



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

RECEIVED
U.S. E.P.A.

2014 MAY 14 PM 2:50

ENVIR. APPEALS BOARD

May 14, 2014

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

VIA HAND-DELIVERY

Clerk of the Board
U.S. Environmental Protection Agency
Environmental Appeals Board
1201 Constitution Avenue, N.W.
WJC East Building, Room 3334
Washington, D.C. 20004

**Re: Complainant Environmental Protection Agency's Response to Respondent Elementis
Chromium Inc.'s Request for Oral Argument; Docket No. TSCA-HQ-2010-5022.**

Dear Clerk of the Board:

Please find enclosed and served upon you for filing Complainant's Response to Respondent's
Request for Oral Argument; Docket No. TSCA-HQ-2010-5022.

Sincerely,

A handwritten signature in cursive script that reads "Erin Saylor".

Erin Saylor
Attorney-Advisor
U.S. Environmental Protection Agency
1200 Pennsylvania Ave
Washington, DC 20460
202-564-6124; saylor.erin@epa.gov

Enclosure

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

**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

COMPLAINANT'S RESPONSE
TO RESPONDENT'S REQUEST FOR ORAL ARGUMENT

Complainant, the United States Environmental Protection Agency (Complainant or EPA), respectfully submits this response in opposition to Respondent Elementis Chromium Inc.'s (Respondent's or Elementis') Request for Oral Argument before the Environmental Appeals Board (Board or EAB). Elementis has not demonstrated good cause for oral argument in a matter which even Respondent characterizes as having been briefed "extensively." (Resp't Reply Brief at 1). As Respondent notes in its Request for Oral Argument, the parties have filed four briefs on the issues raised by Respondent's appeal of the Presiding Officer's exhaustive 93-page Initial Decision, including reply and surreply briefs not contemplated by the Rules of Consolidated Practice which the Board specially granted leave to file. Complainant also notes that the parties filed four post-hearing briefs before the Presiding Officer. In addition, the parties engaged in extensive motion practice prior to the hearing which entailed the filing of briefs in support and

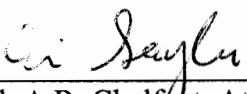
opposition to Respondent's Motion for Judgment on the Pleadings and Complainant's Motion for Accelerated Decision on Liability. As such, the issues on appeal before the EAB have been thoroughly briefed by the parties.

Additionally, Respondent asserts in its Request for Oral Argument that oral argument is warranted because the Complainant has "changed or abandoned several of its arguments." (Resp't Request for Oral Argument at 1). Specifically, Respondent cites to Complainant's discussion of the proper level of deference the Agency should be afforded and the Complainant's reliance on the Supreme Court case of Toussie v. United States in its Response and Surreply briefs. Id. at 1-2. Complainant thoroughly and succinctly stated its position regarding these two issues in its Surreply Brief.

In view of the extensive briefing in this matter, Complainant opposes Respondent's request for open-ended oral argument on the issues on appeal. If the Board has specific questions that would aid the EAB in its review of the issues on appeal, Complainant would gladly make itself available to answer those questions.

Respectfully submitted,

5/14/14
Date



Mark A.R. Chalfant, Attorney
Erin Saylor, 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* in Docket No. TSCA-HQ-2010-5022, dated May 14, 2014, was sent this day in the following manner to the addresses listed below:

Original by hand and email to: Clerk of the Board
U.S. Environmental Protection Agency
Environmental Appeals Board
1201 Constitution Avenue, NW
WJC East Building, Room 3334
Washington, DC 20004
durr.erika@epa.gov

Copy by U.S. mail and email to:

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

Ronald J. Tenpas
Morgan, Lewis & Bockius, LLP
1111 Pennsylvania Avenue, NW
Washington, DC 20004-2541
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 (1900R)
William Jefferson Clinton Building
1200 Pennsylvania Avenue, NW
Washington, DC 20460
anderson.sybil@epa.gov

Copy by U.S. mail:

Administrative Law Judge: Honorable Susan L. Biro
Administrative Law Judge
U.S. Environmental Protection Agency
Office of Administrative Law Judges (1900R)
William Jefferson Clinton Building
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Tony R. Ellis

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

Date: May 14, 2014