



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

BY HAND DELIVERY

APR 28 2011

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

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

Re: 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 each of Complainant's Motion for Accelerated Decision on Liability, Memorandum in Support of Complainant's Motion for Accelerated Decision, and Complainant's Affidavits and Other Exhibits (14) in support of Complainant's Motion for Accelerated Decision on Liability in the above matter.

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

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink that reads "Mark A.R. Chalfant".

Mark A.R. Chalfant
Counsel for Complainant

Enclosures

cc: John J. McAleese, III, Morgan Lewis & Bockius LLP (via overnight delivery and email)
Ronald J. Tenpas, Morgan Lewis & Bockius LLP (via email)
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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:)
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Elementis Chromium Inc.,) Docket No. TSCA-HQ-2010-5022
f/k/a Elementis Chromium, LP,)
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Respondent.)
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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), seeks an order granting an accelerated decision on Respondent Elementis Chromium Inc.'s¹ liability for a violation of the Toxic Substances Control Act, 42 U.S.C. §§ 2601 et seq., as described in the administrative complaint filed on September 2, 2010.

¹The Complaint identifies the Respondent as "Elementis Chromium, LP." However, in its Answer, Respondent represents that Elementis Chromium, LP was merged into Elementis Chromium GP Inc. on September 10, 2010, and then changed its name to "Elementis Chromium Inc." By 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).

Complainant's Motion for Accelerated Decision on Liability is based on the attached Memorandum in Support of Complainant's Motion for Accelerated Decision on Liability, and the record on file in this proceeding.

Respectfully submitted,

4/28/2011
Date

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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

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

MEMORANDUM IN SUPPORT OF COMPLAINANT'S MOTION
FOR ACCELERATED DECISION ON LIABILITY

Complainant, the United States Environmental Protection Agency (Complainant, EPA or the Agency) submits this memorandum in support of its Motion for Accelerated Decision on Liability. Pursuant to 40 C.F.R. §§ 22.16 and 22.20(a), Complainant asks the Presiding Officer to issue an order finding that Respondent Elementis Chromium Inc.¹ (Respondent or Elementis) is liable for a violation of section 8(e) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2607(e), as described in the administrative complaint filed on September 2, 2010 (Complaint).

¹ The Complaint identifies Respondent as "Elementis Chromium, LP." However, in its Answer, Respondent represents that Elementis Chromium, LP was merged into Elementis Chromium GP Inc. on September 10, 2010, and then changed its name to "Elementis Chromium Inc." By 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 J. on the Pleadings at 1).

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I. SUMMARY OF THE ARGUMENT

There are no genuine issues as to any material fact in this case. Respondent Elementis, which has admitted that it manufactures and distributes chromium chemicals, failed to immediately inform the Administrator of substantial risk information it possessed about hexavalent chromium, a known carcinogen. Elementis had a duty to report this information under the express language of TSCA section 8(e). It is Respondent's six-year delay in informing the Administrator of this information that gives rise to this penalty action for a continuing reporting violation under TSCA section 8(e).

Elementis obtained the substantial risk information in October 2002, when it received a report summarizing the results of an industry-commissioned study of hexavalent chromium exposure in modern chromium production facilities, which it has admitted receiving. Yet, Elementis failed to inform the Administrator of the 2002 report or its conclusions until it responded in 2008 to two concurrent subpoenas issued by EPA pursuant to the Agency's TSCA information-gathering authorities. Only then did Elementis turn over a copy of the 2002 report to the Agency.

The 2002 report reasonably supports the conclusion that hexavalent chromium exposure presents a substantial risk of

injury to health. The report at issue — the Modern Four Plant Report² — considers the question of whether hexavalent chromium exposure poses lung cancer mortality risk to workers in modern chromium production plants with relatively low hexavalent chromium exposure levels. Importantly, the Modern Report found *elevated* lung cancer mortality risk in a combined study cohort³ comprised of workers from four modern chromium production facilities in Germany and the United States.

The Modern Report fills a critical gap in the scientific understanding of the health effects of occupational exposure to hexavalent chromium in modern chromium production plants. It marks the first time a comprehensive study had reported elevated lung cancer mortality risk among chromium production workers who had worked exclusively under modern plant conditions. Information about elevated lung cancer mortality risk as a result of exposure to a chemical substance constitutes

² In the Complaint, the September 27, 2002 report is referred to as the "Final Four Plant Report." (Compl. ¶ 41). As previously noted in Complainant's Response to Respondent's Motion for Judgment on the Pleadings, we will use the term, "Modern Four Plant Report" or "Modern Report," in motions and argument before the Presiding Officer because it more accurately and succinctly reflects the subject of the industry-commissioned study, that is, occupational exposure to hexavalent chromium in modern chromium production plants utilizing the newer low-lime or no-lime kiln manufacturing processes.

³ The term "cohort" is defined to mean "any designated group of persons who are followed or traced over a period of time, as in COHORT STUDY (prospective study)." A Dictionary of Epidemiology at 20 (John M. Last, eds., Oxford: International Epidemiological Association, 1983).

"substantial risk information" that Elementis was required to report under TSCA section 8(e).

For the reasons discussed below, Elementis had a statutory duty to immediately inform the Administrator of the Modern Report under section 8(e) of TSCA, a duty that began when Elementis obtained the Modern Report and failed to immediately inform the Administrator of the Modern Report. Elementis's failure continued until Elementis finally sent the Modern Report to EPA. Therefore, the Presiding Officer should grant this Motion for Accelerated Decision on Liability and find Respondent liable as a matter of law for a violation of TSCA section 8(e).

II. STATEMENT OF THE CASE

A. Statutory Framework

Section 8(e) of TSCA imposes a mandatory statutory reporting duty as follows:

Any person who manufactures, processes, or distributes in commerce a chemical substance or mixture and who obtains information which reasonably supports the conclusion that such substance or mixture presents a substantial risk of injury to health or the environment shall immediately inform the Administrator of such information unless such person has actual knowledge that the Administrator has been adequately informed of such information.

15 U.S.C. § 2607(e). Failure to report pursuant to section 8(e) constitutes an unlawful act under TSCA section 15(3)(B), which states it is unlawful for any person to fail or refuse to submit

reports, notices, or other information required by TSCA, and subjects the person to the assessment of civil penalties for each day of the violation, pursuant to TSCA section 16. 15 U.S.C. §§ 2614(3)(B), 2615.

B. Procedural Background

On September 2, 2010, Complainant filed a Complaint against Respondent Elementis. The Complaint alleges that Respondent violated TSCA section 8(e), 15 U.S.C. § 2607(e), and that Respondent's violation constitutes an unlawful act under TSCA section 15(3)(B), 15 U.S.C. § 2614(3)(B). (Compl. at 1-2, ¶ 50, 11). On October 4, 2010, Respondent filed an Answer to the Complaint. In its Answer, Respondent admitted many of the essential allegations set forth in the Complaint. (Answer at 1-6). Respondent also asserted five affirmative defenses. Id. at 6-7.

On December 15, 2010, Respondent filed a Motion for Judgment on the Pleadings seeking an order dismissing the Complaint with prejudice on the ground that the TSCA section 8(e) claim is time-barred by the general federal five-year statute of limitations at 28 U.S.C. § 2462. (Resp't Mot. for J. on the Pleadings ¶¶ 5, 7). On January 7, 2011, Complainant filed its response requesting that Respondent's Motion for Judgment on the Pleadings be denied in its entirety. (Complainant's Mot. in Response to Resp't Mot. for J. on the

Pleadings). On January 25, 2011, Respondent filed its reply to Complainant's response. (Respt's Reply Mem. of Law in Support of Respt's Mot. for J. on the Pleadings). On March 25, 2011, the Presiding Officer issued an Order denying Respondent's Motion for Judgment on the Pleadings. (Order on Resp't Mot. for J. on the Pleadings). On April 7, 2011, Respondent filed a motion for interlocutory appeal of the March 25, 2011 Order. (Respt's Mot. Requesting The Presiding Officer to Recommend Interlocutory Review of the March 25, 2011 Order by the EAB). On April 14, 2011, Complainant filed a response to Respondent's motion. (Complainant's Response to Respt's Mot. Requesting The Presiding Officer to Recommend Interlocutory Review of the March 25, 2011 Order by the EAB). On April 27, 2011, the Presiding Officer issued an Order denying Respondent's motion for interlocutory appeal. (Order Denying Resp't Mot. for Interlocutory Appeal).

C. Factual Background

Respondent Elementis is a person who manufactures or distributes in commerce a chemical substance or mixture. Respondent has two main manufacturing facilities that produce chromium chemicals in the United States, including one domestic facility owned by Elementis at the time of the study reported in the Modern Report. (Answer ¶¶ 6, 8; C's Ex. 1 at 15; Cooper Aff. C's Ex. 11, ¶ 16). The chromium chemicals Respondent

manufactures include chromic acid (Chemical Abstract Service (Registration) Number (CASN) 7738-94-5), chromic oxide (CASN 1308-38-9) and sodium dichromate (CASN 10588-01-9). (Answer ¶ 9; C's Exs. 8, 9. The chromium chemicals Respondent distributes in commerce include chromic acid, chromic oxide and sodium dichromate. (Answer ¶¶ 11, 12).

Respondent obtained the Modern Report on or about October 8, 2002. Id. ¶¶ 24, 41. Dr. Joel Barnhart, the then-vice president of Elementis, received the Modern Report on or about October 8, 2002. Id. ¶¶ 26, 42; C's Ex. 4; see also C's Ex. 6 at 15 (Response 10.a.), 16 (Response 10.c.). Dr. Barnhart played a key role in overseeing the development of the study described in the Modern Report through his involvement in various organizations. (Answer ¶¶ 25, 26, 31-34; see also C's Ex. 6 at 6 (Response 2) (Chairman, Chrome Coalition), 6 (Response 3) (Member, Board of Trustees, Industrial Health Foundation), 8 (Response 4) (Chairman, Industrial Health Foundation Chromium Chemicals Health and Environmental Committee, 1986 to 2002; Elementis Representative, Management Subcommittee, 1999 to 2002)).

The Modern Report reasonably supports the conclusion that hexavalent chromium exposure presents a substantial risk of injury to health. (C's Ex. 1 at 17, 89-95, 98-99; Hernandez Aff. C's Ex. 13, ¶¶ 16-20; Cooper Aff. C's Ex. 11, ¶ 9). The

Modern Report's finding of elevated lung cancer mortality is based on an epidemiologic study of modern chromium production plant workers who had previously not been studied sufficiently. As such, there was uncertainty about the extent of lung cancer mortality risk to workers in modern plants.⁴ (C's Ex. 1 at 40-42, 86; Cooper Aff. C's Ex. 11, ¶¶ 9, 17-18, 30). At the time the study described in the Modern Report was undertaken, only a few epidemiologic studies had evaluated the lung cancer mortality risk from hexavalent chromium exposure under modern plant conditions.⁵ (C's Ex. 1 at 29-32, 86; Cooper Aff. C's Ex. 11, ¶ 15). As of the late 1990s, the limited scientific literature suggested that the modern chromium production process

⁴ In older, pre-modern plants, the chromium industry utilized a high-lime process to manufacture chromium chemicals. (C's Ex. 1 at 25-26; Arnold Aff. C's Ex. 10, ¶ 16). During the roasting of chromite ore, lime was added to maximize the conversion of trivalent chromium to hexavalent chromium salts. (C's Ex. 1 at 26; Arnold Aff. C's Ex. 10, ¶¶ 11, 16). The use of lime produced large amounts of calcium chromate which was present in the dust to which workers were exposed. (C's Ex. 1 at 26; Arnold Aff. C's Ex. 10, ¶ 18). During the 1950s and 1960s, the chromium industry adopted a modern chromium production process utilizing low-lime or no-lime to reduce hexavalent chromium exposure levels. (Answer, ¶ 28; C's Ex. 1 at 26, 29; C's Ex. 3 at 10; Arnold Aff. C's Ex. 10, ¶¶ 19-20; Cooper Aff. C's Ex. 11, ¶¶ 13-16). The chromium industry no longer uses the high-lime process in Europe and North America. (C's Ex. 3 at 11; see also C's Ex. 1 at 86).

⁵ While numerous epidemiologic studies have examined whether there is lung cancer mortality risk among chromium production workers, the vast majority of these studies predated the change-over from the high-lime to the modern chromium production process. (C's Ex. 1 at 27-32; Cooper Aff. C's Ex. 11, ¶¶ 12-15). As the authors of the Modern Report note in the protocol for the study, an extensive body of literature studying risks from occupational exposure in the older, pre-modern plants "demonstrates a consistent association between hexavalent chromate exposure and respiratory cancer...." (C's Ex. 3 at 15). This scientific literature predates changing industry practices in the 1950s and 1960s, rendering the scientific understanding "obsolete" and "unrepresentative of new exposure conditions." (C's Ex. 2 at 10; C's Ex. 3 at 15).

had reduced lung cancer mortality risk; however, on the whole, as noted by the authors of the Modern Report, the literature was inconclusive.⁶ (C's Ex. 1 at 15, 29; Cooper Aff. C's Ex. 11, ¶ 27).

The scientific understanding of lung cancer mortality risk from hexavalent chromium exposure under modern plant conditions was continuing to evolve at the time the study described in the Modern Report was conducted in the late 1990s and early 2000s. Id. at 15, 32, 97-99; Cooper Aff. C's Ex. 11, ¶¶ 15, 18, 27, 32. The potential health risks associated with occupational exposure to hexavalent chromium in modern chromium production plants had yet to be established. (Cooper Aff. C's Ex. 11, ¶¶ 15, 18, 27; see also C's Ex. 1 at 29, 32). The Modern Report, together with other recent epidemiologic studies, constitutes, in the authors' own words, the "best available scientific evidence of the relationship between chromium exposure and human lung cancer risk." (C's Ex. 1 at 19). The authors of the Modern Report state,

⁶ As the authors of the Modern Report state:

It is tempting to attribute the apparent reduction of cancer risks suggested by most of the later epidemiological studies to improved workplace conditions and reduced exposure to Cr(VI) [hexavalent chromium] compounds. Despite the improvements cited for the three more recent studies, the effects of methodological limitations remain unclear, particularly the effects of inadequate latency periods for post-change cohorts, and low statistical power (and resulting imprecision of relative risk estimates) due to small cohort sizes.

(C's Ex. 1 at 32 (emphasis added); see also C's Ex. 3 at 11).

This study adds to a limited but very recent body of scientific studies of occupational exposure to chromium compounds. . . . *As with the other recent studies, this study is intended to help fill the critical gap in the published literature on which a scientifically sound risk assessment for hexavalent chromium may be based.*

Id. at 18 (emphasis added). The Modern Report, by documenting elevated lung cancer mortality risk, helps clarify the scientific understanding of the extent of risk under modern plant conditions. (Cooper Aff. C's Ex. 11, ¶¶ 9, 32; Hernandez Aff. C's Ex. 13, ¶¶ 20-21).

Respondent failed to immediately inform the Administrator of the Modern Report, as required by TSCA section 8(e). While Respondent received the Modern Report on or about October 8, 2002, Respondent did not submit the Modern Report to EPA until six years later. (Answer ¶ 41; Ellis Aff. C's Ex. 12, ¶¶ 5-7). Respondent submitted the Modern Report to the Agency's enforcement office on November 17, 2008, in response to two concurrent TSCA section 11 subpoenas that EPA sent to Respondent on August 22, 2008. (Ellis Aff. C's Ex. 12, ¶¶ 5-7). This was the first time Respondent submitted the Modern Report to EPA.

Id. ¶ 7. Respondent never submitted the Modern Report directly to EPA's Office of Pollution Prevention and Toxics, which manages the section 8(e) reporting program. (Hernandez Aff. C's Ex. 13, ¶ 23).

III. ARGUMENT

A. Standard for an Accelerated Decision on Liability

Section 22.20(a) of the Consolidated Rules of Practice and the Revocation/Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. Part 22, allows the Presiding Officer to "at any time render an accelerated decision in favor of a party as to any or all parts of the proceeding, without further hearing or upon such limited additional evidence, such as affidavits, as he may require, if no genuine issue of material fact exists and a party is entitled to judgment as a matter of law." 40 C.F.R. § 22.20(a).

The standard for granting a motion for accelerated decision pursuant to 40 C.F.R. § 22.20(a) is analogous to the standard for summary judgment under Rule 56(c) of the Federal Rules of Civil Procedure. In Re BWX Technologies, Inc., 9 E.A.D. 61, 74-77 (EAB 2000), 2000 EPA App. LEXIS 9 at *34-35; In Re Green Thumb Nursery, Inc., 6 E.A.D. 782, 793 (EAB 1997), 1997 EPA App. LEXIS 4 at *26-27; In Re CWM Chem. Serv., 6 E.A.D. 1, 12 (EAB 1995), 1995 EPA App. LEXIS 20 at *25-26. In deciding such motions, the evidence must be viewed in a light most favorable to the non-moving party. Adickes v. S.H. Kress & Co., 398 U.S. 144, 158-59 (1970). To defeat summary judgment, the non-moving party must not only raise an issue of material fact, but that party must also demonstrate that the dispute is "genuine" by

referencing probative evidence in the record, or by producing such evidence. In Re Green Thumb Nursery, Inc., 6 E.A.D. at 793, 1997 EPA App. LEXIS 4 at *27. "[P]arties opposing summary judgment must provide more than a *scintilla* of evidence on a disputed factual issue to show their entitlement to a trial or evidentiary hearing: the evidence must be substantial and probative in light of the appropriate evidentiary standard of the case." In Re BWX Technologies, Inc., 9 E.A.D. at 76, 2000 EPA App. LEXIS 9 at *40.

The EAB has ruled that for the Agency to prevail on a motion for accelerated decision, EPA must show that it has established the "critical elements of [statutory] liability" and that respondent "has failed to raise a genuine issue of material fact on its affirmative defense...." Id. at 77-78, 2000 EPA App. LEXIS 9 at *43-44. In addition to establishing the basic elements of, and proving a prima facie case of liability, the Agency, as the movant for an accelerated decision, must successfully dispose of respondent's affirmative defense.⁷ The Agency must "show that there is an absence of support in the record for the defense." Id. at 78, 2000 EPA LEXIS 9 at *44, citing Celotex Corp. v. Catrett, 477 U.S. 317, 323-324 (1986). Once EPA has done so, respondent, who "bear[s] the ultimate

⁷Where a respondent's answer alleges an affirmative defense, the Consolidated Rules provide that the answer shall state "[t]he circumstances or arguments which are alleged to constitute the grounds of any defense" 40 C.F.R. § 22.15(b).

burden of persuasion on its affirmative defense, must meet its countervailing burden of production by identifying 'specific facts' from which a reasonable factfinder could find in its favor by a preponderance of the evidence." Id.

In summary, a motion for accelerated decision should be granted in EPA's favor where the Agency both has established the basic elements of, and proven a prima facie case of TSCA section 8(e) liability, and Respondent has failed to raise a genuine issue of material fact on its alleged affirmative defenses.

B. EPA Has Established the Basic Elements of, and Proven, a Prima Facie Case of TSCA section 8(e) Liability

In order for the Agency to prevail on its motion for accelerated decision, Complainant must show that it has established the following elements of a prima facie case of TSCA section 8(e) liability:

- a) Respondent is a person who manufactures or distributes in commerce a chemical substance or mixture;
- b) Respondent obtained the Modern Report;
- c) the Modern Report reasonably supports the conclusion that hexavalent chromium exposure presents a substantial risk of injury to health; and
- d) Respondent failed to immediately inform the Administrator of the Modern Report.

15 U.S.C. § 2607(e). Complainant has alleged all four basic elements of liability in the Complaint. (Compl. ¶¶ 2, 4, 6-13, 41-42, 43-46, 49-50; Compl. at 11). As set forth in detail

below, Complainant can prove the four elements of liability through Respondent's admissions and documentary evidence. Thus, there are no genuine issues of material fact as to whether Respondent violated TSCA section 8(e).

1. Respondent Is a Person Who Manufactures or Distributes in Commerce a Chemical Substance or Mixture

For purposes of TSCA section 8(e), Respondent is a person⁸ who manufactures or distributes in commerce a chemical substance or mixture. Respondent admits in its Answer that it has two main manufacturing facilities that produce chromium chemicals in the United States, one of which was owned by Elementis at the time of the study. (Answer ¶¶ 6, 8). Respondent also admits that it manufactures chromium chemicals, including chromic acid (CASN 7738-94-5), chromic oxide (CASN 1308-38-9) and sodium dichromate (CASN 10588-01-9). Id. ¶ 9. Respondent's admission is substantiated by Elementis' own TSCA section 8(a) Inventory Update Reporting filings with the Agency. (C's Exs. 8, 9). In addition, Respondent admits that it distributes in commerce chromium chemicals, including chromic acid, chromic oxide and sodium dichromate. (Answer ¶¶ 11, 12). Respondent further

⁸ EPA TSCA section 8(e) guidance broadly defines "person" to include "any natural person, corporation, firm, company, joint-venture, partnership, sole proprietorship, association, or any other business entity, any State or political subdivision thereof, any municipality, any interstate body and any department, agency, or instrumentality of the Federal Government." U.S. EPA, TSCA Section 8(e); Notification of Substantial Risk; Policy Clarification and Reporting Guidance, 68 Fed. Reg. 33,129, 33,137 (June 3, 2003). Elementis Chromium Inc. is a corporation. As a corporation or other business entity, Respondent clearly meets the definition of a person.

admits that chromic acid and sodium dichromate are hexavalent chromium compounds. Id. ¶ 18. Therefore, the Presiding Officer should grant the Motion for Accelerated Decision on Liability as to the first element of liability.

2. Respondent Obtained the Modern Four Plant Report

Respondent obtained the Modern Report, thereby triggering its duty to report to the Administrator pursuant to TSCA section 8(e). As admitted in its Answer, Respondent and Dr. Joel Barnhart, the then-vice president of Elementis Chromium, obtained the Modern Report on or about October 8, 2002. Id. ¶¶ 24, 41, 42; see also C's Ex. 6 at 15 (Response 10.a.), 16 (Response 10.c.). Elementis' vice president played a leadership role in overseeing the development of the study described in the Modern Report through his involvement in various organizations. (Answer ¶¶ 25, 26, 31-34; see also C's Ex. 6 at 6 (Response 2), 8 (Response 4)). Dr. Barnhart's receipt of the Modern Report is documented in an electronic mail message dated October 8, 2002. (C's Ex. 4). Therefore, the Presiding Officer should grant the Motion for Accelerated Decision on Liability as to the second element of liability.

3. The Modern Four Plant Report Reasonably Supports the Conclusion that Hexavalent Chromium Exposure Presents a Substantial Risk of Injury to Health

Under TSCA section 8(e), Respondent must report information that reasonably supports the conclusion of substantial risk of

injury to health or environment. 15 U.S.C. § 2607(e).

Respondent admits in its Answer that exposure to hexavalent chromium may under certain circumstances result in adverse human health effects. (Answer ¶¶ 19-21). The Modern Report found elevated lung cancer mortality risk in the combined study cohort. (C's Ex. 1 at 17, 98). Consequently, the Modern Report, on its face, meets the TSCA section 8(e) statutory reporting threshold. (Hernandez Aff. C's Ex. 13, ¶¶ 16-19).

EPA's TSCA section 8(e) guidance explains that information showing "[a]ny instance of cancer" or "[a]ny pattern of effects or evidence which reasonably supports the conclusion that the chemical substance or mixture can produce cancer" constitutes substantial risk information and should be reported.⁹ (Hernandez Aff. C's Ex. 13, ¶ 13; Krasnic Aff. C's Ex. 14, ¶ 13; U.S. EPA, TSCA Statement of Interpretation and Enforcement Policy; Notification of Substantial Risk, 43 Fed. Reg. 11,110, 11,112 (March 16, 1978) (1978 Policy Statement); see also U.S. EPA, TSCA Section 8(e); Notification of Substantial Risk; Policy Clarification and Reporting Guidance, 68 Fed. Reg. 33,129, 33,138 (June 3, 2003) (2003 Guidance) (containing virtually unchanged language)).¹⁰

⁹ The statute itself does not define the term "substantial risk of injury" to health or environment. See TSCA 15 U.S.C. §§ 2601 et seq.

¹⁰ The current 2003 Guidance retains the Agency's longstanding policy first established in the 1978 Policy Statement regarding "substantial risk"

In the TSCA section 8(e) guidance, EPA has also emphasized that "[a] person is not to delay reporting until he obtains conclusive information that a substantial-risk exists, but is to immediately report any evidence which 'reasonably supports' that conclusion." (Krasnic Aff. C's Ex. 14, ¶ 14; 1978 Policy Statement, 43 Fed. Reg. at 11,112; see also 2003 Guidance, 68 Fed. Reg. at 33,139 (containing virtually unchanged language)). In addition, EPA has stressed that information from *epidemiologic studies* "will often 'reasonably support' a conclusion of substantial risk" and that in studies, such as the one presented in the Modern Report, even a single instance of cancer would be reportable if a chemical is strongly implicated.¹¹ (Krasnic Aff. C's Ex. 14, ¶¶ 15-17; 2003 Guidance, 68 Fed. Reg. at 33,139).

The Modern Report examines potential health risks from hexavalent chromium exposure in modern chromium production plants. Respondent admits that hexavalent chromium, also known as Chromium VI, CrVI, or Cr(VI), rarely occurs naturally, and that hexavalent chromium is generally produced by industrial processes. (Answer ¶¶ 16, 17). The authors of the Modern

information as well as other key components of the TSCA section 8(e) guidance. See Krasnic Aff. C's Ex. 14, ¶ 14.

¹¹ EPA's TSCA section 8(e) guidance provides examples of situations where 8(e)-reportable information may not need to be reported to the Agency. See 2003 Guidance, 68 Fed. Reg. at 33,139. However, the Modern Report does not meet any situation where TSCA section 8(e)-reportable information should not be reported. (Krasnic Aff. C's Ex. 14, ¶ 20).

Report state the goal of the study described in the Modern

Report in the following terms:

The primary goal of this study was to evaluate the possible cancer mortality risks associated with hexavalent chromium exposure in the post-change [modern] environment, increasing statistical power for the study by combining employees from four separate but similar facilities.¹²

(C's Ex. 1 at 41). Simply put, the Modern Report seeks to answer the question of whether there is lung cancer mortality risk from occupational exposure to hexavalent chromium, or, specifically, risk of death due to lung cancer, among workers in modern chromium production facilities. See id.; C's Ex. 3 at 17; Cooper Aff. C's Ex. 11, ¶¶ 10-11; Hernandez Aff. C's Ex. 13, ¶ 15. The Modern Report concludes that there is such risk. (C's Ex. 1 at 17-18, 77-85, 88-95, 98-99; Hernandez Aff. C's Ex. 13, ¶ 16; Cooper Aff. C's Ex. 11, ¶¶ 9, 24, 26, 32).

The Modern Report found *elevated* risk of lung cancer mortality in the combined study cohort from four modern chromium

¹² Similarly, the authors of the Modern Report, in the protocol, or design, for the study, characterize the purpose of the study in these terms:

This study has been designed to describe the cause-specific mortality patterns of employees engaged in the manufacture of chromium chemicals in the years since substantial changes in the production processes (i.e., reduction or elimination of lime) were implemented to reduce risks to employee health. . . . [T]he central goal of this study is to evaluate the possible cancer mortality risks associated with hexavalent chromium exposure in the "post-change" [modern] environment.

(C's Ex. 3 at 17).

production plants in Germany and the United States.¹³ (C's Ex. 1 at 17, 98; Hernandez Aff. C's Ex. 13, ¶ 16; Cooper Aff. C's Ex. 11, ¶ 9). The Modern Report documented "roughly a doubling of risk" of lung cancer death among chromium production workers in the high exposure group in the combined modern plant study cohort, compared to the lung cancer mortality experienced by the populations in states (United States) or regions (Germany) where the plants were located. (C's Ex. 1 at 17). The Modern Report also documented elevated lung cancer mortality risk among members of both the intermediate and high exposure groups in the combined study cohort. Id. at 82-83. These were based on average estimated exposure levels that, even in the highest exposure groups, were considerably lower than the exposure levels evaluated in previous epidemiologic studies. (Cooper Aff. C's Ex. 11, ¶¶ 28, 30, 32; Hernandez Aff. C's Ex. 13, ¶ 19).

The Modern Report is replete with statements and data that document the report's finding of elevated risk of lung cancer mortality in the combined study cohort. A few examples of the

¹³ The Modern Report authors used two standard methods for epidemiologic studies to analyze the risk of lung cancer mortality from occupational exposure to hexavalent chromium. (Cooper Aff. C's Ex. 11, ¶¶ 22-23). The first method, the standardized mortality ratio (SMR) analysis, compares mortality observed in the cohort to mortality that would be expected in an external reference group. Id. ¶ 23. The second method, logistic regression analysis, a statistical modeling tool, compares mortality between exposed workers and an internal comparison group representing workers with no or low exposure to hexavalent chromium. Id. ¶ 25). The latter method is useful because it can adjust for smoking as a potential confounding factor in a study cohort. Id. ¶ 26.

statements and data contained in the Modern Report regarding lung cancer mortality risk are illustrative:

- 1). The Modern Report states, "Lung cancer risk among the study population was moderately elevated, mainly due to an elevation among those in the highest categories of cumulative and peak chromium exposure indicators." C's Ex. 1 at 98;
- 2). The Modern Report states that risk of death from lung cancer due to occupational exposure to hexavalent chromium "was substantially elevated in the highest categories." Id. at 99;
- 3). Statistical modeling indicates that the high exposure group (200 (µg/L)-years) had increased odds of death due to lung cancer from occupational exposure to hexavalent chromium, "suggest[ing] a substantial risk associated with the highest exposure category." Id. at 82-84, 98-99, 121 (Table 17); and
- 4). Statistical modeling also indicates that the intermediate exposure group (40 to <200 (µg/L)-years) had increased risk of death due to lung cancer from occupational exposure to hexavalent chromium. Id. at 93, 98-99; 121 (Table 17).¹⁴

Plainly, the Modern Report contains statements and data that expressly and reasonably support a conclusion of substantial risk of injury from hexavalent chromium exposure to the health of workers in modern chromium production facilities. See generally, Cooper Aff. C's Ex. 11.

¹⁴ Similarly, Table 18 in the Modern Report indicates that workers in the high exposure group are more than eight times as likely (i.e., relative risk equals 8.0 times) to expire, or die, from lung cancer compared to members of the low exposure group. (C's Ex. 1 at 122; Cooper Aff. C's Ex. 11, ¶ 26). Table 18 also shows that workers in the intermediate exposure group are twice as likely (i.e., relative risk equals 2.0 times) to die from lung cancer compared to members of the low exposure group. Id.

Information about elevated lung cancer mortality risk is considered information which reasonably supports the conclusion that a chemical substance or mixture presents a "substantial risk of injury." (Hernandez Aff. C's Ex. 13, ¶¶ 14, 16-19; Krasnic Aff. C's Ex. 14, ¶¶ 15-17). As such, the Modern Report is subject to TSCA section 8(e)'s mandatory reporting duty, and Respondent should have immediately informed the Administrator of the information in the Modern Report. (Hernandez Aff. C's Ex. 13, ¶¶ 16-22). Therefore, the Presiding Officer should grant the Motion for Accelerated Decision on Liability as to the third element of liability.

4. Respondent Failed to Immediately Inform the Administrator of the Modern Four Plant Report

Respondent failed to immediately inform the Administrator of the Modern Report, as required by TSCA section 8(e). As admitted in its Answer, Respondent received the Modern Report on or about October 8, 2002. (Answer ¶ 41). However, Respondent did not inform EPA of the Modern Report until many years later. Specifically, Respondent did not submit the Modern Report to the Agency until November 17, 2008, in response to two concurrent TSCA section 11 subpoenas which EPA's enforcement office sent to Respondent on August 22, 2008. (Ellis Aff. C's Ex. 12, ¶¶ 5-7). This was the *first* time Respondent submitted the Modern Report

to EPA.¹⁵ Id. ¶ 7. Respondent never submitted the Modern Report directly to EPA's Office of Pollution Prevention and Toxics, which manages the section 8(e) reporting program, as provided by EPA's TSCA section 8(e) guidance. (2003 Guidance at 33,140; Hernandez Aff. C's Ex. 13, ¶ 23). Therefore, the Presiding Officer should grant the Motion for Accelerated Decision on Liability as to the fourth and final element of liability.

C. Respondent Has Failed to Raise a Genuine Issue of Material Fact on Its Alleged Affirmative Defenses

To prevail on a motion for accelerated decision, the Agency, as the movant for an accelerated decision, must successfully dispose of Respondent's affirmative defenses. In Re BWX Technologies, Inc., 9 E.A.D. at 78, 2000 EPA App. LEXIS 9 at *43-44. The Agency's task is to show that there is an absence of support in the record for Respondent's affirmative defenses. Id., 2000 EPA App. LEXIS 9 at *44, citing Celotex,

¹⁵ TSCA section 8(e) establishes a continuing mandatory reporting obligation. (Order Denying Resp't Mot. for J. on the Pleadings at 12). The TSCA section 8(e) disclosure requirement is extinguished only when a person either informs the Administrator of 8(e)-reportable information or has actual knowledge that the Administrator has been adequately informed of such information. 15 U.S.C. § 2607(e). Although EPA independently obtained a copy of the Modern Report on or about March 14, 2006, shortly after the publication of an article regarding the report in The Washington Post dated February 24, 2006, this fact does not operate to extinguish Respondent's continuing mandatory reporting obligation to inform the Agency of the Modern Report. Moreover, EPA was not in a position to confirm whether the copy of the Modern Report that the Agency obtained was the same as the version Respondent received until Elementis responded to EPA's TSCA subpoenas. Therefore, Respondent's statutory duty to report continued until Elementis submitted the Modern Report to the Administrator. (Compl. at 11).

477 U.S. at 323-24. If the Agency satisfies this burden, Respondent, as the non-movant bearing the ultimate burden of persuasion on its affirmative defenses, must meet its countervailing burden of production by identifying "specific facts" from which a reasonable factfinder could find in its favor by a preponderance of the evidence. Id. The Agency, as the accelerated decision movant who does not carry the burden of persuasion on affirmative defenses at hearing, has the "lesser burden" of pointing out to the reviewing tribunal that there is an absence of evidence in the record to support the nonmoving party's case on that issue and that the movant is entitled to judgment in its favor as a matter of law. Id. at 76, 2000 EPA App. LEXIS 9 at *39, citing Celotex, 477 U.S. at 323-24.

Respondent has asserted five defenses that it has characterized as "affirmative defenses." (Answer at 6-7). The Presiding Officer's ruling on Respondent's Motion for Judgment on the Pleadings has disposed of one of Respondent's five alleged defenses.¹⁶ As a result, there are four remaining alleged defenses which are summarized as follows:

¹⁶ On March 25, 2011, the Presiding Officer issued an Order denying Respondent's Motion for Judgment on the Pleadings, which pertained to Respondent's fourth affirmative defense concerning a defense of limitations. (Order on Resp't Mot. for J. on the Pleadings). On April 7, 2011, Respondent filed a motion for interlocutory appeal of the March 25, 2011 Order. (Resp't's Mot. Requesting The Presiding Officer to Recommend Interlocutory Review of the March 25, 2011 Order by the EAB). On April 14, 2011, Complainant filed a response to Respondent's motion. (Complainant's Response to Resp't's Mot. Requesting The Presiding Officer to Recommend Interlocutory Review of the March 25, 2011 Order by the EAB). On April 27, 2011, the

Defense #1: Complainant was adequately informed of the information described in the Modern Four Plant Report at the time of Elementis' alleged receipt thereof;

Defense #2: Elementis had actual knowledge that Complainant was adequately informed of the information described in the Modern Four Plant Report at the time of Elementis' alleged receipt thereof;

Defense #3: At the time of Elementis' alleged receipt of the Modern Four Plant Report, Complainant was aware of information indicating an increased risk of cancer among certain workers with high levels of exposure in chromium processing plants; and

Defense #5: Complainant's published guidance and interpretation of law stated that the Toxic Substances Control Act did not require information contained in the Modern Four Plant Report to be disclosed to Complainant.

(Answer at 6-7). There is an absence of evidence in the record for Respondent's first, second, third, and fifth alleged defenses.

In asserting its defenses, Respondent has not met its burden of production by identifying specific facts from which a reasonable factfinder could find in its favor by a preponderance of the evidence. Respondent's first, second, third, and fifth alleged defenses are merely bare assertions unsupported by specific facts.¹⁷ Even a cursory review of the Answer reveals

Presiding Officer issued an Order denying Respondent's motion for interlocutory appeal. (Order Denying Resp't Mot. for Interlocutory Appeal).

¹⁷The Consolidated Rules require that an answer state the "circumstances or arguments" alleged to constitute the grounds of any defense. 40 C.F.R. § 22.15(b). Respondent's Answer does not meet the Consolidated Rules' legal

that Respondent has not identified specific facts. See Answer at 6-7. In opposing this motion, Respondent must "provide more than a *scintilla* of evidence on a disputed factual issue to show their entitlement to a trial or evidentiary hearing: the evidence must be substantial and probative in light of the appropriate evidentiary standard of the case." In Re BWX Technologies, Inc., 9 E.A.D. at 76, 2000 EPA App. LEXIS 9 at *40. As a result, Respondent has failed to raise a genuine issue of material fact on its remaining alleged defenses. Consequently, Respondent's remaining alleged defenses are not a bar to the granting of Complainant's Motion for Accelerated Decision on Liability.

Respondent's first, second, third, and fifth alleged defenses fail to raise a genuine issue of material fact. With respect to the first alleged defense, Respondent's defense is based on the misapprehension that EPA was adequately informed of the information described in the Modern Report at the time Respondent obtained the Modern Report in 2002. EPA is not aware of any specific facts, circumstances, or arguments to support this defense. To the best of EPA's knowledge, the Agency did not have a copy of the Modern Report on or about October 8,

standard for defenses asserted in an answer. In its Answer, Respondent does not state the circumstances or arguments that constitute the grounds for its alleged first, second, third, and fifth defenses. See Answer. Rather, these alleged defenses are merely bare assertions unsupported by circumstances or arguments as well as by specific facts.

2002, nor did the Agency know about the Modern Report at that time. Moreover, to the best of EPA's knowledge, at no time on or about October 8, 2002 was the information described in the Modern Report available in a published study that reported the results of the Modern Report.

The Modern Report's finding of increased lung cancer mortality risk constitutes new information about potential health risks associated with occupational exposure to hexavalent chromium under modern plant conditions.¹⁸ (Cooper Aff. C's Ex. 11, ¶¶ 9, 26, 26, 29-32). For example, this is the first study to find elevated lung cancer mortality risk among workers exposed to significantly lower chromium levels found in modern chromium production plants. Id., ¶¶ 9, 30. This is also the first study to focus solely on workers who had worked exclusively in modern chromium production plants. In addition, this is the first study to follow workers employed in modern plants for a sufficient time to account for the extended latency period for respiratory cancers. Id., ¶¶ 30, 32. Moreover, this study benefits from analyzing an adequate number of lung cancer

¹⁸ EPA is well aware of a 2000 study conducted by Gibb et al. regarding hexavalent chromium exposure at a Baltimore, Maryland chromium production facility. While the Gibb et al. study, funded in part by EPA, made important contributions to the scientific understanding of lung cancer mortality risk from hexavalent chromium exposure, this study involved a facility which predated the chromium production changes in the modern plants analyzed in the Modern Report. (Arnold Aff. C's Ex. 10, ¶¶ 26-27, 33). Thus, the exposure conditions of the Baltimore plant analyzed by Gibb et al. differ from those of the plants in the Modern Report, and, as a result, Gibb et al. could not have provided the same type of information as was provided by the Modern Report.

deaths to provide a relatively precise risk estimate for the different exposures in the modern facilities. Id., ¶ 30. Therefore, the Modern Report contains new information, which was not previously known to the Agency. Consequently, Respondent's first alleged defense is not a bar to the granting of Complainant's Motion for Accelerated Decision on Liability.

Respondent's second alleged defense requires Respondent to demonstrate actual knowledge that EPA was adequately informed of the information in the Modern Report at the time Respondent obtained the Modern Report in 2002. 15 U.S.C. § 2607(e). Respondent has not offered specific facts, circumstances, or arguments to support its second alleged defense. See generally, Answer. In particular, Respondent has provided no evidence as to the factual basis for its alleged "actual knowledge" that the Administrator was adequately informed of the information in the Modern Report. Id. Additionally, EPA is not aware of any specific facts, circumstances, or arguments that would support Respondent's second alleged defense. To the best of EPA's knowledge, the Agency did not have a copy of the Modern Report on or about October 8, 2002, nor was the Agency aware of the information in the Modern Report at that time.

Tellingly, in response to EPA's TSCA subpoena, Dr. Joel Barnhart, Elementis' vice president at the time the study described in the Modern Report was conducted, states "he does

not know exactly how or when EPA first obtained the Study.” (C’s Ex. 6 at 20 (Response 11). Dr. Barnhart tacitly admits that he is without actual knowledge that EPA was adequately informed of the information in the Modern Report at the time Respondent obtained the Modern Report in 2002. In light of Respondent’s failure to offer evidence in support of its second alleged defense and Dr. Barnhart’s apparent lack of actual knowledge that EPA was adequately informed, it appears that Respondent has no factual basis for asserting actual knowledge as required by the statute. (Answer ¶¶ 25, 26, 31-34). Consequently, Respondent’s second alleged defense is not a bar to the granting of Complainant’s Motion for Accelerated Decision on Liability.

Respondent’s alleged third defense is based on the faulty premise that EPA was adequately informed of information indicating an increased risk of cancer among certain workers with high levels of exposure in chromium production plants. Respondent’s alleged third defense rests on the mistaken assumption that the nature and magnitude of health risks to humans from hexavalent chromium exposure in modern chromium production plants was a settled matter at the time of the 2002 study described in the Modern Report. However, if this matter were truly settled at the time the 2002 study was undertaken, it begs the question why Elementis and other chromium producers

underwrote the funding of the 2002 study in the first place. Rather, as supported by both the Modern Report itself and the record established through this Motion, the nature and magnitude of health risks to humans from the lower hexavalent chromium exposure levels in modern plants was not settled. (C's Ex. 1 at 15, 29; Cooper Aff. C's Ex. 11, ¶ 27).

The Modern Report's finding indicates that increased risk of lung cancer mortality persists even under the lower exposure levels which typify modern plant conditions. (Hernandez Aff. C's Ex. 13, ¶ 19; Cooper Aff. C's Ex. 11, ¶¶ 9, 28). This finding is important because it had been expected that changes in the chromium production process would have reduced worker exposure to chromate salt(s), thereby lessening concern for lung cancer mortality risk. Id. As such, the Modern Report fills a critical gap in the scientific understanding of the risk of lung cancer mortality from occupational exposure to hexavalent chromium in modern plants and is TSCA section 8(e)-reportable. Id. EPA could not have been aware of the information in the Modern Report until that report became available. Consequently, Respondent's third alleged defense is not a bar to the granting of Complainant's Motion for Accelerated Decision on Liability.

Respondent's alleged fifth defense is derived from a flawed understanding of EPA's TSCA section 8(e) guidance. Respondent has failed to identify the provision or provisions in the

guidance that constitutes the factual basis for its defense that EPA's guidance did not require Respondent to inform the Agency of the Modern Report. EPA's guidance does not relieve Respondent from the responsibility to inform the Administrator of the Modern Report. (Krasnic Aff. C's Ex. 14, ¶ 20).

Moreover, even if EPA's guidance could be construed to provide that the Modern Report need not have been reported to the Administrator, guidance does not impose any binding requirements upon either the regulated community or the Agency. Id., ¶ 8.

Assuming, arguendo, that Respondent relies upon EPA's guidance for the proposition that the Modern Report need not to have been reported because it substantially duplicates or confirms a well-recognized, well-established serious adverse effect, Respondent's reliance upon the guidance is misplaced. See 2003 Guidance, 68 Fed. Reg. at 33,139. As discussed above, only a few epidemiologic studies had evaluated the lung cancer mortality risk from hexavalent chromium exposure under modern plant conditions, and, on the whole, the limited scientific literature was inconclusive at the time the study described in the Modern Report was conducted. (C's Ex. 1 at 15, 29-32, 86; Cooper Aff. C's Ex. 11, ¶¶ 15, 27). As a result, the potential health risks associated with occupational exposure to hexavalent chromium in modern chromium production plants had yet to be established. (Cooper Aff. C's Ex. 11, ¶¶ 15, 18, 27; see also

C's Ex. 1 at 29, 32). Importantly, the study in the Modern Report was designed to specifically address some of the deficiencies in earlier studies (e.g., latency period and size of cohort). As noted by the Modern Report's authors, this study was intended "to help fill the critical gap in the published literature." (C's Ex. 1 at 18). For Respondent to now argue that the Modern Report merely duplicates or confirms a well-recognized, well-established serious adverse effect contradicts the Modern Report's authors' own statement about the purpose of the 2002 study. Consequently, Respondent's fifth alleged defense is not a bar to the granting of Complainant's Motion for Accelerated Decision on Liability.

In short, Respondent, in opposing this Motion, must provide "substantial and probative" evidence on a disputed factual issue to establish their right to an evidentiary hearing. In Re BWX Technologies, Inc., 9 E.A.D. at 76, 2000 EPA App. LEXIS 9 at *40.

IV. LIST OF AFFIDAVITS AND OTHER EXHIBITS

The following affidavits and other exhibits are referenced in Complainant's Memorandum in Support of its Motion for Accelerated Decision on Liability:

- 1). Modern Four Plant Report (September 27, 2002);
- 2). Draft Protocol for Modern Four Plant Report (April 23, 1999);
- 3). Revised Protocol for Modern Four Plant Report (July 9, 1999);
- 4). Electronic message from Industrial Health Foundation to Joel Barnhart, Elementis (October 8, 2002);
- 5). EPA TSCA Subpoena (Elementis/Barnhart) (August 22, 2008);
- 6). Elementis Response to EPA TSCA Subpoena with Index of Responsive Documents (Elementis/Barnhart) (November 17, 2008);
- 7). Elementis Response to EPA TSCA Subpoena with Index of Responsive Documents (Elementis/General) (December 12, 2008);
- 8). Elementis 2006 TSCA section 8(e) Inventory Update Report (Chromix acid);
- 9). Elementis 2006 TSCA section 8(e) Inventory Update Report (Chromic oxide);
- 10). Affidavit of Fredric Arnold;
- 11). Affidavit of Glinda Cooper;
- 12). Affidavit of Tony Ellis;
- 13). Affidavit of Oscar Hernandez; and
- 14). Affidavit of Toni Krasnic.

V. CONCLUSION

There are no genuine issues of material fact as to whether Respondent violated TSCA section 8(e). Specifically, the evidence in the record shows EPA has established the basic elements of, and proven, a prima facie case of TSCA section 8(e) liability: (1) Respondent is a person who manufactures or distributes in commerce a chemical substance or mixture; (2) Respondent obtained the Modern Report; (3) the Modern Report reasonably supports the conclusion that hexavalent chromium exposure presents a substantial risk of injury to health; and (4) Respondent failed to immediately inform the Administrator of the Modern Report, and continued such failure until November 17, 2008. Additionally, Respondent has failed to raise a genuine issue of material fact on its alleged defenses. There is an absence of support in the record for Respondent's remaining four alleged defenses and Respondent has not identified specific facts from which a reasonable factfinder could find in its favor by a preponderance of the evidence. For the foregoing reasons, Complainant respectfully requests that this motion be

granted and that Respondent be found liable as a matter of law
for its ongoing violation of section 8(e) of TSCA.

Respectfully submitted,

4/28/2011
Date



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CERTIFICATE OF SERVICE

I certify that the foregoing *Complainant's Motion for Accelerated Decision on Liability, Memorandum in Support of Complainant's Motion for Accelerated Decision on Liability, and Affidavits and Other Exhibits in support of Complainant's Motion for Accelerated Decision on Liability* in Docket No. TSCA-HQ-2010-5022, dated April 28, 2011, were sent this day in the following manner to the addresses listed below:

Original by hand and email to: Sybil Anderson
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Copy by hand to:

Presiding Officer: The Honorable Susan L. Biro
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Copy by overnight delivery and email to:

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