure to submit the information occurring more than five years prior to the complaint; Complainant is relying on the continuing violations exception to establish that these claims were filed on time. Specifically, to uphold the Presiding Officer's penalty calculation in the manner it was calculated, Complainant respectfully requests that the Board affirm both the application of the continuing violations exception and a reading of section 16(a)(1) that allows for multi-day penalties. The Presiding Officer found that both 28 U.S.C. § 2462 and TSCA support the conclusion that a continuing violation had occurred here and Complainant is seeking the Board to affirm that conclusion.[13]

As counsel for Complainant noted at the oral argument, there is no helpful legislative history for what Congress intended with the "separate violations" language in TSCA. Tr.113:21-114:1. This is true for similar language found in the Resource Conservation and Recovery Act

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[12] Respondent is confusing a compliance deadline with a temporal limitation on an obligation. Every statutory or regulatory requirement will have a compliance deadline but this does not turn every requirement into one of limited duration. See Lazarus at 372 (by providing a compliance date, the "EPA did not alter the ongoing nature of the obligation to register transformers. The effective date does not convert the registration obligation into a one-time requirement."); United States v. Advance Machine Co., 547 F. Supp. 1085, 1090 (D. Minn. 1982) ("[a]lthough the regulations define 'immediately' as 24 hours .... this does not extinguish the continuing statutory duty, but merely provides guidance to manufacturers.").

[13] As discussed below in response to the Board's third question, Complainant also would be entitled to penalties under a discrete violations theory. However, Complainant does not believe that a discrete violations theory is the proper analysis in this case: the language of section 16(a)(1) does not transform a continuing violation of section 8(e) into discrete daily violations, but instead merely addresses the manner in which penalties are to be calculated for that continuing violation.

and the Emergency Planning and Community Right-to-Know Act ("EPCRA"). However, a Supreme Court decision, rendered in 1975 just before the enactment of TSCA, is instructive. In United States v. ITT Cont'l Baking Co., 420 U.S. 223 (1975), the Court considered similar penalty language in the Clayton Act and the Federal Trade Commission Act. In those statutes, Congress provided that any person who violates an order may be liable for a civil penalty "of not more than $5,000 for each violation" and that "in the case of a violation through continuing failure or neglect to obey a final order .... each day of continuance of such failure or neglect shall be deemed a separate offense." 15 U.S.C. §§ 21(*l*), 45(*l*). The Court examined the language, including relevant legislative history, and concluded, first, that the language contemplated continuing violations and, second, that the language was "intended to assure that the penalty provisions would provide a meaningful deterrence" against continuing violations.[14]

> On the other hand, if violation of an order .... were treated as a single violation, any deterrent effect of the penalty provisions would be entirely undermined, and the penalty would be converted into a minor tax upon a violation which could reap large financial benefits to the perpetrator. As we have seen, Congress added the continuing-penalty provisions precisely to avoid such a result.

Id. at 232-233.

Therefore, in line with the ITT Cont'l Baking Co. decision, section 16(a)(1) accomplishes two goals relevant to this case. First, it provides that penalties are not to be capped solely on a "per violation" basis but rather cumulative penalties are available for each day of violation which allows for violations of differing durations to have penalties assessed proportionally. Second, as the Board found in both Lazarus and Newell, this language shows that Congress contemplated continuing violations under TSCA.

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[14] It is unclear whether Congress was cognizant of the Court's decision during drafting and enactment of TSCA; nonetheless, the Court's analysis of similar language aid interpretation of the section 16(a)(1) language here.

Importantly, the "separate violation" language in section 16(a)(1) is only relevant to the calculation of the penalty because Congress included the statement "for purposes of this subsection." If Congress had intended a much broader effect from the language of section 16(a)(1), intending, for example, that multi-day violations always be treated as individual discrete violations rather than as continuing violations for accrual purposes under 28 U.S.C. § 2462, it undoubtedly would not have added that limiting language. It is doubtful, too, that in an effort to cut off the application of the continuing violations doctrine, Congress would have started the very provision aimed at accomplishing that with "Each day such a violation continues…" 15 U.S.C. § 2615(a) (emphasis added). If Congress was intending that outcome, it likely would have left some trace of legislative history that indicates this language was meant to cut-off the application of a well-established legal doctrine.

Question 3 – Board's October 3, 2014 Order

The short answer is that if the Board concludes that the failure to comply here is a series of separate violations, then penalties would be available for all those violations (or days) that are within five years of the date the complaint was filed. In other words, under the Board's hypothetical conclusion, claims for violations beyond the five-year limitations period would be time-barred. It is Complainant's position, though, that the better view of the facts and circumstances of this case is that this is a continuing violation and that the claim accrued and the five year clock began to run after the violation terminated, i.e., November 17, 2008.[15] See Harmon at 21. In its October 3, 2014 Order, the Board cited CSC Holdings, Inc. v. Redisi, 309 F.3d 988 (7th Cir. 2002) but the present case is not analogous to the CSC case for the following

[15] In this case, Complainant is seeking penalties for days of violation that began October 29, 2002, based on EPA guidance in effect at that time that allowed for submissions under section 8(e) to be made within 15 working days after receipt of that information.

reasons. First, in CSC, the offense was transaction-based – the sale of an illegal device that de-scrambled premium cable channels without a subscription for those channels. The unlawful activity was made up of each individual sale, leading the court to conclude "[t]he mere fact that the [defendants] made a regular habit of violating the statute is not enough to convert multiple individual violations into one continuing wrong." Id. at 992. This point is further illustrated by the fact that the prosecution of a case under the CSC scenario could involve separate witnesses and evidence for each illegal sale of each device. The case before the Board here does not present a transaction-based scenario; there were not separate independent acts of violation. Nor were there periods of non-compliance sprinkled among periods of compliance; the failure to submit required information was a single uninterrupted course of conduct. Respondent's failure to submit the required information is more like the examples the CSC court drew to highlight the distinction between ongoing conduct and discrete violations, pointing first to the continuing violation of creating a hostile work environment (as opposed to individual discriminatory acts) and, second, to the ongoing conduct of deliberate indifference to a prisoner's medical treatment (as opposed to consistent underpayment of employee based on gender).

The requirement laid out in section 8(e) is essentially a standing mandatory information request that Congress provided directly in the statute. The Agency is authorized under TSCA sections 8 and 11 to seek information from specific persons who manufacture, process or distribute in commerce chemical substances and the EPA could have issued an information request that asked for any substantial risk information. The failure to comply with similar information requests has routinely been viewed as giving rise to continuing violations.[16]

[16] See United States v. Gurley, 235 F.Supp.2d 797 (W.D.Tenn. 2002), aff'd 384 F.3d 316 (6th Cir. 2004) (penalties assessed for failure to submit CERCLA information request response for 2,530 days); United States v. Martin, 2000 WL 1029188 (N.D.Ill. 2000) (penalties assessed for failure to submit CERCLA information request response for 607 days); United States v. Barkham, 784 F.Supp. 1181 (E.D.Pa. 1992) (penalties assessed for failure to submit

Second, as further support for its decision, the CSC court pointed to language in the Cable Communications Policy Act of 1984 that, in the criminal penalties context, the distribution of each individual device is deemed a separate violation. In this case, even though TSCA does allow successive days to be deemed separate violations for purposes of penalty assessment, it does so only for "[e]ach day such a violation continues." Section 16(a)(1) does not change the continuing nature of a section 8(e) violation and, in fact, the language of section 16(a)(1) states the "separate violations" penalty calculation language only applies after it has been established there is a continuing violation. See supra discussion at 11-13.

D. THE GABELLI DECISION DOES NOT AFFECT THE APPLICATION OF THE CONTINUING VIOLATION EXCEPTION IN THIS CASE.

Respondent suggests that the Supreme Court's decision in Gabelli v. Sec. and Exch. Comm'n, 133 S.Ct. 1216 (2013) which centered on the application of the discovery rule for the initiation of the statute of limitations period, should be read to make unavailable the application of the well-recognized continuing violations exception to the limitations period to the government's complaint in this case. Resp't Appeal Br. at 16; Tr. 9:6. The Board also questioned whether the Gabelli case limited, if not foreclosed, the possibility of the application of the continuing violations exception in this type of case. Tr. 109:15-110:6. Although the Court in Gabelli cautioned against aggressive interpretations of doctrines that alter strict application of statutes of limitation, that caution was firmly affixed to a context where Congress had not

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CERCLA information request response for 700 days); United States v. Ponderosa Fibres of Am., Inc., 178 F.Supp.2d 157 (N.D.N.Y. 2001) (penalties assessed for failure to submit CERCLA information request response for 895 days); United States v. Hugo Key and Son, Inc., 672 F.Supp. 656 (D.R.I.1987) (penalties assessed for failure to submit Clean Air Act information request response for 77 days).

provided any statutory cues.[17] Furthermore, the Court's rationale was firmly planted on issues and conclusions that apply to the discovery rule but do not apply to the continuing violations theory.

1. Although the Court in Gabelli Found No Statutory Basis for Concluding Congress Intended the Discovery Rule to Apply, TSCA Contains a Textual Basis for Application of the Continuing Violation Doctrine.

In Gabelli, the Court noted there was no textual basis to conclude that Congress contemplated application of the discovery rule (133 S.Ct. at 1224); in contrast, here Congress specifically acknowledged the existence of continuing violations by including the phrase "where a violation continues" in section 16(a)(1). In other words, where there is a continuing violation, Congress could not have been clearer that TSCA allows for such violations. Where Congress is clear, an adjudicatory body cannot impose its own interpretation.[18] Section 16(a)(1) specifically embraces the possibility of continuing violations, employing those exact words; the language in section 8(e), read in conjunction with section 16, provides that continuous noncompliance with the ongoing obligation should be deemed a continuing violation. In that regard, this is not a case where the Board is being asked to read into the statute of limitations inquiry something that is not already inherent in TSCA.

2. Application of the Continuing Violations Exception Does Not Give Rise to the Concerns that Shaped the Court's Decision in Gabelli.

The Court's decision in Gabelli was based on concerns that the discovery rule application could open the door for stale claims; may be in conflict with fundamental notions of fairness which call for a finite period of time that a potential defendant remains at risk for prosecution;

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[17] "As we held long ago, the cases in which 'a statute of limitation may be suspended by causes not mentioned in the statute itself .... are very limited in character, and are to be admitted with great caution.'" Gabelli at 1224 (quoting Amy v. Watertown (No. 2), 130 U.S. 320, 324 (1889)).

[18] The parties agree that where Congress has spoken, courts cannot ignore the words in the statute. Tr. 125:22-126:2.

and could disrupt the purpose limitations periods serve in providing a date certain for potential claims, resulting in order and certainty in society. Id. at 1221. The discovery rule, of course, raises these issues as it allows for an undefined time period for the statute of limitations to run after the violator ceases the noncompliance and does not necessarily tie the period of time of claim exposure to the conduct of the violator. The continuing violation theory, on the other hand, is directly tied to the conduct of the violator, allowing a fixed time period, five years in this case, to begin after the violative conduct ends. Here, there is no staleness concern because, up until 2008, Respondent still possessed the required information and continued to maintain that it was not under an obligation to submit it.[19]

Complainant is urging nothing more than that the five year statute of limitations clock begins after the misdeeds occurred, which is consistent with the Court's decision in Gabelli. Id. at 1223 (discovery rule "would leave defendants exposed to Government enforcement actions not only for five years after their misdeeds, but for an additional uncertain period into the future"). In this respect, the Gabelli decision supports Complainant's position: the five year statute of limitations applies here at the point the violation ceases, thereby providing a finite and discernible time period allowed for bringing a claim. In stark contrast to the discovery rule, the statute of limitations timing in the case of a continuing violation is completely within the control of the alleged violator.

3. Application of the Continuing Violations Exception Does Not Give Rise to Any Implementation Issues.

The Court's decision in Gabelli was heavily influenced by a practical implication of the discovery rule – that it is very difficult to determine a fixed time by which the government is

[19] The Court found in Havens Realty Corp. v. Coleman, 455 U.S. 363, 380 (1982), "where the challenged violation is a continuing one, the staleness concern disappears."

deemed to discover or know something or the point when it should have known something. Id. at 1223-24 ("Applying a discovery rule to Government penalty actions is far more challenging than applying the rule to suits by defrauded victims, and we have no mandate from Congress to undertake that challenge here"). The continuing violations exception poses no such challenge. The application of the continuing violations exception does not require an inquiry into when the government may have learned something; rather, it involves only the simple task of discerning when the Respondent's noncompliance ended which, in cases such as this one, may be a fact that is not in dispute. Tr. 124:10-11.

4. Unlike the Discovery Rule, There is Supreme Court Precedent Regarding Continuing Violations in Government Enforcement Cases.

The Court noted that it had never extended the discovery rule to a government enforcement case (distinguishing cases where the government was a defrauded victim) and declined to do so in Gabelli. This is not true in the continuing violations context: in Toussie v. United States, 397 U.S. 112, 115 (1970), a government criminal enforcement case regarding the defendant's failure to register for the draft, the Court, while declining to find a continuing violation in the case before it, acknowledged that there may be some offenses that do give rise to the continuing violations exception. The Court offered this even though it was well aware, as it relied on it in Toussie, that the rule of lenity can tip the scale toward the defendant in criminal cases. The Court's acknowledgement that the continuing violation exception may be available in criminal cases indicates that it is available in civil cases as well because the Court established that statutes of limitations in the civil context should be strictly construed in favor of the government, Badaracco v. Commissioner of Internal Revenue, 464 U.S. 386, 391-392 (1984), and that courts should narrowly construe statutes that purport to limit common law. Id. at J. Stevens dissenting opinion n.3.

As discussed above at page 16, in ITT Cont'l Baking Co., the Court found, in a government penalties enforcement case, that Congress, in language very similar to section 16(a)(1), not only anticipated continuing violations but made multi-day penalties available to account for ongoing violations. Although this case is not a limitations case, taken together with Toussie, it is clear that the Supreme Court has acknowledged the concept of continuing violations in government enforcement cases.[20]

E. THE BOARD HAS PREVIOUSLY RULED THAT FAILURE TO COMPLY WITH AN "IMMEDIATE" REPORTING REQUIREMENT IS A CONTINUING VIOLATION IN MOBIL OIL.

During oral argument, the Board inquired whether it had ever faced the question whether an "immediate" reporting requirement gave rise to a continuing violation. Tr. 23:22-24:2. Although Respondent's counsel answered in the negative (Tr. 24:10-13), counsel for Complainant noted that, in Mobil Oil, the Board faced and rejected a similar argument as the one Respondent asserts here: that a failure to immediately report gives rise to a single violation. Tr. 104:6.

> Mobil contends that a per-day penalty is inappropriate because there was no "continuing violation." In Mobil's view, a failure to report cannot continue beyond one day, and only a single violation can occur once a facility has knowledge of a release and fails to immediately report it. Mobil's reasoning is illogical in view of EPCRA's purpose: what is required under EPCRA is reporting at the earliest possible time, and each day that passes between when a report could have been made and when it is actually made is a continuing violation.

[20] Where the Court is changing prior decisions, it will provide special justification for doing so given the substantial consideration stare decisis is to be given in the area of statutory interpretation. Patterson v. McLean Credit Union, 491 U.S. 164, 172-173 (1989). In Gabelli, not only did the Court fail to provide any special justification for overruling prior continuing violations decisions, it did not even reference the continuing violations doctrine nor cite to Toussie or any other continuing violations case. Complainant continues, therefore, to urge the Board not to give the Gabelli decision more import in an area of the law that was not before the Court.

In re Mobil Oil Corp., 5 E.A.D. 490, 517 (EAB 1994). As the Presiding Officer found in this case, section 8(e) serves a similar purpose – to ensure timely submission of information regarding health and safety studies concerning the potential for injury to human health or the environment from chemicals. Order on Respondent's Motion for Judgment on the Pleadings, n.1 (Mar. 25, 2011). The Board's conclusion in Mobil Oil is equally applicable here: submissions under section 8(e) are due immediately and the ongoing failure to submit reportable information constitutes a continuing obligation.

Although this issue arose in the context of multi-day penalties rather than statute of limitations, as counsel for Complainant noted at oral argument, the analyses for multi-day penalties and the continuing violations exception necessitate analysis of many of the same factors and considerations. Tr. 97:16-18. Counsel for Respondent offered that a violation could be definitively determined to be a single day violation for purposes of statute of limitations yet be considered continuing for purposes of multi-day penalty assessment. Tr. 37:16-21. But Respondent has cited no cases that provide support for such an incongruity and Respondent offers no logical basis for arriving at contradictory conclusions in these two analyses.[21]

F. THE FIFTH CIRCUIT DECISION IN CENTER FOR BIOLOGICAL DIVERSITY V. BP AMERICA SUPPORTS COMPLAINANT'S POSITION THAT NONCOMPLIANCE WITH THE ONGOING OBLIGATION OF SECTION 8(e) IS A CONTINUING VIOLATION.

During oral argument, the Board inquired as to whether the Fifth Circuit's recent decision in Ctr. for Biological Diversity, Inc. v. BP Am. Prod. Co., 704 F.3d 413 (5th Cir. 2013), is helpful for the Board to consider given the similarities of the EPCRA provision at issue in that case with

[21] Counsel for Respondent's concession that multi-day penalties could be available in this case (Tr. 37:16-21) must mean that the Respondent believes the obligation to comply continued beyond the single day Respondent urges the Board to adopt for statute of limitations purposes. As pointed out by Complainant's counsel, the Board's decisions have established that if the obligation continues and is not complied with, the violation is therefore continuing as well. Tr. 117:18-19.

section 8(e). It is. In the Ctr. for Biological Diversity case, the court was analyzing EPCRA section 304(c), which requires written notice "as soon as practicable" after a release. 42 U.S.C. § 11004(c). The court concluded that the failure to submit the notice was a continuing violation despite the fact that the release was not still occurring. In both the EPCRA provision and section 8(e), Congress provided for a compliance deadline relative to the possession of the information to be submitted and both "as soon as practicable" and "immediately" modify verbs that connote ongoing duties ("provide" for EPCRA section 304(c) and "inform" for section 8(e)). In neither provision, as the Fifth Circuit held in this case, did Congress enact a limitation on the obligation to report by creating a temporal deadline.

II. CONCLUSION

Complainant respectfully requests that the Board affirm the Presiding Officer's March 25, 2011 Order and November 12, 2013 Initial Decision for the reasons discussed herein and in Complainant's February 24, 2014 and April 22, 2014 briefs.

Respectfully submitted,

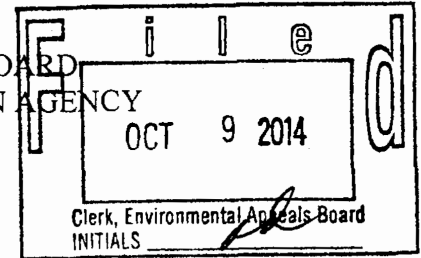
Date: November 17, 2014

MARK A.R. CHALFANT
Attorney-Advisor
PETER RAACK
Attorney-Advisor
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency

Of Counsel: BRIAN GRANT
Assistant General Counsel
Office of General Counsel
U.S. Environmental Protection Agency

BENJAMIN D. FIELDS
Acting National Coordinator for Cross-Cutting
Administrative Litigation Issues

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



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

CORRECTED ORDER REQUIRING 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 also required to submit additional briefing addressing these questions and any other unanswered questions that may surface during oral argument. These briefs must be filed no later than Monday, November 10, 2014.

So Ordered.[1]

Dated: October 9, 2014

ENVIRONMENTAL APPEALS BOARD

By: Leslye M. Fraser

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 Corrected Order Requiring 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 & Bockious, LLP
1111 Penn. Ave., NW
Washington, DC 20004-2541

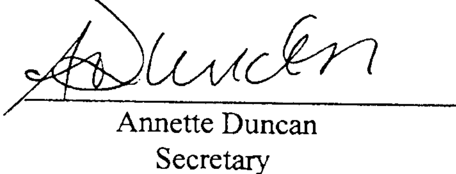
By Pouch Mail:
Mark A.R. Chalfant [Mail Code: 8ENF-UFO]
Waste and Chemical Enforcement Division
Office of Civil Enforcement
U.S. EPA Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

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: OCT - 9 2014



Annette Duncan
Secretary

CERTIFICATE OF SERVICE

I certify that the foregoing *Complainant Environmental Protection Agency's Supplemental Brief* in Docket No. TSCA-HQ-2010-5022, dated November 17, 2014, was sent this day in the following manner to the addressees listed below:

Original by hand and email to:

U.S. Environmental Protection Agency
Environmental Appeals Board
1201 Constitution Avenue, N.W.
WJC East, Room 3332
Washington, DC 20004
Email: durr.erika@epa.gov

Copy by U.S. mail and email to:

John J. McAleese, III, Esq.
McCarter & English, LLP
1735 Market Street, Suite 700
Philadelphia, PA 19103
Email: jmcaleese@mccarter.com

Ronald J. Tenpas, Esq.
Morgan, Lewis & Bockius, LLP
1111 Pennsylvania Avenue, N.W.
Washington, DC 20004-2541
Email: rtenpas@morganlewis.com

Copy by U.S. mail and email to:

Office of the Hearing Clerk:

Sybil Anderson
Headquarters Hearing Clerk
U.S. Environmental Protection Agency
Office of Administrative Law Judges
Mailcode 1900R
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460
Email: anderson.sybil@epa.gov

Copy by U.S. mail:

Chief Administrative Law Judge: The Honorable Susan L. Biro
U.S. Environmental Protection Agency
Office of Administrative Law Judges
Mailcode 1900R
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

[signature] Date: 11-17-14

Tony R. Ellis, Case Officer
Waste and Chemical Enforcement Division (2249A)
Office of Civil Enforcement
U.S. Environmental Protection Agency
1200 Pennsylvania Ave, N.W.
Washington, D.C. 20460
Telephone: 202-564-4167
Email: ellis.tony@epa.gov