



## ASSISTANT ADMINISTRATOR FOR ENFORCEMENT AND COMPLIANCE ASSURANCE

WASHINGTON, D.C. 20460

September 27, 2024

### MEMORANDUM

**SUBJECT:** Extension to Enforcement Statement Regarding the Prohibition of Processing and Distribution in Commerce of Decabromodiphenyl Ether (DecaBDE)-Containing Wire and Cable Insulation in Nuclear Power Generation Facilities under 40 C.F.R. § 751.405(a)(2)(ii)

**FROM:** David M. Uhlmann

**TO:** Michal Freedhoff  
Assistant Administrator  
Office of Chemical Safety and Pollution Prevention

In response to your request of September 26, 2024, the Office of Enforcement and Compliance Assurance is issuing this extension to its May 2, 2023, [Enforcement Statement](#) regarding the Toxic Substances Control Act Section 6(h) Rule, which prohibits the processing and distribution in commerce of decaBDE-containing wire and cable insulation for use in nuclear power generation facilities after January 6, 2023. See 40 C.F.R. § 751.405(a)(2)(ii).<sup>1</sup>

As explained more fully below, the EPA does not intend to pursue enforcement actions for violations of the prohibition on processing and distribution in commerce of decaBDE-containing wire and cable insulation for use in nuclear power generation facilities, provided the entities involved are diligently seeking to qualify their alternative products in accordance with Nuclear Regulatory Commission regulations and guidance and meet other conditions of this enforcement statement. Additionally, entities that either (i) use decaBDE-containing wire and cable insulation in components that do not need separate qualification in accordance with NRC regulations, or (ii) distribute decaBDE-containing wire to nuclear power generation facilities with those or other components should diligently be seeking to replace the decaBDE-containing wire and cable insulation with a qualified alternative wire when available.

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<sup>1</sup> The final rule entitled “Decabromodiphenyl Ether (DecaBDE); Regulation of Persistent, Bioaccumulative, and Toxic Chemicals Under TSCA Section 6(h),” (or the “decaBDE rule”) was published on January 6, 2021. The decaBDE rule phased-in the prohibition of all processing and distribution in commerce of decaBDE for use in wire and cable insulation in nuclear power generation facilities, and decaBDE-containing wire and cable insulation, setting a January 6, 2023, compliance deadline.

The EPA's decision to issue its May 2023, enforcement statement was based in large part on OCSPP's April 20, 2023, [request for enforcement statement](#), which explained that once decaBDE has been encased in the cured coating, the potential for worker exposure is minimal. OCSPP further explained that failing to enforce violations of the prohibition on the processing and distribution of wire and cable already containing decaBDE would not jeopardize the EPA's efforts to ensure the protection of health and the environment under TSCA.

As raised in OCSPP's request and separately by the Nuclear Energy Institute and regulated entities, we understand that the lapse between the expiration of the existing enforcement statement and the effective date of the to-be-issued final rule could interfere with scheduled and unscheduled maintenance at nuclear power plants, which could lead to power outages and/or grid instability or the inability to maintain safe operations. DecaBDE-containing insulation used in wires, cables, and components play a vital role in the operation of numerous safety systems required by Federal regulations for both safe operation and safe shutdown of nuclear facilities. Without qualified cables and components, reactors that schedule temporary outages for routine maintenance might not be able to restart operations. Additional power capacity could be at risk if any plants experience premature failures of decaBDE-containing components that would require unplanned repair or replacement. The lack of qualified cables could decrease electricity production and create reliability risks in the U.S. electric system, risks that the EPA believes must be prevented.

As discussed in OCSPP's request, the final rule addressing the compliance deadline amending the 2021 decaBDE rule has been submitted to the Office of Management and Budget for interagency review, which is scheduled to conclude on October 24, 2024. OCSPP anticipates that the final rule will be published in November 2024, with an effective date in January 2025.

In recognition of these extremely unusual circumstances, the EPA does not intend to pursue enforcement for the following violations:

- Prohibitions on processing and distributing in commerce of decaBDE-containing wire and cable insulation for use in nuclear power generation facilities, after January 6, 2023 (see 40 C.F.R. § 751.405(a)(2)(ii)).
- The requirement in 40 C.F.R. § 751.405(c)(1)(ii) that records that must be maintained must contain a statement that the decaBDE-containing products or articles are complying with 40 C.F.R. § 751.405(a) for entities processing and distributing in commerce decaBDE-containing wire and cable insulation for use in nuclear power generation facilities after January 6, 2023.
- Any related TSCA Section 15(2) violation for using, for commercial purposes, a chemical substance or mixture which a person knew or had reason to know was manufactured, processed, or distributed in commerce in violation of TSCA Section 6 (i.e., use by a nuclear power plant or a manufacturer of component parts for a nuclear power plant of any decaBDE-containing wire, cable, or component processed or distributed after January 6, 2023).

I emphasize that **this statement of enforcement discretion applies only to the requirements stated above and only to entities working diligently to qualify their alternative components under NRC regulations and guidance. Entities that either (i) use decaBDE-containing wire and cable insulation in components that do not need separate qualification in accordance with NRC regulations, or (ii)**

**distribute decaBDE-containing wire to nuclear power generation facilities with those or other components should diligently be seeking to replace the decaBDE-containing wire and cable insulation with a qualified alternative wire when available.** The statement does not cover the existing prohibition of all processing and distribution in commerce of decaBDE (i.e., raw or compounded) for use in wire and cable insulation in nuclear power generation facilities. Moreover, this exercise of enforcement discretion is also conditioned on compliance with all other aspects of the 2021 final decaBDE Rule, as well as the following additional conditions:

- **Records:** Records required to be kept under 40 C.F.R. § 751.405(c)(1)(ii) must contain a statement that the decaBDE-containing products or articles, either are complying with 40 C.F.R. § 751.405(a) or are consistent with this enforcement statement.
- **Export Notification:** A condition of the exercise of enforcement discretion described in this enforcement statement is that any entity processing or distributing in commerce of decaBDE-containing wire and cable insulation for use in nuclear power generation facilities after January 6, 2023, must report any exports of such wire or cable to the EPA as if under TSCA Section 12(b) and the provisions of subpart D of 40 C.F.R. part 707, using the TSCA Section 12(b) reporting tool available in the EPA's Central Data Exchange (CDX).

This enforcement statement reflects the EPA's enforcement intent only until either (1) 11:59 PM ET, January 30, 2025, or (2) the effective date of a final action addressing the compliance date for the prohibition on processing and distributing in commerce of decaBDE-containing wire and cable insulation, whichever occurs earlier. The EPA reserves the right to revoke or modify this enforcement statement at any time.

If you have any further questions regarding this matter, please contact Phil Milton of my staff at (202) 564-5029 or [milton.philip@epa.gov](mailto:milton.philip@epa.gov).

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