

## Announcement of appeal<sup>1</sup>

<b>Case</b>	A-007-2012
<b>Appellant</b>	Italcementi Fabbriche Riunite Cemento S.p.A. Bergamo, Italy
<b>Appeal received on</b>	28 September 2012
<b>Subject matter</b>	A decision taken by the European Chemicals Agency (the 'Agency') pursuant to Article 41(3) of the REACH Regulation, in accordance with the procedure laid down in Articles 50 and 51 of the REACH Regulation
<b>Keywords</b>	<i>Evaluation – Compliance Check – Request to submit further information – UVCB identification – Annex VI requirements</i>
<b>Contested decision</b>	CCH-D-0000002626-72-02/F
<b>Language of the case</b>	English

### Remedy sought by the Appellant

The Appellant requests the Board of Appeal to:

- annul the contested decision which obliges the Appellant to submit further information on i) name or other identifier of the substance and ii) composition of the substance; or, in subsidiary order, should the Board of Appeal not annul the contested decision;
- partially annul and replace the contested decision by a new decision extending the time-limit for submission of the information to a date that is six months after the decision of the Board of Appeal; and
- reimburse the Appellant the fees for, and costs arising from, the appeal proceedings.

### Pleas in law and main arguments

The contested decision was adopted on 31 July 2012 following a compliance check under the dossier evaluation procedure of the Appellant's registration submitted for the substance flue dust, Portland cement.

In the contested decision the Agency states that the registration did not comply with the requirements of Article 10 as well as Annex VI of the REACH Regulation. The Agency requested the Appellant to submit the following information:

- Name or other identifier of the substance (Annex VI, Section 2.1) and
- Composition of the substance (Annex VI, 2.3).

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<sup>1</sup> 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.

The Agency's reasoning can be summarised as follows:

1. Regarding the name or other identifier of the substance (Annex VI, 2.1) the Agency stated that the naming of substances of Unknown or Variable composition, Complex reaction products or Biological materials (UVCB) shall consist of two parts, the chemical name and the more detailed description of the manufacturing process. In this case, the composition of the substance varied considerably with a high variation in the concentration of 3 constituents in particular. The Agency concluded that, based on the information provided in the Registrant's comments and in the updated registration dossier, significant changes exist in the manufacturing process of flue dusts from Portland cement and these differences lead to the production of different substances under REACH. As a result, the registrant is requested to provide detailed information on the manufacturing process of specific fraction(s) of the flue dust.
2. Regarding the composition of the registered substance (Annex VI, 2.3) the Agency stated that the registration does not contain sufficient information to establish the composition of the registered substance and therefore its identity. The Registrant has provided information on the composition of the registered substance and on the variation in the concentrations of the main constituents. For some compositions exceptionally wide concentration ranges have been provided. The Agency stated that while inherent variations due to the composition of the raw materials are perfectly acceptable, compositions referring to different fractions of the flue dust shall be regarded as different substances. Furthermore, for some constituents the minimum concentration values were not provided. The Agency concluded that the reported composition covers fractions/grades which differ significantly by their composition and are thus not manufactured under the same process conditions. As a result, the Registrant is requested to provide compositional information which refers solely to the specific fraction/grade being one substance.

The Appellant contests the Agency's decision requesting it to submit the above-mentioned information for the registered substance. The Appellant's claims and arguments can be summarised as follows:

1. Regarding the grounds of the contested decision, the Appellant claims that the contested decision breaches the principle of legitimate expectation as it follows from the *Guidance for Identification and Naming of Substances under REACH and CLP* (Version 1.2) that UVCBs produced by the same or largely identical manufacturing process (and from the same source) should be covered by the same registration. This principle is particularly relevant to residues (i.e. to by-products such as flue dust). In addition, the Appellant could legitimately have relied upon the existing unique CAS and EINECS numbers for flue dust as well as the related substance description. Furthermore, the contested decision breaches the principle of proportionality; requiring separate registration of the individual fractions contained in flue dust which have the same hazard and safety characteristics would be contrary to the objective and purpose of registration, whilst entailing an undue administrative burden for the Appellant.
2. Regarding the time limit set by ECHA, the contested decision breaches the principle of proportionality, as the Appellant would have to update its existing registration and

to file new registrations for the other various dust fractions. The two month time limit granted by the contested decision is not sufficient. A time limit of six months from the date of the Appeal Decision is the minimum time necessary to update the existing registration and to compile new registrations. The compliance period set by the Agency in the contested decision expires before the end of the Appeal period. Hence, the Appellant has to appeal before the end of the compliance period in order to benefit from the suspensive effect attached to an appeal. This amounts to truncating the Appellant's right of Appeal. This time overlap and the procedural impact entailed thereby are not justified in the name of the public interest and adversely affect the underlying purpose of the Appeal procedure. Consequently, the contested decision breaches the Agency's duty to act in a fair and reasonable way.

**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>