

Announcement of appeal¹

Case	A-006-2015
Appellant	United Initiators GmbH & Co. KG, Germany
Appeal received on	11 March 2015
Subject matter	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
Keywords	<i>Evaluation – Compliance check – Request for further information</i>
Contested Decision	CCH-D-2114290329-41-01/F
Language of the case	English

Remedy sought by the Appellant

The Appellant requests the Board of Appeal to:

- declare the appeal admissible;
- annul the Contested Decision in so far as it requests the Appellant to submit certain information related to effects on terrestrial organisms;
- order the Agency to refund the appeal fee; and
- take such other or further measures as justice may require.

Pleas in law and main arguments

The Contested Decision was adopted on 12 December 2014 following a compliance check under the dossier evaluation procedure of the Appellant's registration submitted for the substance (tert-butyl 2-ethylperoxyhexanoate; hereinafter the 'Substance').

In the Contested Decision the Agency requested the Appellant to submit, for the Substance, information on effects on soil micro-organisms and short-term toxicity to plants obtained through certain tests. The Appellant was also asked to revise the chemical safety assessment, as necessary, once the results of these tests are available.

The Appellant argues that during the compliance check it fully addressed the concern identified by the Agency regarding the Substance's wide dispersive outdoor use by removing this use from the technical dossier. While the Agency then removed that concern from the

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.

draft decision, the Agency subsequently adopted the Contested Decision on the basis of a previously undisclosed and unidentified concern related to industrial uses of the Substance. As a result, the Appellant claims that the Contested Decision does not comply with the requirements and the procedure laid down in Article 41 of the REACH Regulation, read together with Section 9.4. of Annex IX to the REACH Regulation.

Considering the above, the Appellant additionally claims that the Contested Decision breaches the Appellant's right to be heard as it was not allowed to comment on and address the new basis for concern that the Agency introduced in the amended version of the draft decision, as circulated to the Member State Competent Authorities.

The Appellant further submits that by requesting studies to address a concern, toxicity to terrestrial organisms, based on a manifestly erroneous and factually incorrect assessment, instead of requesting the Appellant to correct the newly identified discrepancy between the information in the technical dossier and the information in the Chemical Safety Report, the Contested Decision breaches Article 41 of the REACH Regulation, read together with Section 9.4. of Annex IX to the REACH Regulation, and the principle of proportionality. The Appellant states that the Agency erred in its assessment and breached its obligation to take into account factually accurate, reliable and consistent information.

Next, the Appellant claims that the Agency infringed the principle of proportionality as, instead of requesting the Appellant to submit certain information related to effects on terrestrial organisms, the more appropriate measure would have been to request the Appellant to modify its Chemical Safety Report in order to address the readily removable discrepancy that was identified concerning wide dispersive use of the registered substance.

Finally, the Appellant claims that, in so far as it was not informed of the date on which the draft decision of the Contested Decision would be sent to the Member States' Competent Authorities, and hence about the expiry of the time window to submit updates of the registration dossier that would be taken into account in the decision making process, the Contested Decision has been adopted in breach of the principle of legal certainty.

Other information

Pursuant to Article 93(1) of the REACH Regulation, the Executive Director of the European Chemicals Agency rectified the Contested Decision on 10 April 2015 by withdrawing it in its entirety. The appeal was subsequently withdrawn by the Appellant and the case was closed by the Board of Appeal on 22 May 2015.

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>