

Helsinki, 30-11-2010

[REDACTED]

EC number: [REDACTED]
Reference number: DSH-30-3-[REDACTED]-2010

Decision No: DSH-30-3-D-[REDACTED]-2010

DECISION ON REQUEST FOR PERMISSION TO REFER TO INFORMATION REQUESTED FROM [REDACTED] UNDER ARTICLE 30(3) OF REGULATION (EC) No 1907/2006

In accordance with Article 30(3) of Regulation (EC) No 1907/2006 ("the REACH Regulation"), the European Chemicals Agency (ECHA) has examined the information you (for [REDACTED]) provided on 17 October 2010, regarding failure in reaching an agreement on data sharing under Article 30(3) of the REACH Regulation with [REDACTED] as a data owner. The information you provided was considered complete and appropriately documented, as indicated in our communication to you dated 22 October 2010. ECHA received information from [REDACTED] within the set deadline and conducted a contradictory assessment of the information provided by both parties.

As a result of this assessment according to Article 30(3) covering the exchange of communication up to the date of the complaint, ECHA has decided to **not grant you permission to refer to the information requested from [REDACTED]**

[REDACTED] and information requirements as listed in Annexes [REDACTED]

On the basis of the information provided by both you and the other party, ECHA concluded that you have not made every effort, pursuant to Article 30(1) of the REACH Regulation, to reach an agreement on the sharing of the costs of the information you requested in a fair, transparent and non-discriminatory way. More specifically, ECHA took its decision on the basis of the following reason(s):

The conversations with [REDACTED] started only on 20 August 2010 after receiving an email from [REDACTED] announcing that the letter of access was available to all SIEF members. Until the submission of the dispute (17/10/2010), you have not challenged any specific aspect of the cost but just asked general questions. ECHA notes that you have never indicated clearly to the lead registrant the actual information you requested, [REDACTED] has presumed it on its own from the nature of your questions.

ECHA also notes that the lead registrant always replied promptly to you. In addition, [REDACTED] always clarified stating from the beginning of the communications

(20/08/2010) that the needs of potential registrants subject to latter registration deadlines will be considered and covered after the first registration deadline (01/12/2010). [REDACTED] has therefore asked you to wait until then.

We note that you have not challenged this approach with any constructive arguments, which might have convinced [REDACTED] to share data now on tonnages which are normally subject to later deadlines. Considering the registration obligations of other companies before 01 December 2010 and in the absence of any argument from your side challenging it, the approach proposed by [REDACTED] does not seem to be manifestly inappropriate.

In the absence of any element demonstrating an urgent need to share the data and considering the complexity of data sharing negotiations in general and the time still available for you before you are compelled to register (until 01/06/2013), ECHA considers that you had the opportunity to develop valid and detailed arguments in order to challenge concretely the offer made by [REDACTED]. We also understand from your email of 4/10/2010 that even the tonnage band [REDACTED] "is not entirely confirmed yet". In the absence of precise arguments or proposals from you, ECHA considers that you have not made every effort to reach an agreement to share the costs of the data submitted, as required pursuant to Article 30(1) of the REACH Regulation.

Consequently ECHA advises that you continue the discussions in order to reach an agreement, as data sharing dispute claims made to ECHA need to be considered as a last resort only.

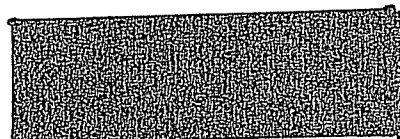
Besides the result of its assessment, ECHA would like to make some general observations in order to facilitate a future agreement. Each party shall give reasonable time to the other for providing appropriate answers to its questions. If the answer is received by a party is not satisfactory, it is up to that party (the recipient) to challenge the other one (the sender) by raising arguments and in this way engaging in further dialogue.

As already mentioned, in order to successfully reach an agreement on the sharing of the information, ECHA recommends to the potential registrants to specify the exact nature of the information to be requested from the previous registrants.

If you have a specific concern about the content of this message you can contact ECHA using the webform at http://echa.europa.eu/about/contact-form_en.asp and then selecting the menu item 'Enquiry on specific submission to ECHA'.

In accordance with Article 30(5) of the REACH Regulation, the potential registrant or the previous registrants may appeal against this decision to the Board of Appeal of ECHA within three months of receiving notification of this decision. The procedure for lodging an appeal is described at http://echa.europa.eu/appeals/app_procedure_en.asp.

Yours faithfully,



Geert Dancet
Executive Director

Cc. [REDACTED]