

Announcement of appeal¹

Case	A-006-2016
Appellants	SI Group-UK Ltd, United Kingdom TÜV SÜD Iberia S.A.U., Spain Sasol Germany GmbH, Germany Nalco Limited, United Kingdom Oy Nizhex Scandinavia Ltd, Finland Addivant UK Ltd, United Kingdom MHM Holding GmbH, Germany PCC Synteza SA, Poland ICC Industries BV, The Netherlands Hermes Chemicals Marketing BV, The Netherlands GE Water & Process Technologies bvba, Belgium GE Water & Process Technologies France S.A.S., France
Appeal received on	28 July 2016
Subject matter	A decision adopted by the European Chemicals Agency pursuant to Article 46(1) of the REACH Regulation, in accordance with the procedure laid down in Articles 50 and 52 of the REACH Regulation
Keywords	<i>Substance evaluation – Request for further information</i>
Contested Decision	Decision of 29 April 2016 on substance evaluation for Phenol, 4-nonyl-, branched (CAS No 84852-15-3; EC No 284-325-5), notified to the Appellants through the following annotation numbers: SEV-D-2114331672-54-01/F, SEV-D-2114331673-52-01/F, SEV-D-2114331693-50-01/F, SEV-D-2114331674-50-01/F, SEV-D-2114331675-48-01/F, SEV-D-2114331678-42-01/F, SEV-D-2114331679-40-01/F, SEV-D-2114331683-51-01/F, SEV-D-2114331684-49-01/F, SEV-D-2114331689-39-01/F, SEV-D-2114331690-56-01/F, SEV-D-2114330418-53-01/F, SEV-D-2114330416-57-01/F
Language of the case	English

¹ Announcement published in accordance with Article 6(6) of Regulation (EC) No 771/2008 laying down the rules of organisation and procedure of the Board of Appeal of the European Chemicals Agency, as amended by Commission Implementing Regulation (EU) No 2016/823.

Background

Phenol, 4-nonyl-, branched (hereinafter the 'Substance') is mainly used as a chemical intermediate in high tonnages to make many other substances. It has been identified as a substance of very high concern and included in the candidate list of substances for inclusion in Annex XIV to the REACH Regulation (list of substances subject to authorisation). It is, moreover, subject to specific restrictions in accordance with Annex XVII to the REACH Regulation. In addition, the Substance may contain 2,4-dinonylphenol (EC No 284-323-4), which has been found to be very persistent and very bioaccumulative, as an impurity.

The Contested Decision was adopted on 29 April 2016 following the evaluation of the Substance by the Competent Authority of the United Kingdom. It requires the Appellants to provide further information due to concerns relating inter alia to a perceived lack of data on the level of protection against endocrine disrupting properties provided by the aquatic predicted no-effect concentration (hereinafter the 'PNEC'), the interpretation of environmental half-life data, aquatic risks from degradation of nonylphenol ethoxylate, deficiencies in the data sets concerning wastewater treatment plant partitioning, bioaccumulation, sediment organism toxicity and secondary poisoning.

The Contested Decision requests, amongst other information, further information on the persistent, bioaccumulative and toxic ('PBT') properties of the Substance, on the environmental exposure assessment (hereinafter 'EEA') and on the environmental fate of the Substance. No new testing on vertebrate animals is required in this regard.

The Contested Decision also requests further information on environmental PNECs, to be derived inter alia from existing data on fish and potentially from testing on aquatic molluscs and echinoderms.

Remedy sought by the Appellants

The Appellants request the Board of Appeal to annul those parts of the Contested Decision requiring the submission of further information concerning the EEA and environmental PNECs. The Appellants also request that the Executive Director and/or the Board of Appeal annul the Contested Decision *'in full or in part'* and take *'any other further measures as justice may require'*. Moreover, the Appellants seek reimbursement of the costs incurred in the proceedings and the refund of the appeal fee.

In the alternative, the Appellants request that a new deadline be set for the submission of the information required by the Contested Decision.

Pleas in law and main arguments

The Appellants raise a variety of pleas in support of their appeal, alleging that the Contested Decision is *'not consistent with the legal intent'* of substance evaluation because some of the information at issue cannot be requested under that procedure, that the Contested Decision breaches the principles of proportionality and legal certainty, the duty to state reasons, and animal welfare requirements, that the action taken was ultra vires and that the Contested Decision is vitiated by errors of assessment. The Appellants also claim that the deadline for providing the information requested by the Contested Decision is *'unreasonable'* and *'not legally appropriate'*.

Further information

The rules for the appeal procedure and other background information are available on the 'Appeals' section of the Agency's website:

<http://echa.europa.eu/web/guest/regulations/appeals>