EUROPEAN CHEMICALS AGENCY
BOARD OF APPEAL

DECISION OF THE BOARD OF APPEAL
OF THE EUROPEAN CHEMICALS AGENCY

9 April 2014

(Dossier evaluation - Compliance check of a registration dossier – Substance identity – UVCB substance – Notion of 'stabiliser' – Substance composition)

Case number	A-001-2013
Language of the case	English
Appellant	Infineum UK Ltd United Kingdom Represented by: Mark J. Grimwood Abingdon, Oxfordshire United Kingdom
Contested Decision	CCH-D-0000002759-61-02/F of 19 November 2012 adopted by the European Chemicals Agency (hereinafter, the 'Agency') pursuant to Article 41 of Regulation (EC) No 1907/2006 of the European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (OJ L 396, 30.12.2006, p. 1; corrected by OJ L 136, 29.5.2007, p. 3; hereinafter, the 'REACH Regulation')

THE BOARD OF APPEAL

composed of Christopher HUGHES (Chairman), Andrew FASEY (Technically Qualified Member and Rapporteur) and Marc PALLEMAERTS (Legally Qualified Member)

Registrar: Sari HAUKKA

gives the following

Decision

RELEVANT LEGISLATION

1. Point 1 of Article 3 of the REACH Regulation provides that for the purposes of the [REACH] Regulation:

   'substance: means a chemical element and its compounds in the natural state or obtained by any manufacturing process, including any additive necessary to preserve its stability and any impurity deriving from the process used, but excluding any solvent which may be separated without affecting the stability of the substance or changing its composition'.

2. Article 41(1)(a) and (3) of the REACH Regulation provides:

   '*1. The Agency may examine any registration in order to verify any of the following:*

   (a) that the information in the technical dossier(s) submitted pursuant to Article 10 complies with the requirements of Articles 10, 12 and 13 and with Annexes III and VI to X;

   […]

   3. On the basis of an examination made pursuant to paragraph 1, the Agency may, within 12 months of the start of the compliance check, prepare a draft decision requiring the registrant(s) to submit any information needed to bring the registration(s) into compliance with the relevant information requirements and specifying adequate time limits for the submission of further information. Such a decision shall be taken in accordance with the procedure laid down in Articles 50 and 51.'

3. Article 50(1) of the REACH Regulation provides:

   '1. The Agency shall notify any draft decision under Articles 40, 41 or 46 to the registrant(s) or downstream user(s) concerned, informing them of their right to comment within 30 days of receipt. If the concerned registrant(s) or downstream user(s) wish to comment, they shall provide their comments to the Agency. The Agency in turn shall inform the competent authority of the submission of the comments without delay. The competent authority (for decisions taken under Article 46) and the Agency (for decisions taken under Articles 40 and 41) shall take any comments received into account and may amend the draft decision accordingly.'

4. Annex VI of the REACH Regulation on Information requirements reffered to in Article 10 provides, inter alia:

   […]

   '2. IDENTIFICATION OF THE SUBSTANCE

   For each substance, the information given in this section shall be sufficient to enable each substance to be identified. If it is not technically possible or if it does not appear scientifically necessary to give information on one or more of the items below, the reasons shall be clearly stated.

   2.1. Name or other identifier of each substance

   […]

   2.3. Composition of each substance

[…]

2.3.7. Description of the analytical methods or the appropriate bibliographical references for the identification of the substance and, where appropriate, for the identification of impurities and additives. This information shall be sufficient to allow the methods to be reproduced.'

SUMMARY OF THE FACTS

Background of the dispute

5. The Appellant submitted a registration dossier for the substance Phenol, alkylation products with C10 – 15 branched olefins derived from propene oligomerization, calcium salts, sulfurized, carbonated, overbased (hereinafter 'the registered Substance' or the 'Substance') at the tonnage level of 1 000 tonnes or more per year.

6. On 19 April 2012, the Agency initiated a compliance check of the Appellant's registration dossier for the registered Substance. Further to this, the Agency prepared a draft decision pursuant to Article 41(3) of the REACH Regulation.

7. On 31 May 2012, the Agency notified the draft decision to the Appellant and invited the Appellant to provide comments. The draft decision included a number of information requirements, including information on the name or other identifier of the Substance and on the composition of the Substance.

8. On 19 June 2012, the Agency and the Appellant held a teleconference (hereinafter the 'teleconference') to informally discuss the content of the draft decision.

9. On 26 June 2012, the Appellant submitted comments on the draft decision and subsequently, on 28 June 2012, updated its registration dossier by providing some additional data.

10. On 6 September 2012, after considering the Appellant's comments and the updated registration dossier, the Agency notified, pursuant to Article 51(1) of the REACH Regulation, the draft decision to the Competent Authorities of the Member States (hereinafter the 'MSCAs') and invited them to submit proposals to amend the draft decision. No proposals for amendments were submitted.

11. On 19 November 2012, the Agency adopted the Contested Decision and notified it to the Appellant. Section II, 'Information Required', of the Contested Decision requests the Appellant to update its registration dossier by 19 February 2013 by providing the following information:

    a) Name or other identifier of the substance in compliance with paragraph 2.1. of Annex VI to the REACH Regulation.

    b) Composition of the substance in compliance with paragraph 2.3. of Annex VI to the REACH Regulation.

    c) The description of the analytical methods or the appropriate bibliographical references for the identification of the Substance in compliance with paragraph 2.3.7. of Annex VI to the REACH Regulation.

12. In relation to the requirement to provide information on the name or other identifier of the Substance (Section 2.1. of Annex VI to the REACH Regulation), the Agency notes in Section III, 'Statement of Reasons', of the Contested Decision that:

    '[…] The naming of UVCB [Unknown or Variable composition, Complex reaction products or Biological materials] *substances shall consist of two parts: the chemical*

name and the more detailed description of the manufacturing process. […] the Registrant did not provide sufficient and appropriate information on the naming of the registered substance, as required under Annex VI Section 2.1 of the REACH Regulation.

[…] the Registrant reported, as part of the registration update submitted on 28 June 2012, the presence of the substance "lubricating oils" added in order to allow the formation of a stable colloid and identified it as stabiliser for the registered substance. […] the registrant did not reflect the presence of that oil in the assigned chemical name. The approach followed by the Registrant would be consistent with the naming conventions specified in chapter 4.3.1.1., with reference to chapter 4.2., of the Guidance as long as the oil could be defined as a stabiliser. ECHA however points out that, in line with Article 3(1) of the REACH Regulation, a stabiliser is added in order to preserve the stability of a substance. The role of a stabiliser is therefore limited to preserving the chemical integrity of already formed constituents ending up in the composition of the manufactured substance. Substances added in order to allow the chemical formation and/or physical order of the constituents ending up in the manufactured substance shall not be regarded as stabilisers. It follows that the lubricating oil shall not be regarded as a stabiliser. To the extent that the quantity of lubricating oil reported in the composition is not a solvent which can be removed without affecting the stability of the substance or changing its composition, the constituents of that oil shall be regarded as constituents of the registered substance. As the oil contributes extensively to the composition, the chemical name shall refer to the presence of that oil to reflect as far as possible its actual identity. […]'

13. In relation to the requirement to provide information on the composition of the Substance (Section 2.3. of Annex VI to the REACH Regulation), the Agency notes in Section III of the Contested Decision that:

'[…] As already explained […], [the lubricating oil] cannot be defined as preserving the stability of the registered substance. The constituents of that oil which end in the composition of the registered substance shall be regarded as constituents of that substance and reported as such in the composition.

In addition, the identity and concentration level (in terms of upper and lower concentration values) of the constituents originating from the lubricating oil have not been specified to a sufficient level of detail. ECHA notes that the Registrant provided information on the content of the oil […]. However, further information on the identity and concentration level of the different hydrocarbon classes within the reported groups of constituents is necessary for an unambiguous identification of the oil.

[…] For the hydrocarbon constituents originating from the "Lubricating oils", the reporting of the different hydrocarbon classes […] is necessary as a baseline for ECHA to establish the composition of the substance. For each group of constituents, quantitative information on the carbon number distribution shall also be specified to conclude on the compositional profile of the constituents within the group. […]'

14. In relation to the requirement to describe the analytical methods or the appropriate bibliographical references for the identification of the Substance (Section 2.3.7. of Annex VI to the REACH Regulation), the Agency notes in Section III of the Contested Decision that:

'[…] the Registrant has attached an HPLC [High-Performance Liquid Chromatography] *analysis of the registered substance. However, this information is part only to a certain degree of a quantitative analysis of constituents and groups of constituents. Furthermore, the analytical information reported in the dossier does not provide any description of the analytical methods used for the identification and quantification of*

the constituents required to be reported in the composition […]. ECHA therefore concludes that the provided chromatographic analysis cannot be used as such to draw any conclusion on the composition of the registered substance.

In the updated dossier, the Registrant has provided a justification […] explaining that the quantification of the constituents and groups of constituents is determined based on […]. On this basis, the Registrant has calculated the percentage ranges for probable constituents of the registered UVCB substance. Moreover, the Registrant has indicated that extensive methodological work and multiple analyses were carried out in order to confirm the constituents listed in the compositional information in IUCLID section 1.2.

Nevertheless, the Registrant has not attached any of the above mentioned analyses and calculations. […] the justification alone is not sufficient to demonstrate how the compositional values were derived. […]'

Procedure before the Board of Appeal

15. On 8 February 2013, the Appellant lodged the present appeal at the Registry of the Board of Appeal challenging the Contested Decision.

16. By way of the present appeal, the Appellant requested the Board of Appeal to:

    - Annul the Contested Decision requiring the Appellant to submit additional information regarding the Substance identity, composition and analytical spectra, or alternatively;

    - Should the Board of Appeal not annul the Contested Decision in its entirety, to partially annul and replace the Contested Decision by a new decision that would be aligned with the REACH Regulation and the general principles of EU law. Such a new decision would outline those additional items required for submission by way of a registration update, and would give the Appellant reasonable and sufficient time for the submission of the additional information required, starting from the date of the new decision.

17. The Notice of Appeal was notified to the Agency on 13 February 2013. The Agency submitted the Defence on 12 April 2013.

18. On 6 May 2013, the Board of Appeal sent a number of written questions to the Parties. The Appellant was further invited to provide observations on the Agency's Defence and respond to the request for further information. On 21 May 2013 the Agency submitted its reply. The Appellant submitted its observations and responded to the Board of Appeal's request on 7 June 2013.

19. On 28 June 2013, the Agency was invited to provide further clarifications. The Agency duly submitted the information requested on 15 August 2013.

20. On 2 August 2013, as the legally qualified member of the Board of Appeal was precluded from participating in the proceedings, pursuant to the first subparagraph of Article 3(2) of Commission Regulation (EC) No 771/2008 of 1 August 2008 laying down the rules of organisation and procedure of the Board of Appeal of the European Chemicals Agency (OJ L 206, 2.8.2008, p. 5; hereinafter the 'Rules of Procedure'), Marc Pallemaerts was designated as an additional legally qualified member of the Board of Appeal in the present case.

21. On 2 October 2013, the Parties were notified of the Board of Appeal's decision to close the written procedure.

22. On 14 October 2013, the Appellant requested a hearing to be held. On 15 October 2013, the Agency informed the Board of Appeal that it did not request a hearing to be held.

23. On 18 October 2013, since the Chairman of the Board of Appeal was precluded from participating in the proceedings, pursuant to the first subparagraph of Article 3(2) of the Rules of Procedure, Christopher Hughes was designated as an alternate Chairman, to act in the present case as the Chairman of the Board of Appeal.

24. In accordance with Article 13 of the Rules of Procedure, following the request of the Appellant for a hearing to be held, the Parties were summoned to a hearing which was held on 26 November 2013. Oral presentations were made by the Parties. The members of the Board of Appeal also posed questions to the Parties.

REASONS

I. Claims under examination

25. In support of its appeal, the Appellant claims, firstly, that the majority of the information requested by the Agency in the Contested Decision has already been submitted to the extent that is technically and practically possible, required in Article 10(a)(ii) of the REACH Regulation and Annex VI Section 2, and as elaborated in the Agency's Guidance for identification and naming of substances under REACH and CLP (Version 1.1, hereinafter the 'Guidance'). Secondly, the Contested Decision is legally flawed as the Agency erred in law by failing to recognise the 'lubricating oil' as a stabilising additive in accordance with point 1 of Article 3 of the REACH Regulation. Thirdly, and in the alternative, should the Board of Appeal consider that the 'lubricating oil' is not a stabiliser, the Appellant contends that the Agency breached certain general principles of European law. Namely, the principles of legal certainty, of legitimate expectations, of proportionality, and of equal treatment. Fourthly, the Appellant claims that the Agency breached Article 51(1) of the REACH Regulation by not circulating the Appellant's comments on the draft decision to all MSCAs.

26. In its observations on the Defence, the Appellant accepted that the Agency had circulated the Appellant's comments on the draft decision to all MSCAs. The Board of Appeal therefore considers that the Appellant withdrew its plea claiming an infringement of Article 51(1) of the REACH Regulation by the Agency. During the hearing the Appellant also stated that it no longer relies on its plea of unequal treatment, alleging that the Agency unfairly discriminated between the Appellant and other registrants of the same substance. As a result, the part of the third plea claiming an infringement of the principle of equal treatment, by not treating the Appellant in the same manner as other registrants of the same or similar substances in relation to the level of compositional detail requested, is also considered by the Board of Appeal to have been withdrawn.

27. During the hearing the Appellant also confirmed that the substance they intended to register was the combination of an overbased calcium phenate substance (which corresponds to the 'registered Substance' detailed in paragraph 5 above) and the oil in which it is dispersed (hereinafter the 'lubricating oil'). In the interests of clarity, in the rest of this decision the combination of the registered Substance plus the lubricating oil will be identified as the 'colloidal Substance'. The Appellant however contends that the lubricating oil is a stabilising additive only. The Board of Appeal notes that in parts of the submissions in the present case it is not always clear whether it is the registered Substance (i.e. the overbased calcium phenate substance) or the colloidal Substance (i.e. the phenate plus the lubricating oil) which is being referred to. The lack of

certainty in this regard does not however impact on the decision of the Board of Appeal in this case. The Board of Appeal also notes that during these proceedings the Appellant agreed that, regardless of whether the lubricating oil is considered as a stabiliser or not, it should submit compositional information for the lubricating oil as a constituent of the colloidal Substance.

Appellant's first plea alleging that the majority of the information requested in the Contested Decision has already been submitted

Arguments of the Parties

28. The Appellant argues that it had already submitted the majority of the information requested by the Agency prior to the Contested Decision being issued. This information has been submitted to the extent that is, firstly, technically and practically possible, secondly, required in Article 10(a)(ii) of the REACH Regulation and Section 2 of Annex VI to the REACH Regulation and, thirdly, as elaborated in the Guidance. The Appellant accepted during these proceedings that it will update its registration dossier to address some of the more minor requests for additional information specified in the Contested Decision.

29. The Agency did not respond separately to the arguments put forward by the Appellant under its first plea.

Findings of the Board of Appeal

30. The Board of Appeal observes that the Appellant's first plea is closely connected to its other pleas and claims alleging infringement of the principles of legal certainty and of legitimate expectations when requiring a high degree of detailed compositional information on the Substance.

31. Consequently, the Board of Appeal will conclude on the merits of the Appellant's first plea after it has examined the Appellant's third plea below.

Appellant's second plea alleging the Agency's failure to recognise the lubricating oil as a stabilising additive in accordance with point 1 of Article 3 of the REACH Regulation

Arguments of Parties

32. The Appellant argues that the test established by the definition of stabiliser in point 1 of Article 3 of the REACH Regulation is whether an additive is necessary to preserve stability. The definition in point 1 of Article 3 of the REACH Regulation is broad and the Agency's interpretation in the Contested Decision, focusing solely on the preservation of stability following the formation of the Substance, impermissibly narrows that definition. The Guidance merely references the broad definition given in point 1 of Article 3 of the REACH Regulation. It is a fundamental error of law to confuse the question of the function of the additive with the question of the time at which the additive was introduced. By focusing solely on the preservation of stability following the formation of the Substance, the Agency misinterpreted point 1 of Article 3 of the REACH Regulation and breached the legitimate expectation of the Appellant that the

definition of a stabiliser under the REACH Regulation would be properly applied by the Agency and in accordance with its own Guidance.

33. The Appellant also argues that the definition of stabiliser found in point 1 of Article 3 of the REACH Regulation does not preclude a substance required to ensure the physical stability of a colloid being considered to be a stabiliser. In this particular case, destabilisation of the Substance following the removal of the lubricating oil would entirely be due to the absence of the oil as this would cause the destruction of the physical colloid and a change in the composition of the Substance. The destabilisation would have nothing to do with the conditions per se (e.g. temperature) that might be applied to remove the oil. This supports the Appellant's contention that the lubricating oil should be considered to be a stabilising additive.

34. The Agency argues that the Contested Decision is in line with the substance definition in point 1 of Article 3 of the REACH Regulation and that the lubricating oil does not fulfil the function of a stabiliser. The Agency is of the view that other provisions of the REACH Regulation support its understanding that the concept of substance stabilisation and use of stabilisers is linked to chemical stabilisation and does not extend the concept of preserving the stability of a substance to maintaining its physical form. In support of its position, the Agency refers in particular to Subsection 10.2. of Annex II [on Requirements for the compilation of safety data sheets] to the REACH Regulation on 'Chemical stability' (hereinafter the 'Subsection 10.2. of Annex II') which provides that [the safety data sheet for a substance] shall indicate 'if the substance or mixture is stable or unstable under normal ambient and anticipated storage and handling conditions of temperature and pressure. Any stabilisers which are, or may need to be, used to maintain the chemical stability of the substance or mixture shall be described'.

35. The Agency also contends that a stabiliser should be considered to be a substance which preserves the chemical elements and compounds of the substance as manufactured. The Agency clarified in its submissions that it did not exclude the possibility that constituents that stabilise a substance as manufactured may be added during the manufacturing process of that substance. However, in order for a substance to be considered a stabiliser, the stabilising function will still need to apply once the substance has been manufactured and the manufacturing process is complete. The Agency is of the view that the Appellant has not demonstrated that the function of the lubricating oil relates to maintaining the chemical stability of the Substance after its manufacture.

36. The Agency argues that a substance can only be a stabiliser if its function is to preserve the chemical stability of the substance. The Appellant failed to demonstrate that the lubricating oil has a stabilising function because its arguments solely focus on preserving the physical stability of the Substance. Also, the fact that it is not possible to remove the lubricating oil post reaction without affecting the stability of the Substance does not demonstrate that the oil is a stabiliser. It only demonstrates that the consequence of the process of removing the oil is the destabilisation of the Substance. However, it is not possible to conclude from this information that the cause of the destabilisation of the Substance is the absence of the oil and that the oil would therefore be necessary to stabilise the Substance.

37. The Agency clarified that the conclusion that the lubricating oil is not a stabiliser is based neither on the point of the manufacturing process in which it is introduced nor on the function of the oil in the formation of the Substance. The fact that the Substance cannot be formed without the lubricating oil being present does not demonstrate that the lubricating oil is a stabiliser for the Substance. In order to demonstrate that the lubricating oil can be considered to be a stabiliser, within the meaning of point 1 of Article 3 of the REACH Regulation, the Appellant would need to

show that the lubricating oil has this function in relation to the constituents present in the Substance as manufactured.

Findings of the Board of Appeal

38. The Board of Appeal notes that the interpretation of what a stabiliser is and what it is not is one of the principal points of disagreement between the Parties in the present appeal proceedings. In summary, the Appellant contests the Agency's interpretation that stability and the role of a stabiliser only applies to chemical stability. The Board of Appeal considers therefore that it is necessary to examine the claims with regard to the interpretation of the term 'stabiliser' and whether it covers chemical or physical stability or both. In that regard, the Board of Appeal will firstly examine whether the Agency correctly interpreted point 1 of Article 3 of the REACH Regulation. Secondly, in light of this the Board of Appeal will examine whether the lubricating oil in the present case may be considered to be a stabiliser. And, thirdly, the Board of Appeal will consider how its conclusions as regards the interpretation of the term 'stabiliser' and the status of the lubricating oil in the present case affect the Contested Decision.

39. The Board of Appeal notes that the consequence of the examination as set out in the above paragraph will in practice only affect the naming of the substance. The compositional information required for substance identity purposes is independent of whether a substance is a stabiliser or not.

(i) Stabiliser within the meaning of point 1 of Article 3 of the REACH Regulation

40. The Board of Appeal observes that the REACH Regulation does not provide an exact definition of a 'stabiliser'. Point 1 of Article 3 of the REACH Regulation that defines a substance refers to a stabiliser by means of a functional criterion, by providing that a substance can include any additive necessary to preserve stability of the substance. The definition of substance does not therefore limit the interpretation of stabiliser to only chemical stability. The Board of Appeal will therefore examine whether other provisions in the REACH Regulation clarify the interpretation of the term stabiliser.

41. In support of its position, the Agency refers to Subsection 10.2. of Annex II. The Agency argues that the requirement found in Subsection 10.2. of Annex II to describe any stabilisers which are, or may need to be, used to maintain the chemical stability of the substance or mixture reinforces the conclusion that a stabiliser is a substance that ensures exclusively chemical stability. As a preliminary remark, the Board of Appeal notes that Subsection 10.2. of Annex II does not contain a definition of stabiliser. Moreover, the Board of Appeal finds that Subsection 10.2. of Annex II should be interpreted as requiring that, of all stabilisers used in a substance, those that ensure chemical stability need to be described in the section of a safety data sheet relating to chemical stability. The Board of Appeal notes that it follows from an *a contrario* reading of Subsection 10.2. of Annex II that it is not required to describe in the section of a safety data sheet requiring information on chemical stability those stabilisers that ensure, for example, physical stability. As a result, Subsection 10.2. of Annex II to the REACH Regulation should not be interpreted as supporting the Agency's contention that 'stability' as referred to in point 1 of Article 3 of the REACH Regulation refers to the chemical stability of substances only.

42. In light of the above, the Board of Appeal finds that there is nothing in the definition of substance in point 1 of Article 3 of the REACH Regulation or elsewhere in the REACH Regulation that leads to the conclusion that the term stabiliser only relates to chemical stability.

(ii) The lubricating oil as a stabiliser under the REACH Regulation

43. Considering the above conclusion on the interpretation of the term 'stabiliser' in point 1 of Article 3 of the REACH Regulation, the Board of Appeal will next examine whether in the present case, related to the colloidal Substance, the lubricating oil may be considered to be a stabiliser.

44. The Board of Appeal notes that when a registrant declares that an additive acts as a stabiliser it has to provide to the Agency sufficient information on the function of that additive so that the Agency can verify whether the additive actually is a stabiliser. In that regard the Agency may, during the compliance check, assess the plausibility of the information given and its consistency with other information provided in the registration dossier.

45. During the hearing the Appellant explained that the colloidal Substance, containing the phenate and the lubricating oil, is an additive which is used in engine oil to improve the performance of internal combustion engines, in particular with respect to the build-up of contaminants that can damage the surfaces of the component parts of an engine. The Board of Appeal understood from the Appellant's explanations at the hearing that, for the phenate to be effective as an additive to engine oil, at the point the phenate is added to the engine oil it has to be miscible with the oil. In other words, to have a functional product to place on the market for this use it is essential that the product has the physical properties which allow this mixing. Namely, in this particular case, the phenate must already be combined with oil in order for it to mix with engine oil.

46. As a general observation, the Board of Appeal accepts that the maintenance of both physical and chemical integrity is often a crucial aspect of colloid chemistry. Colloids are often required for specific uses because, in simple terms, they present a stable form of one substance by being dispersed in another (this is known as a dispersed phase in a continuous phase). For example, to avoid a substance coagulating, which would hinder it functioning as intended, the substance is dispersed in a second substance.

47. In this particular case, the phenate substance (dispersed phase) is dispersed in the lubricating oil (continuous phase) and the Board of Appeal accepts that this is necessary for the phenate to act as intended, as an additive to engine oil. The Board of Appeal further notes that the lubricating oil is required for the manufacture of the colloidal Substance; the phenate is not added to the lubricating oil after it has been manufactured to form a stable colloidal substance but is manufactured in the presence of the lubricating oil.

48. The Board of Appeal finds that in this particular case the lubricating oil is both essentially involved in the manufacturing process of the colloidal Substance as a whole and, by ensuring miscibility in use, an essential constituent of the colloidal Substance itself. Whilst the lubricating oil may have stabilising properties with regard to the colloidal Substance, the Board of Appeal finds in light of the above that the lubricating oil cannot be considered to be primarily an additive whose function is to ensure the stability of the phenate substance. Therefore, the lubricating oil should not be considered as being a stabiliser within the meaning of point 1 of Article 3 of the REACH Regulation.

49. Having concluded, following the above examination, that in the present case the lubricating oil should not be considered as being a stabiliser, the Board of Appeal will next examine what consequences should be drawn from the Agency's erroneous interpretation as regards the definition of 'stabiliser' in point 1 of Article 3 of the REACH Regulation.

(iii) Legal effects of the Agency's interpretation of the term 'stabiliser'

50. In view of the Agency's erroneous interpretation, in the Contested Decision, of the term 'stabiliser' the Board of Appeal will next consider whether the Agency's error in this regard warrants the annulment of the Contested Decision.

51. The Board of Appeal recalls that its power to examine a case is defined in Article 93(3) of the REACH Regulation. According to this provision, the Board of Appeal may exercise any power that lies within the competence of the Agency or it may remit the case to the competent body of the Agency for further action.

52. In paragraphs 43 to 48 above, the Board of Appeal concluded that the lubricating oil is not a stabiliser within the meaning of point 1 of Article 3 of the REACH Regulation. As a consequence, although the Agency erred in its interpretation of the the term 'stabiliser', the Agency was correct to find that the lubricating oil is not a stabiliser, and to ask the Appellant to refer to the presence of that oil in the chemical name to reflect as far as possible the actual identity of the Substance.

53. In any event, the Board of Appeal notes that the Agency's erroneous interpretation that a stabiliser may only preserve the chemical stability of a substance appears in section III.(a) of the Contested Decision. This section sets out the grounds for the operative part of the Contested Decision requesting the Appellant to submit the name or other identifier for the registered substance (section II.a. of the Contested Decision) and consists of three independent pillars of reasoning. The first pillar relates to the presence of the lubricating oil in the composition of the registered Substance, the second pillar concerns the fact that the predominance of the phenate constituents has not been reflected in the name of the registered Substance, and the third pillar relates to missing elements of the manufacturing process description. The Board of Appeal notes that the Agency's erroneous interpretation of the term 'stabiliser' affects only the first pillar of reasoning in section III.(a) of the Contested Decision.

54. According to the case-law of the General Court of the European Union, where some of the grounds in a contested decision on their own provide a sufficient legal basis for the decision, any errors in the other grounds of the decision have no effect on its operative part. Moreover, where the operative part of a contested decision is based on several pillars of reasoning, each of which would in itself be sufficient to justify that operative part, that decision should, in principle, be annulled only if each of those pillars is vitiated by an illegality. In such a case, an error or other illegality which affects only one of the pillars of reasoning cannot be sufficient to justify annulment of the decision at issue because that error could not have had a decisive effect on the operative part of the contested decision (see, to that effect, Case T-591/10 *Castiglioni Srl* v *Commission*, paragraph 44).

55. As noted in paragraph 53 above, the Agency's erroneous interpretation of the term 'stabiliser' affects only the first pillar of reasoning in section III.(a) of the Contested Decision. Moreover, in its appeal, the Appellant did not contest the legality of the second and third pillar of reasoning found in section III.(a), which, in any event, on a *prima facie* examination by the Board of Appeal do not seem to be vitiated by any error or illegality.

56. Consequently, the Board of Appeal considers that the Agency's error in the interpretation of the term 'stabiliser' could not have had a decisive effect on the operative part of the Contested Decision requesting information on the name of the substance or other identifier (section II.a.). As a result, the error made by the Agency cannot be sufficient to justify the annulment of the Contested Decision.

Appellant's third plea alleging that the Agency's requirement for a high degree of detailed compositional information breaches certain principles of European Union law

57. The Appellant's plea alleging that the Agency's requirement for a high degree of detailed compositional information breaches certain principles of European Union law is divided into two parts. The Appellant claims firstly that the Contested Decision requests submission of a much greater level of compositional detail and, specifically for the lubricating oil, inclusion of separate hydrocarbon classes as individual constituents in the main composition of the phenate substance, than is foreseen by the Guidance. The Agency therefore breached the principle of legal certainty and the principle of legitimate expectations. Secondly, considering the requirements in the Guidance for identification of UVCB substances and given the difficulties related to identification of such substances, the level of requested compositional information in the Contested Decision and the three months' period given for the submission of additional compositional information, the Agency breached the principle of proportionality.

(i) Alleged infringement of the principles of legal certainty and legitimate expectations

Arguments of Parties

58. The Appellant claims that the Agency accepts in its Guidance that the nature of UVCB substances may render it impracticable to provide a detailed breakdown of their composition. However, the Contested Decision requires submission of a much greater level of compositional detail, and specifically for the lubricating oil inclusion of separate hydrocarbon classes as individual constituents, than indicated in the Guidance. These requirements go beyond the level of detail envisaged in the Guidance for UVCB substances. With regard to the requirement for additional information on identity and compositional detail of the phenate substance that had been requested in the draft decision of 31 May 2012, and also discussed in the teleconference between the Appellant and the Agency, the Appellant claims that it was led to believe that if it committed to appropriately update its registration dossier the Agency would amend its draft decision before it was circulated to the MSCAs.

59. More specifically, the Appellant also claims that in the Contested Decision, by requesting information on the carbon number distribution with regard to the alkanes, alkenes and aromatic constituents, the Agency went beyond the information requirements set-out in the Guidance.

60. The Agency considers that the Contested Decision meets the Appellant's legitimate expectations, as it correctly follows the methology outlined in the Guidance. The Guidance does not state that for UVCB substances no attempt needs to be made to define the constituents, rather that they need to be identified as far as possible. Moreover, contrary to what the Appellant appears to suggest, the Guidance does not contain a general presumption that, if a constituent is likely to be present at less than 10%, this constituent can be omitted from the description of the substance without making any effort to identify the constituent concerned.

61. The Agency further argues that its request for information was justified as the identity and concentration level of the constituents originating from the lubricating oil are not

specified to a sufficient level of detail. More specifically, the Appellant's description of the lubricating oil indicated the presence of over 60% of saturated hydrocarbons and a significant amount, over 30%, of aromatics. However, without detailed information on the variability of composition, it cannot be concluded, the Agency argued, that the oil used in the process can be described as predominantly consisting of saturated hydrocarbons only.

62. The Agency also noted that the information in the registration dossier shows that the unidentified constituents derived from the lubricating oil may present up to 25% of the composition of the colloidal Substance. As the lubricating oil can be classified as being a CMR [Carcinogenic, Mutagenic, Toxic to Reproduction] category 2, the presence of unidentified constituents may have a significant impact on the hazard profile and classification of the colloidal Substance as a whole. Moreover, other registrants in the joint submission (members of the same SIEF [Substance Information Exchange Forum]) have described the lubricating oil differently from the Appellant.

Findings of the Board of Appeal

63. The Board of Appeal will first examine whether by requiring in the Contested Decision that the Appellant submits detailed compositional information on the identity of the colloidal Substance the Agency disregarded its Guidance and breached the principles of legal certainty and of legitimate expectations. Second, the Board of Appeal will examine whether the minutes of the teleconference or the draft decison of 31 May 2012 created legitimate expectations, on which the Appellant could rely, that the Agency would amend its draft decision before it was circulated to the MSCAs.

64. The Board of Appeal notes at the outset that during the hearing the Appellant stated that it agrees to submit the information requested concerning the phenate substance. Consequently, the Board of Appeal will only examine whether, by requesting detailed information on the lubricating oil, the Agency disregarded its own Guidance and breached the principles of legal certainty and of legitimate expectations.

65. The Board of Appeal observes that administrative guidance, such as the Guidance in the present case, can constitute a precise assurance by the administrative body as to the course of conduct that it follows and, as such, it can create legitimate expectations (see in that regard, the decision of the Board of Appeal of 10 October 2010 in case A-001-2010, paragraphs 57 to 60).

66. Section 4.3.1.1 of the Guidance states that '*UVCB substances either cannot be uniquely specified with the IUPAC* [International Union of Pure and Applied Chemistry] *name of the constituents, as not all the constituents can be identified; or they may be generically specified but with a lack of specificity due to variability of the exact composition*'. The Board of Appeal observes that this statement describes certain characteristics of UVCB substances, whereby the first group covers UVCB substances with unknown constituents and the second group covers those with variable composition. The Board of Appeal therefore considers that this statement does not offer a choice with regard to how UVCB substances may be characterised or described for the purposes of complying with requirements of the REACH Regulation, but is rather descriptive of two different circumstances related to such substances.

67. In the same section, the Guidance also states that '*for a UVCB substance all known constituents and all constituents present at concentrations [> or equal to] 10% should be specified by at least an English-language IUPAC name and preferably a CAS* [Chemical Abstracts Service] *number, the typical concentrations and concentrations ranges of the known constituents should be given as well. Constituents that are relevant for the classification and/or PBT assessment of the substance shall always be*

identified by the same identifiers, independently from their concentration' and that *'unknown constituents should be identified as far as possible by a generic description of their chemical nature'*.

68. Section 4.3.2.2 of the Guidance, titled *Substances obtained from oil or oil like sources,* states under point 2 relating to identifiers that *'characteristics like the name, carbon chain-length range, boiling point, viscosity, cut-off values, and other physical properties are generally more helpful than compositional information in order to identify the petroleum substance as clearly as possible'* and that *'although chemical composition is not the primary identifier for UVCB substances, the known main constituents (*[> or equal to] *10%) shall be given and the composition shall be described in generic terms e.g. molecular weight range, aliphatics or aromatics, degree of hydrogenation and other essential information'*. The Board of Appeal accepts that inclusion in the Guidance of the statement of 'other essential information' may be considered as encompassing a broad range of different elements. However, the Board of Appeal accepts that such wording is necessary as not every case, situation or eventuality can be covered precisely by the Guidance. This wording must however be applied by the Agency in a way that is consistent with the objectives and requirements of the REACH Regulation and the Guidance as a whole.

69. The Appellant also identified Section 7.10.2 of the Guidance as being relevant in the present case as for the example given, 'Gas oils (petroleum)', the entry for chemical composition was 'No information available'. The Board of Appeal observes however that this situation is not comparable to the lubricating oil as it describes a gas which has relatively few constituents and the process description is largely sufficient to identify the gas.

70. The Board of Appeal further notes that the Agency stated in its written submissions and during the hearing that the Agency issued a compliance check decision against another registrant of the 'same' substance (hereinafter the 'co-registrant') in the joint submission and that for the lubricating oil the Agency required a description of the substance concerned to the same level of detail as in the Contested Decision. Further to this decision the co-registrant provided the required level of detail on the composition of the lubricating oil relating to the identity and concentration levels of the different hydrocarbon classes. The Board of Appeal observes that whilst nothing can be read into the decision of the co-registrant not to appeal against the decision, and whilst this is not decisive, it nevertheless indicates that it is technically possible to generate the required information.

71. The Board of Appeal in addition notes that the main objective of the REACH Regulation is to ensure a high level of protection of human health and the environment (see, in that regard, decision of the Board of Appeal of 19 June 2013 in case A-001-2012, paragraph 103). That objective is achieved in part by the registration obligation imposed on manufacturers and importers which includes the requirement to generate data on the substances they manufacture or import, to use those data to assess the risks related to those substances, and to develop and recommend appropriate risk management measures (see, to that effect, Case C-558/07 *S.P.C.M. and Others*, paragraphs 45 and 46). The Board of Appeal therefore considers that, when registering a substance and in order for the substance to be used safely, it is of utmost importance that a registrant unambiguously identifies the substance it is intending to register.

72. The Board of Appeal observes that when a registrant provides information on the identity of the substance it is intending to register, as a general principle all constituents need to be identified as far as it is possible and reasonable to do so, accepting that with UVCB substances it is often the case that not all constituents of the

substance can be identified. More specifically, and as already stated in paragraph 67 above, any constituent present at 10% or more must be identified. The Board of Appeal finds that the 10% threshold does not mean that any constituent that is present below this threshold does not need to be identified. It should be rather interpreted that constituents below this threshold should also be identified as far as it is possible and reasonable to do so. In addition, it is clear from the Guidance that the Agency requires that any constituents that are relevant for classification shall also be identified. The Board of Appeal further observes that it is the clear responsibility of the registrant to identify the substance it is intending to register as far as it is reasonably possible to do so and consistent with the REACH Regulation.

73. Furthermore, the Board of Appeal notes that the Appellant, in its registration dossier, used for the lubricating oil a single CAS number covering 34 individual CAS numbers. In such circumstances the lack of specificity may have contributed to the uncertainty that the Agency needed to clarify in order to be sufficiently clear what was being registered by the Appellant. The Appellant should be aware that whilst broad descriptions of the composition of UVCB substance may in some cases be appropriate, the consequence may be that in some cases the Agency will require further information to allow it to clearly identify the substance being registered.

74. Consequently, the Board of Appeal finds that, in the circumstances of the present case, it is necessary for the Agency to have information on the different hydrocarbon classes in order for it to clearly and unequivocally establish the composition of the lubricating oil. For each of these groups of constituents, quantitative information on the carbon number distribution needs to be specified so that the Agency can conclude on the compositional profile of the constituents within each group.

75. The Board of Appeal finds therefore that by requiring in the Contested Decision additional information on the composition of the lubricating oil, the Agency acted in accordance with its Guidance and the need to identify the constituents of a registered substance.

76. In particular, with regard to the more specific requirement concerning the different hydrocarbon classes and their concentration levels and identity, namely information on their carbon number distribution and generic molecular/structural information, the Board of Appeal finds that this is consistent with the requirement expressed in the Guidance for 'essential information' and the requirement in section 4.3.1.1 of the Guidance that 'typical concentrations and concentrations ranges of the known constituents should be given'.

77. The Board of Appeal consequently finds that in the present case, considering the contents of the Guidance, the Agency did not violate the principles of legal certainty and of legitimate expectations by requiring the Appellant to submit the requested information.

78. Next, the Board of Appeal will consider whether the Appellant is correct in claiming that after the teleconference it could legitimately expect that the Agency would modify the draft decision of 31 May 2012.

79. The Board of Appeal notes that the letter accompanying the Agency's draft decision of 31 May 2012 indicated that the Appellant had 30 days to respond via a specific link to a webform and confirmed that the deadline for submitting comments was 2 July 2012. The letter also set out the procedure to be followed. It stated that the Agency *'will consider those comments and possibly amend the decision accordingly'* and also that the Agency *'would like to offer* [the Appellant] *a possibility to informally and without delay discuss the scientific rationale behind the current draft decision'*.

80. As a result of the offer of a discussion contained in the letter, the teleconference between representatives of the Agency and the Appellant was held on 19 June 2012 and the minutes of the call were supplied to the Appellant on 25 June 2012.

81. The minutes of the teleconference set-out under 'Purpose of the meeting and background' that the '*purpose of the meeting was to clarify any unclear points in the issued draft decision to the registrant'.* The background is described by the following, '*the communications made by ECHA during the teleconference cannot be regarded as a formal opinion or position of ECHA concerning specific scientific issues on the current draft decision. ECHA has notified the registrant of a draft decision on a testing proposal, and in the letter ECHA indicated that the registrant has 30 days to send any comments to ECHA. Possible comments should be sent via the webform linked in the notification letter. ECHA does not treat any comments made during the teleconference as a formal comment to ECHA, as requested in the draft decision'*. Under the second item on the agenda, 'Disclaimer and Background information', the minutes record that '*the disclaimer was sent via email to the participants and the registrant confirmed that they had understood the statement and did not have questions on it*'. The Appellant did not contest this during these proceedings.

82. The fourth item in the minutes reads 'Conclusion and next steps' and under heading e. it is stated that the Agency's evaluation of the updated IUCLID dossier '*may lead to amendments to the current draft decisions before referral*' to the MSCAs. The minutes under this heading further state that *'if further information is received via IUCLID by the agreed date,* [the Agency] *will examine the IUCLID dossier and consider if amendments to the current draft decisions should be made before referral to the Member States competent authorities'*.

83. The Board of Appeal finds that the letter of 31 May 2012 and the minutes of the teleconference supplied to the Appellant on 25 June 2012 clearly spell out the procedure which the Agency will follow. The limited role of the teleconference was also clearly specified under the heading '*Purpose of the meeting and background'*. The Board of Appeal therefore considers that the Agency precisely communicated the ground rules concerning the teleconference which clearly mentioned that neither of the parties participating in the teleconference is bound by the contents of the discussion. Moreover, as is clear from the teleconference minutes, the Agency clearly stated that it will consider the Appellant's comments only if they are submitted in a formal manner via the appropriate webform. On 26 June 2012 the Appellant formally submitted a general comment on the draft decision. The comments stated, among others, that '*it is our* [the Appellant's] *understanding that* [the Agency] *will review the update*[d] *submission and, if there are outstanding issues, issue a revised draft decision. Furthermore, we understand that it is this revised draft decision which will be circulated to the member states'*.

84. In view of the above, the Board of Appeal considers that it is necessary to identify key inconsistencies between the Appellant's comments of 26 June 2012, regarding the purpose of the teleconference, and the stated scope and purpose of the teleconference. Two points should be mentioned at the outset. Firstly, the Agency did not commit itself in the letter accompanying the draft decision to revise the draft decision or to issue a new draft decision. Secondly, as regards the discussion in the teleconference, it was made clear in the minutes that the discussion would be informal and about scientific issues and there was no suggestion that the issues discussed during the teleconference will be considered by the Agency without the Appellant submitting those issues in the formal manner required.

85. The Board of Appeal finds that the minutes of the teleconference gave no indication that there would be a revision to the draft decision but rather that the draft decision,

the registrant's comments to it if submitted appropriately, and the Agency's response to those comments, would be forwarded to the MSCAs in accordance with the provisions of the REACH Regulation.

86. The Appellant had previously, after it received the disclaimer mentioned in paragraph 81 above, confirmed that it understood the purpose and function of the teleconference. The Board of Appeal considers that the letter offering the teleconference and the minutes of the teleconference itself gave no basis upon which the Appellant could come to its 'expectation' that the Agency will revise the draft decision. In its observations of 7 June 2013 on the Defence, the Appellant claimed that it has been prejudiced by the Agency's actions at, and following, the teleconference as the Appellant's expectation from the call was that a revised draft decision was to be issued once the Agency had considered the information on the composition of the lubricating oil submitted in the registration update. The Board of Appeal considers that the Agency's communications and actions both prior to and following the teleconference were clear and did not prejudice the Appellant.

87. As explained in paragraphs 83 to 86 above, the Board of Appeal finds that there was no reasonable basis upon which the Appellant could have formed its expectation as mentioned in the previous paragraph. The Board of Appeal therefore concludes that a reasonable reading of the communications from the Agency would have meant that the Appellant would not have arrived at the expectation that the Agency will revise the draft decision following the registration update.

88. Consequently, the Board of Appeal considers that the Appellant has not established that there was any error on the part of the Agency which was prejudicial, or caused difficulty, to the registrant that could lead the Board of Appeal to conclude that the Agency infringed the Appellant's legitimate expectations by not amending the draft decision after the Appellant updated its registration dossier.

89. It follows from the foregoing that the Appellant's complaint alleging infringement of the principles of legal certainty and of legitimate expectations is unfounded.

(ii) Alleged infringement of the principle of proportionality

Arguments of Parties

90. The Appellant claims that the Agency infringed the principle of proportionality, first, by requesting detailed compositional information despite the difficulties relating to UVCB substances which are recognised by the Guidance, and second, by requesting that such information be provided within three months. The Appellant also claims in this regard that, with respect to the lubricating oil, a minimum timeframe of at least twelve months would be required for test method development and analysis. As regards the phenate substance, there is little additional information that the Appellant can practically generate.

91. The Appellant adds that it did not comment on the Agency's timeframe to generate the additional spectra for the lubricating oil because its starting position was that the oil should not be seen as part of the registered substance's composition at all. However, having accepted that the lubricating oil as a stabilising additive needs to be included in the composition of the colloidal Substance, the Appellant submitted that the compositional information that already existed for the lubricating oil was consistent with the Guidance and corresponded to the information submitted by other registrants

of this and other oils. The Appellant's expectation from the teleconference was that a revised draft decision was to be issued after the Agency had considered compositional information on the lubricating oil submitted in the registration update. At that point, the Appellant would be able to start a dialogue with the Agency to establish a reasonable timeframe to generate any additional information required. However, this was not possible as the Agency progressed directly to the Contested Decision including the three month deadline for information on the composition of the lubricating oil.

92. The Agency argues that the Contested Decision is proportionate as the requested information as regards the colloidal Substance is based on real information needs and it is technically feasible to generate the requested information. As regards the technical feasibility, the Agency had issued a compliance check decision requiring further information on the identity of the 'same' substance to a co-registrant. In this decision, the Agency requested provision of an equivalent level of compositional information to that required in the Contested Decision. Following that decision, the co-registrant updated its registration dossier and provided the required level of detail on the composition of the lubricating oil in terms of identity and concentration levels of the different hydrocarbon classes within two months. This supports the Agency's position that the generation of the data is technically feasible, that the principle of equal treatment is respected, and that the deadline of three months to submit the required information was appropriate. Moreover, the Appellant provided no comment on the length of the deadline at the time it was requested to submit comments on the Agency's draft decision or at any later stage during the Agency's decision making process.

Findings of the Board of Appeal

93. The Board of Appeal will first examine whether the Agency, by requesting detailed compositional information on both the phenate substance and the lubricating oil, followed its own guidance.

94. The Board of Appeal considers that it is sufficient to note that, as it concluded above in paragraphs 65 to 77 when examining the Appellant's claim alleging the Agency's disregard of its Guidance and infringement of the principles of legal certainty and legitimate expectations, the Agency acted in accordance with the requirements of the REACH Regulation and its own Guidance. Moreover, when the Agency's request for additional information on a substance flows directly from the legislation, which applies in the present case, the Agency has no option but to require the missing information (see, to that effect, the decision of the Board of Appeal of 10 October 2013 in case A-004-2012, paragraph 109). The Board of Appeal further notes that it is up to the Appellant to decide which test methods and techniques it will use to provide the requested information. In light of the above, the Board of Appeal finds that the Appellant cannot maintain that the Agency's request for detailed compositional information on the Substance in the Contested Decision infringes the principle of proportionality.

95. The Board of Appeal will next examine the Appellant's complaint alleging infringement of the principle of proportionality by the Agency in setting a three month deadline to submit the requested information. The Board of Appeal notes that the Agency stated during the hearing that the requested information on the lubricating oil can be obtained through standard testing methods and techniques. The Board of Appeal accepts that the Agency is not imposing on the Appellant how to carry out the analyses required. The Board of Appeal concludes however, predicated on the fact that the required information can be generated using standard test methods and techniques,

and that there is therefore no need for test method development, the three months deadline is not disproportionate.

96. The Board of Appeal further notes that the Agency stated at the hearing that they use the three month deadline as standard when requesting substance identity information that the Agency considers necessary. The Board of Appeal observes that under the REACH Regulation, in particular Article 1(3) thereof, the burden of proof is on registrants to demonstrate that the substances they manufacture, place on the market or use are safe to use. The Board of Appeal thus accepts in this regard the Agency's argument that the starting point when setting a deadline to provide information on substance identity is the assumption that a registrant already knows the identity of the substance it is registering. Also, and as mentioned in the paragraph above, the Board of Appeal notes that the Agency stated that the requested information could be generated using standard 'off the shelf' test methods. Furthermore, the Board of Appeal notes that the Agency requested a co-registrant to submit the equivalent level of compositional information for the substance and that the registrant managed to submit the required level of detailed information on the composition of the lubricating oil within the given two months deadline.

97. Finally, the Board of Appeal observes that when given the opportunity to comment on a draft decision a registrant can comment on any aspect of it. In the present case and as already stated in paragraph 79 above, this was clearly indicated in the letter accompanying the Agency's draft decision of 31 May 2012. Moreover, in the minutes of the teleconference the following appears under heading e. of the fourth item on 'Conclusion and next steps': '*It was underlined that it is important to explain both what the registrant agrees in the draft decision and what he doesn't and then explain why'*. The Board of Appeal sees this as a clear invitation to address any and every point in the draft decision which gave the Appellant concern, including, if needed, arguments for a longer deadline to comply with the information requirements. The Board of Appeal notes that the Appellant did not take the opportunity to comment on the two month deadline to submit the requested information in the draft decision and further notes that this is one month less than the three month deadline established in the Contested Decision itself.

98. It follows from the foregoing that the Appellant's claim alleging that the Agency violated the principle of proportionality must be rejected.

99. In view of all of the above, the Appellant's third plea that the Agency's requirement for a high degree of detailed compositional information breaches certain principles of European Union law must be rejected as unfounded.

100. Considering the above conclusions of the Board of Appeal in relation to the Appellant's third plea, the Board of Appeal considers that the Appellant's first plea alleging that the majority of the information requested in the Contested Decision has already been submitted must also be rejected as unfounded.

II. Other issues under examination

Appeal fee

101. In accordance with Article 10(4) of Commission Regulation (EC) No 340/2008 on the fees and charges payable to the European Chemicals Agency pursuant to Regulation (EC) No 1907/2006 of the European Parliament and of the Council on the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) (OJ L 107, 17.4.2008,

p. 6), the appeal fee shall be refunded if the appeal is decided in favour of an appellant.

102. As the Board of Appeal has dismissed the Appellant's pleas the appeal has not been decided in favour of the Appellant. Consequently, the appeal fee shall not be refunded.

Effects of the Contested Decision

103. According to Article 91(2) of the REACH Regulation an appeal before the Board of Appeal shall have suspensive effect.

104. The Contested Decision, upheld in the present appeal proceedings, required the registrant, now the Appellant, to submit the required information to the Agency by 19 February 2013, in other words within three months of the date of adoption of the decision. The deadline to provide the requested information has therefore expired in the course of the present appeal proceedings.

105. In light of the above, and taking into account the circumstances of the present case, a new time-limit should be set for the Appellant to submit the information required by the Contested Decision.

106. Consequently, the Appellant shall submit the information required by the Contested Decision within three months from the date of notification of the Board of Appeal's Decision in the present case.

ORDER

On those grounds,

THE BOARD OF APPEAL

hereby:

Dismisses the appeal.

Decides that the appeal fee shall not be refunded.

Decides that the Appellant shall submit the information required by the Agency's Decision CCH-D-0000002759-61-02/F of 19 November 2012 within three months from the date of notification of the Board of Appeal's decision in this case.

Christopher HUGHES
Chairman of the Board of Appeal

Sari HAUKKA
Registrar of the Board of Appeal