

From: Seltzer, Mark
Sent: Monday, July 18, 2016 5:03 PM
To: Aaron H. Goldberg <AGoldberg@bdlaw.com>; Durr, Eurika <Durr.Eurika@epa.gov>; Wenisch, Michelle <Wenisch.Michelle@epa.gov>
Cc: Garvey, Mark <Garvey.Mark@epa.gov>
Subject: RE: Docket No. TSCA-HQ-2016-5007: OSRAM SYLVANIA, Inc.

This email confirms that EPA concurs with the jointly drafted email below.

(In addition, in follow-up to our June 30, 2016 phone call, EPA anticipates including reference to 40 CFR 22.18(c) in future proposed consent order preliminary statements.)

Respectfully,
Mark Seltzer

Mark Seltzer, Attorney Advisor
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Waste and Chemical Enforcement Division
Office of Civil Enforcement
US Environmental Protection Agency
Phone: 202-564-2901

From: Aaron H. Goldberg [<mailto:AGoldberg@bdlaw.com>]
Sent: Monday, July 18, 2016 4:38 PM
To: Durr, Eurika <Durr.Eurika@epa.gov>; Wenisch, Michelle <Wenisch.Michelle@epa.gov>
Cc: Seltzer, Mark <Seltzer.Mark@epa.gov>
Subject: Docket No. TSCA-HQ-2016-5007: OSRAM SYLVANIA, Inc.

Dear Ms. Durr and Ms. Wenisch --

This is a joint email from Mark Seltzer, Attorney Advisor with EPA's Office of Civil Enforcement, and Aaron Goldberg, outside counsel for OSRAM SYLVANIA, Inc. ("OSI"), regarding Docket No. TSCA-HQ-2016-5007. The consent agreement signed by Jonathan Stringer, OSI, on April 12, 2016 and Mark Seltzer, EPA, on April 19, 2016 is intended to be in full compliance with 40 CFR Section 22.18. During our phone call on June 30, 2016, Michelle Wenisch, Senior Counsel with the Environmental Appeals Board, expressed concern that paragraph 15 of the consent agreement did not track closely enough with the regulatory provision set forth at 40 CFR 22.18(c), *Scope of resolution or settlement*.

During negotiations between EPA and OSI, the following boilerplate consent agreement text in paragraph 15:

"Payment of the penalty resolves the civil administrative claims alleged in this Consent Agreement"

was changed to read:

"Payment of the penalty resolves all civil claims with respect to the allegations set forth in this Consent Agreement."

The change was not intended to materially change the terms of the agreement or order. In following Section 22.18(c), the parties agree, as per this email, that the intent of Paragraph 15 is to convey that:

"Full payment of the penalty specified in the Consent Agreement shall only resolve respondent's liability for federal civil penalties for violations and facts alleged in this Consent Agreement."

Assuming the Board agrees with approach, we believe the Consent Agreement can be approved in the "identical form" that is was executed by the parties, consistent with paragraph 25 of the Consent Agreement.

Respectfully,

/s/ _____
Mark Seltzer, EPA

/s/ _____
Aaron Goldberg,
BEVERIDGE & DIAMOND, P.C.
Outside counsel for OSRAM SYLVANIA, Inc.

Aaron H. Goldberg
Principal

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