

**DECISION OF THE BOARD OF APPEAL
OF THE EUROPEAN CHEMICALS AGENCY**

16 January 2013

Application to intervene

(Interest in the result of the case – Legal personality)

Case number	A-006-2012
Language of the case	English
Applicant	PETA International Science Consortium (PISC) Represented by: Dr. Gilly Stoddart 8 All Saints Street London N1 9RU United Kingdom
Contested decision	CCH-D-0000002304-84-04/F of 21 June 2012 adopted by the European Chemicals Agency (hereinafter the 'Agency') pursuant to Article 41(3) 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')
Appellant	Momentive Specialty Chemicals B.V. The Netherlands
Representative	Messrs. Herbert Estreicher and Marcus Navin-Jones Keller and Heckman LLP Avenue Louise 523 B-1050 Brussels Belgium

THE BOARD OF APPEAL

composed of Mercedes ORTUÑO (Chairman), Andrew FASEY (Rapporteur), and Mia PAKARINEN (Member)

Registrar: Sari HAUKKA

gives the following

Decision

SUMMARY OF THE FACTS

1. On 20 September 2012, the Appellant filed an appeal at the Registry of the Board of Appeal against the contested decision.
2. On 26 October 2012, an announcement of the notice of appeal was published on the website of the Agency in accordance with Article 6(6) 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').
3. On 9 November 2012, the Applicant filed an application with the Registry of the Board of Appeal seeking to intervene in the proceedings in support of the Appellant.
4. On 13 November 2012, PISC's application to intervene was served on the Appellant and the Agency. In addition, the Registry of the Board of Appeal requested the Applicant to provide the instruments constituting and regulating its legal personality or a recent extract from the register of associations or any other proof of its existence in law. The Applicant was also requested to provide proof that the person submitting the appeal had the authority to act on its behalf.
5. On 4 December 2012, the Applicant provided a proof of authority to act and evidence that, on 29 November 2012, it had been incorporated as a company limited by guarantee under the laws of England and Wales.
6. By documents lodged with the Registry on 5 December 2012, the Appellant expressed its support for the application to intervene.
7. By documents lodged with the Registry on 11 December 2012, the Agency requested the Board of Appeal to reject the application to intervene.

REASONS

8. In accordance with Article 8(1) of the Rules of Procedure '[any] person establishing an interest in the result of the case submitted to the Board of Appeal may intervene in the proceedings before the Board of Appeal'.
9. It should firstly be noted that point 4 of PISC's Consortium Formation and Representation Agreement (hereinafter the 'Agreement'), which was attached to the application to intervene, states that '[a]s the Consortium is not a corporate entity, it does not have the power or authority to assume or create any obligation or responsibility on behalf of any of the PETA-named entities individually nor on behalf of the Consortium as a cohesive body, and signatories therefore have no authority to execute any document on the Consortium's behalf purporting to create any such obligation'.
10. The wording of that point of the Agreement raised concerns as to whether PISC had legal personality, which in turn lead to the Registry's request of 13 November 2012 for further information in this regard.

11. As stated above in paragraph 5 of this Decision, on 4 December 2012, PISC provided evidence that, on 29 November 2012, it had been incorporated as a company limited by guarantee under the laws of England and Wales with a registered office in the United Kingdom.
12. It is clear, however, that, on the basis of the evidence submitted, the Applicant was incorporated as a company only after the time limit set for submitting an application to intervene, 9 November 2012, had expired. As that incorporation took place after the deadline for intervention it cannot be taken into consideration for the present application.
13. The Applicant has not therefore provided evidence demonstrating that it was a legal person prior to the expiry of the time limit set for the submission of applications to intervene.
14. Bodies which have no legal personality may however be granted leave to intervene provided that they satisfy the basic requirements for such personality, in particular the ability, however restricted, to undertake autonomous action and to assume liability (see by analogy the Order of the Court of 11 December 1973 in Joined Cases 41/73, 43/73 to 48/73, 50/73, 111/73, 113/73 and 114/73 *Générale sucrière and Others v Commission* [1973] ECR 1465, paragraph 3 and the Order of the Fifth Chamber of the General Court of 28 May 2004 in Case T-253/03, *Akzo Nobel Chemicals Ltd v Commission* [2004] ECR II 1603, paragraph 18).
15. The Board of Appeal considers however that, having examined the evidence submitted, the Applicant has failed to demonstrate that, prior to the expiry of the time limit set for applications to intervene, it was able to satisfy all the basic requirements for such personality. In particular, point 4 of the Agreement referred to in paragraph 9 above indicates that the Applicant was unable to assume liability.
16. Since the Applicant has failed to demonstrate that, prior to the expiry of the time limit set for applications to intervene, it had legal personality, or that it possessed all of the characteristics which are at the foundation of such personality, the application to intervene must be dismissed.

ORDER

On those grounds,

THE BOARD OF APPEAL

hereby:

Dismisses the application to intervene.

Mercedes ORTUÑO
Chairman of the Board of Appeal

Sari HAUKKA
Registrar of the Board of Appeal