



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

OFFICE OF CHEMICAL SAFETY
AND POLLUTION PREVENTION

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RE: Request for Approval of Extension Request and Enforcement Discretion Regarding DecaBDE Rule.

Dear Mr. Duvall,

This letter is in response to your request submitted on behalf of your client, RSCC Wire & Cable LLC (RSCC), related to the use of wire and cable for applications in nuclear power plants, under 40 C.F.R. § 751.405(a)(2)(ii). Thank you for the information you provided to EPA's Office of Pollution Prevention and Toxics (OPPT) regarding potential impacts to your client, customers, and the nuclear power generation sector. As you are of course aware, EPA promulgated a rule for decabromodiphenyl ether (decaBDE) two years ago, in January 2021. This rule prohibited the manufacture of decaBDE in 2021, but allowed an extended compliance deadline for processing and distribution in commerce of decaBDE for use in wire and cable insulation in nuclear power generation facilities, and for decaBDE-containing wire and cable insulation, with a compliance deadline of January 6, 2023 (40 CFR § 751.405(a)(2)(ii)). This compliance deadline was established after consideration by EPA of feedback from stakeholders, including RSCC. Failure to comply with this provision would put your client in violation under the Toxic Substances Control Act (TSCA).

RSCC has asked that OPPT approve its pending request for an extension of the compliance deadline related to wire and cable used in the nuclear industry, including power generation facilities, until April 30, 2024. The 2021 EPA rule, titled "Decabromodiphenyl Ether (DecaBDE); Regulation of Persistent, Bioaccumulative, and Toxic Chemicals Under TSCA Section 6(h)," does not include a provision allowing for compliance waivers or extending compliance deadlines, and thus absent a new rulemaking OPPT cannot make such a change. Moreover, OPPT does not intend to initiate a rulemaking to extend the compliance date to the requested timeframe of April 30, 2024.

As noted in the January 13, 2023 letter from RSCC, EPA developed the January 6, 2023 compliance deadline in the January 2021 final rule after engagements with RSCC and other stakeholders to discuss, among other things, the achievability of the January 6, 2023 deadline. On March 16, 2021, EPA noted its intent to review the five PBT rules (EPA-HQ-OPPT-2021-0202-0001) and broadly requested public comment. This notice specifically asked for comment on implementation issues associated with the final rules. RSCC did not submit any comments. OPPT requested a call with RSCC which was held on April 15, 2021. At that point, RSCC did not raise a concern to EPA about meeting the 2023 deadline. In short, despite earlier opportunities in 2021 to raise concerns with EPA, RSCC failed to contact EPA until October of 2022 about new concerns regarding their ability to meet the compliance deadline set in January 2021 and the potential impacts to RSCC and others of compliance with the deadline.¹

RSCC has also asked EPA to “issue enforcement discretion to permit resumption of manufacture, processing and distribution of wire and cable that contain decaBDE for nuclear power generation facilities until such time as OPPT can approve RSCC’s extension request,” and notes the No Action Assurance associated with Phenol, Isopropylated Phosphate (3:1), or PIP (3:1), issued in March 2021. OPPT is denying RSCC’s request to extend the compliance deadline in 40 C.F.R. § 751.405(a)(2)(ii) and, after discussion with Office of Enforcement and Compliance Assurance (OECA) regarding No Action Assurances (NAAs) for this circumstance, will not be asking OECA for enforcement discretion through an NAA. However, RSCC should reach out directly to Rosemarie Kelley, Director of the Office of Civil Enforcement, to discuss if there are enforcement settlement response options available. You can reach her at kelley.rosemarie@epa.gov or 202-564-4014.

Sincerely,

**DENISE
KEEHNER**  Digitally signed by
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Denise M. Keehner, Director
Office of Pollution Prevention and Toxics
U.S. Environmental Protection Agency

¹ Stated in the January 13, 2023, letter, “As it turns out, two years was insufficient time in which to obtain qualification of nuclear facility wire and cable that do not contain decaBDE. Recognizing this, on October 18, 2022, RSCC asked OPPT for a further extension of the compliance deadline for this use of decaBDE.”