

Announcement of appeal¹

Case	A-005-2014
Appellants	Akzo Nobel Industrial Chemicals GmbH, Germany Dow Deutschland Anlagengesellschaft mbH, Germany KEM ONE, France INEOS ChlorVinyls Ltd, United Kingdom Solvay Chimica Italia S.p.A., Italy Solvay Electrolyse France SAS, France
Appeal received on	26 May 2014
Subject matter	A decision taken by the European Chemicals Agency (the '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 - Proportionality</i>
Contested Decision	Decision on substance evaluation for carbon tetrachloride of 26 February 2014. The Decision was notified to the Appellants through the following annotation numbers: SEV-D-2114274040-63-01/F, SEV-D-2114274051-60-01/F, SEV-D-2114274042-59-01/F, SEV-D-2114274043-57-01/F, SEV-D-2114274049-45-01/F and SEV-D-2114274050-62-01/F
Language of the case	English

Remedy sought by the Appellant

The Appellants request the Board of Appeal to annul the Contested Decision in its entirety, and order the Agency to refund the appeal fee.

Pleas in law and main arguments

The Contested Decision was adopted by the Agency on 26 February 2014 following a substance evaluation of carbon tetrachloride (the 'Substance') by the French Competent Authority.

In the Contested Decision the Appellants are requested to submit information on an Extended One Generation Reproduction Toxicity Study by inhalation route (OECD TG 443) using the Substance by 26 May 2016.

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.

According to the Contested Decision, this information is required to enable an assessment to be made on the reproductive properties of the Substance and on whether there remains an uncontrolled risk that should be subject to further risk management measures.

The Agency observed in the Contested Decision that since several registrants of the same substance are required to provide the same information, they are obliged to make every effort to reach an agreement for every endpoint as to who is to carry out the test on behalf of the other registrants.

By their first plea, the Appellants claim that the Contested Decision breaches the principle of proportionality. In particular, the Appellants argue that the study requested by the Agency is not necessary to complete the evaluation of the Substance to determine whether the Substance constitutes a risk to human health (or the environment). The Appellant also argues that the Agency did not demonstrate that conducting the requested study is adequate to achieve the objectives pursued. In addition, the Appellant argues that the requested study is not the least onerous measure to attain the pursued objective since it is excessive in terms of the number of animal sacrificed and there is insufficient likelihood that it will provide meaningful results.

By their second plea, the Appellants claim that the Contested Decision breaches Article 13(3) of the REACH Regulation in particular as the requested study is not yet introduced in the Commission Regulation on test methods, nor is it an international test method recognised by the Commission or the Agency as being appropriate.

By their third plea, the Appellants claim that the Contested Decision breaches Article 25(1) of the REACH Regulation as the Agency did not ensure that testing on vertebrate animals is undertaken only as a last resort and that the fewest number of animals possible are used to satisfy the objective pursued.

By their fourth plea, the Appellants claim that the Agency infringed its duty to state reasons by failing to provide reasons why it requested the study and changed its request from a two-generation reproduction toxicity study which was requested in the draft decision.

By their fifth plea, the Appellants claim that the Agency breached the Appellant's right to be heard as the Appellants were not given the possibility to review and comment on certain data submitted by the French Competent Authority shortly before the Member State Committee meeting at which the Contested Decision was agreed upon.

By their sixth plea, the Appellants claim that the Contested Decision breaches the principle of legal certainty and non-retroactivity as they were notified of the deadline after which updates of their registration dossier would not be taken into account only after that deadline had passed.

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>

The CoRAP list of substances is available here:

<https://echa.europa.eu/information-on-chemicals/evaluation/community-rolling-action-plan/corap-table>