



Environmental Notes - Spring 2015

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TSCA REPORTING: VIOLATIONS MAY NEVER LAPSE, BUT CORROBORATIVE INFORMATION IS BETTER UNDERSTOOD

A recent ruling by EPA's Environmental Appeals Board (EAB) may keep manufacturers on the hook for failing to report new health risks under the Toxic Substance Control Act (TSCA) for a very long time. However, those same facilities now have a better idea what information is covered by TSCA.

Under Section 8(e) of TSCA, a facility must report to EPA any link it discovers between a TSCA chemical and health risks to employees. An exception to this reporting requirement is where EPA is "adequately informed already" of the information because it is "corroborative of well-established adverse effects."

In the case of *IN RE: Elementis Chromium, Inc.*, the EAB reversed a lower court ruling and dismissed a \$2.5 million fine against the company for violating Section 8(e) of TSCA. In the late 1990's, the company obtained an epidemiology study showing prolonged exposure to hexavalent chromium could increase risks of lung cancer. Elementis did not share the lung cancer study with EPA for six years.

In the opinion, the EAB concluded the company was not required to file the 8(e) report because EPA was already aware of the lung cancer risk at the dose levels in the study:

As stated in Section 8(e) guidance documents, EPA considers itself to be 'adequately informed already' of information that is 'corroborative of well-established adverse effects.'

The EAB Panel ruled information is deemed not to be "corroborative" if the adverse effects in a new study are "of a more serious degree or a different kind" than risks already known by EPA. Specifically, the EAB determined any information showing health risks at lower dose levels is treated as "non-corroborative." The Elementis study did not indicate lung cancer risks at lower dose levels than those known by EPA.

Importantly, the EAB took the opportunity to re-affirm a controversial interpretation of the five-year statute of limitations for TSCA claims. Under *Elementis*, the EAB concluded, had the TSCA Section 8(e) reporting requirement been triggered, Elementis would be in violation, even though more than five years passed before the company filed its epidemiology study with EPA. Although this is beyond the Federal statute of limitations, the EAB concluded that each day the report was not filed triggered a new statute of limitations.

While the *Elementis* decision does clarify what information EPA is now deemed to have knowledge of, it leaves industry on the hook virtually forever for TSCA 8(e) reporting violations.

SOUTH CAROLINA GENERATOR INSPECTION SCHEDULE INCREASES

Generators of hazardous waste with facilities in South Carolina are subject to revised inspection protocols beginning 2015. Now, South Carolina is allocating more resources to provide for increased hazardous waste inspections.

Historically, the South Carolina Department of Health and Environmental Control (DHEC) inspects hazardous waste treatment, storage, and disposal (TSDF) facilities annually.

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