

Decision of the U.S. Court of Appeals against an injunction filed by a U.S. subsidiary of Denka

As announced in the “Announcement of New Regulations set by the U.S. Environmental Protection Agency that apply to Chloroprene Rubber Manufacturing Facilities in the U.S.” on April 17, 2024, on April 9 of the same year (local time), the U.S. Environmental Protection Agency (“EPA”) announced new chemical air emission regulations (“new regulations”) applicable to chloroprene rubber manufacturing facilities, including Denka Performance Elastomer LLC (“DPE,” Denka has a 70% stake in the company.), a U.S. subsidiary of Denka Company Limited (Denka). The new regulations were published in the official gazette on May 16, 2024 (local time) and will take effect on July 15 of the same year (local time), 60 days after that day of publication. Furthermore, the grace period for implementing measures in line with the new regulations has been set at 90 days from the date of enforcement.

In response, DPE filed a motion for injunction on May 28, 2024 (local time) with the U.S. Court of Appeals for the District of Columbia (“DC Court of Appeals”) seeking a stay of the EPA’s 90-day grace period for the new regulations. The DC Court of Appeals ruled on June 26 of the same year (local time) to reject the petition, as described below.

1. Background of Petition and Decision, etc.

The EPA’s new regulations require chloroprene rubber manufacturing facilities in the U.S. to take various emission control measures to substantially reduce emissions of chloroprene monomers (*1), which are used as an intermediate raw material. The new regulations will take effect 60 days after the date of publication in the official gazette, and the grace period for taking such measures was set at 90 days after the date of publication.

These new regulations respond to the results of the EPA’s Risk and Technology Review (RTR), which is based on the EPA’s 2010 Integrated Risk Information System (IRIS) carcinogenicity assessment of chloroprene monomers. DPE has long demanded that the EPA review the carcinogenicity assessment of chloroprene monomers based on the latest science, claiming that the carcinogenicity of chloroprene monomers is overestimated by IRIS (see 4 below). DPE has consistently operated this business of manufacturing chloroprene rubber in compliance with the emission standards of the state of Louisiana since it took over the business from DuPont on November, 2015. In addition, it has further invested a total of more than 35 million dollars in the environment based on consultations with the Louisiana Department of Environmental Quality (LDEQ) and the EPA, and has reduced the amount of chloroprene monomers emitted at the facility by 85 percent as of 2019 compared with that in 2014. Since this new regulations do not appear to review the validity of the carcinogenicity assessment based on the latest science, but will have a significant impact on the continued operation of DPE, in response to the publication of the new regulations in the official gazette on May 16, 2024 (local time), DPE filed a petition for a review of the new regulations themselves with the DC Court of Appeals on the same day, and on May 28 of the same year (local time), filed a motion for injunction seeking a stay of the grace period until the implementation of emission reduction measures with the DC Court of Appeals. In parallel, DPE filed an application with the LDEQ for a two-year extension of the grace period for the new regulations.

2. Content of the Decision, etc. on the Petition

In a written decision dated June 26, 2024 (local time), the DC Court of Appeals rejected the motion for a grace period injunction filed by DPE.

However, regarding DPE’s parallel application to LDEQ for a two-year extension of the grace period for the new regulations, DPE received a notice from LDEQ on June 27 of the same year (local time) granting DPE’s application for a two-year extension

of the grace period for the new regulations. DPE has contacted the EPA regarding the EPA's position on the validity of this notice, but as of today, the EPA's position has not been made clear.

As of today, there has been no decision on the petition filed by DPE with the DC Court of Appeals for the review of the new regulations themselves.

3. Future Outlook

Regarding future actions, DPE will closely examine the content of the DC Court of Appeals' decision, etc. and discuss and review it with the counsel for the litigants, and will continue to take action to seek a stay or extension of the 90-day grace period. DPE will continue to closely examine the impact on the operation of DPE's chloroprene rubber manufacturing facilities and Denka's consolidated financial results due to the new regulations and this DC Court of Appeals' decision, etc. Further disclosures will be released promptly if any matters that require disclosure should arise due to further detailed examination, etc. in the future.

4. Supplemental Information (Carcinogenicity Assessment of Chloroprene Monomers)

Since the EPA's assessment, in 2010, of the carcinogenicity of chloroprene monomers, which was based on the Integrated Risk Information System (IRIS), overestimated their toxicity, DPE has been requesting the EPA to perform a review that incorporates the latest scientific technologies, and has consulted with the EPA on the application of a model of physiologically based pharmacokinetics (PBPK). As a result, the EPA has also accepted it, and DPE has been developing a new PBRK model jointly with the EPA since 2018. Subsequently, in July 2021, DPE submitted a request to the EPA for a review of the carcinogenicity assessment of chloroprene monomers based on the new, jointly developed PBPK model.

However, in October 2022, the EPA rejected DPE's Request for Review. The reason for the denial was that they were not obligated to bring newer science into the assessment because the carcinogenicity assessment of chloroprene monomers conducted based on the Integrated Risk Information System (IRIS) in 2010 was systematized through peer review by a strict third party at that time using the best science at the time which complied with the EPA Information Quality Guidelines.

Despite the above, the results of the toxicity assessment using the new PBPK model were published in the leading science magazine, "Inhalation Toxicology." In the said publication, the "Recommendation Value" which is a 70-year average exposure concentration of 0.2 $\mu\text{g}/\text{m}^3$ or below based on EPA's 2010 IRIS carcinogenicity assessment was concluded to be overstated. In addition to the new PBPK model, a causal relationship between chloroprene monomers and carcinogenicity, as claimed by the EPA, has not been confirmed from the data, such as a recent epidemiological study updated by researchers at the University of Pittsburgh that followed approximately 7,000 employees who worked at the facilities handling chloroprene monomers for nearly 70 years in the U.S., and carcinogenic statistics around DPE plants by the Louisiana Tumor Registry.

5. Outline of the Subsidiary of Denka

(1) Company Name	Denka Performance Elastomer LLC (DPE)
(2) Location	State of Louisiana, USA
(3) Title and name of representative	Kazuya Tokumoto, President & CEO
(4) Content of business	Manufacture and sale of synthetic rubber (Neoprene)
(5) Capital	121 million USD
(6) Major shareholders and share ownership ratio	Denka USA LLC (100% invested by Denka Company Limited): 70% DIANA ELASTOMERS, INC. (100% invested by Mitsui & Co., Ltd.): 30%
(7) Date of establishment	December 8, 2014

(*1) Chloroprene monomer: Chemical substance that is a raw material of chloroprene rubber

[Regarding DPE's environmental initiatives, please refer to the following information posted on Denka's official website.

<https://www.denka.co.jp/eng/>]

- “Announcement of New Regulations set by the U.S. Environmental Protection Agency that apply to Chloroprene Rubber Manufacturing Facilities in the U.S.” April 17, 2024
https://www.denka.co.jp/eng/storage/news/pdf/490/20240417_denka_dpe_en.pdf
- “U.S. EPA's Review of the Toxicity Assessment of Chloroprene Monomers (9th Report)” April 21, 2023
https://www.denka.co.jp/eng/storage/news/pdf/445/20230421_denka_dpe_en.pdf
- “U.S. EPA's Review of the Toxicity Assessment of Chloroprene Monomers (8th Report)” March 6, 2023
https://www.denka.co.jp/eng/storage/news/pdf/442/20230306_denka_dpe_en.pdf
- “U.S. EPA's Review of the Toxicity Assessment of Chloroprene Monomers (7th Report)” January 13, 2023
https://www.denka.co.jp/eng/storage/news/pdf/439/20230113_denka_dpe_en.pdf
- “U.S. EPA's Review of the Toxicity Assessment of Chloroprene Monomers (6th Report)” October 28, 2022
https://www.denka.co.jp/eng/storage/news/pdf/429/20221028_denka_dpe_en.pdf
- “U.S. EPA's Review of the Toxicity Assessment of Chloroprene Monomers (5th Report)” June 17, 2022
https://www.denka.co.jp/eng/storage/news/pdf/407/20220617_denka_dpe_en.pdf
- “U.S. EPA's Review of the Toxicity Assessment of Chloroprene Monomers (4th Report)” April 28, 2022
https://www.denka.co.jp/eng/storage/news/pdf/406/20220428_denka_dpe_en.pdf
- “U.S. EPA's Review of the Toxicity Assessment of Chloroprene Monomers (3rd Report)” July 20, 2021
https://www.denka.co.jp/storage/news/pdf/901/20210720_denka_dpe.pdf
- “U.S. EPA's Review of the Toxicity Assessment of Chloroprene Monomers (Updated)” March 2, 2021
https://www.denka.co.jp/eng/storage/news/pdf/332/20210302_denka_dpe_en.pdf
- “Latest epidemiological study of chloroprene monomer workers in the US” December 17, 2020
https://www.denka.co.jp/eng/storage/news/pdf/317/20201217_denka_dpe_en.pdf
- “Transition to Review Process in Toxicity Assessments Reconsideration of Chloroprene Monomer by the United States Environmental Protection Agency” August 7, 2020
https://www.denka.co.jp/eng/storage/news/pdf/311/20200807_denka_dpe_en.pdf
- “LDEQ confirms 85% emissions reduction achieved, DPE's completion of voluntary program” June 8, 2020
https://www.denka.co.jp/eng/storage/news/pdf/314/20200608_denka_dpe_en.pdf
- “Notice Regarding Litigation Against US Subsidiary” February 14, 2020
https://www.denka.co.jp/eng/storage/news/pdf/265/20200214_denka_dpe_litigation_en.pdf
- “U.S. EPA's Review of the Toxicity Assessment of Chloroprene Monomers” February 14, 2020
https://www.denka.co.jp/eng/storage/news/pdf/266/20200214_denka_statement_en.pdf
- “Notice Regarding Initiatives to Reduce Environmental Burden Being Undertaken by Denka's Subsidiary in the United States” June 19, 2019
https://www.denka.co.jp/eng/storage/news/pdf/238/20190619_statement_en.pdf

End of Press Release

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Corporate Communications Dept. Tel: +81-3-5290-5511