

March 5, 2014

VIA ELECTRONIC FILING

Clerk of The Board  
U.S. Environmental Protection Agency  
Environmental Appeals Board  
1200 Pennsylvania Avenue, N.W.  
Mail Code 1103 M  
Washington, DC 20460-0001

John J. McAleese III  
Partner  
T. 215-979-3892  
F. 215-599-7333  
jmcaleese@mccarter.com

Re: In The Matter of Elementis Chromium, Inc.  
Docket No. TSCA-HQ-2010-5022

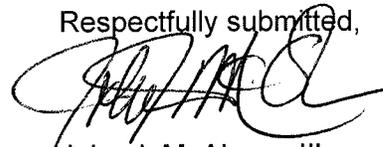
Dear Sir or Madam:

Enclosed for filing, please find the Motion for Leave to File Reply Brief of Respondent, Elementis Chromium Inc., in the above-referenced matter.

Thank you for your assistance and cooperation.

McCarter & English, LLP  
BNY Mellon Center  
1735 Market Street - Suite 700  
Philadelphia, PA 19103-7501  
T. 215.979.3800  
F. 215.979.3899  
www.mccarter.com

Respectfully submitted,



John J. McAleese III

JJM:drw

Enclosure

BOSTON

HARTFORD

NEW YORK

NEWARK

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WASHINGTON, DC

WILMINGTON

cc: Regional Hearing Clerk (via Overnight Courier & E-mail)  
Mark A. R. Chalfant, Esq. (via Overnight Courier & E-mail)  
Erin K. Saylor, Esq. (via Overnight Courier & E-mail)

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

	)	
In the Matter of:	)	
	)	
Elementis Chromium Inc.,	)	Docket No. TSCA-HQ-2010-5022
f/k/a Elementis Chromium, L.P.,	)	
	)	
Respondent.	)	
	)	

**MOTION FOR LEAVE TO FILE REPLY BRIEF**

Respondent, Elementis Chromium, Inc. (“Respondent”), through its undersigned counsel, hereby moves for leave to file a Reply Brief in this matter. In support of this Motion, Respondent states:

1. On November 25, 2013, Respondent filed a Notice of Appeal of the Initial Decision of Chief Administrative Law Judge Susan Biro dated November 12, 2013. On January 15, 2014, Respondent filed its Appeal Brief. On February 24, 2014, Complainant, The United State Environmental Protection Agency (“Complainant”), filed its Brief in Opposition to Respondent’s Appeal (“Response Brief”).

2. In the Response Brief, Complainant raises several arguments and issues not addressed in Respondent’s Appeal Brief or in Chief Judge Biro’s Initial Decision. For instance, in the Response Brief, Complainant incorrectly states that Respondent argues that “its obligation to submit Section 8(e) information is discharged the instant it obtains the information but fails to report it... .” This mischaracterizes Respondent’s argument, which is that a violation under Section 8(e) is complete for the purposes of the tolling of the statute of limitations after failing to

provide the information “immediately.” Respondent requests leave to file a Reply Brief to further address the issue given the characterization Complainant has presented.

3. In its Response Brief, Complainant also contends that it is to be accorded Chevron deference on several issues, including for example, on its interpretation of whether a violation is continuing under Section 8(e) of the Toxic Substances Control Act and thus when the statute of limitations runs. Chief Judge Biro’s decision did not rest on such deference claims -- for example, the Initial Decision did not discuss such deference as a rationale for her finding that a continuing violation theory could be relied upon by the Agency. Respondent therefore did not address this issue in its Appeal Brief. It thus requests leave to file a Reply Brief to address the issue of what level of deference should be afforded to Complainant’s interpretation of Section 8(e).

4. Complainant also argues in its Response Brief that the information in the Final Four Plant Report at issue in this case is new because the plants studied in the Final Four Plant Report and the methodology utilized in conducting the study have not been employed before, thereby making the Final Four Plant Report reportable under Section 8(e) regardless of the finding of substantial risk in the report. The implication of this position is that any epidemiology study would be reportable under Section 8(e) because every epidemiology study, by its very nature, is unique and thus different from every other epidemiology study. This position, though, is wholly inconsistent with Complainant’s own guidance on Section 8(e) reporting and therefore, cannot be maintained. Respondent requests leave to file a Reply Brief to further address this issue.

5. Respondent requests leave to file a Reply Brief up to 20 pages in length to be filed within 14 days after granting of this Motion.

6. Complainant does not object to this Motion for Leave to File Reply Brief on the condition that Complainant is also granted permission to file a Surreply Brief up to 20 pages in length (should this Motion be granted) within 14 days after Respondent's Reply Brief is filed. Respondent has no objection to such a motion.

WHEREFORE, Respondent respectfully requests that the Environmental Appeals Board grant its Motion for Leave to File Reply Brief.

Respectfully submitted,

/s/  
John J. McAleese, III  
McCarter & English, LLP  
1735 Market Street, Suite 700  
Philadelphia, PA 19103  
Ph: (215) 979-3892  
Fax: (215) 979-3899  
jmcaleese@mccarter.com

Ronald J. Tenpas  
Morgan, Lewis & Bockius, LLP  
1111 Pennsylvania Ave., NW  
Washington, DC 20004-2541  
Ph: (202) 739-5435  
Fax: (202) 739-3001  
rtenpas@morganlewis.com

*Attorneys for Respondent,  
Elementis Chromium, Inc.*

