

**SUMMARY OF DECISION OF 6 JUNE 2018
OF THE BOARD OF APPEAL OF THE EUROPEAN CHEMICALS AGENCY**

Case number: A-006-2016

*(Substance evaluation of a monomer – Monomer as an unreacted impurity
in polymers – Monomer as a degradation product of polymers – Proportionality –
Legal certainty – Predicted No-Effect Concentration)*

Background

Nonylphenol (CAS No 84852-15-3, EC No 284-325-5) is a monomer used in the manufacture of polymers, including nonylphenol ethoxylates and phenol/formaldehyde resins.

Following an evaluation by the competent authority of the United Kingdom, the Agency required the Appellants to submit:

- information on the presence of nonylphenol in polymers as an unreacted impurity after polymerisation or as a degradation product, and
- information concerning the environmental predicted no-effect concentration ('PNEC'), namely to re-assess existing information and conduct new studies on invertebrate animals.

The Appellants requested the Board of Appeal to annul these information requirements.

With regard to the request for information on the presence of nonylphenol in polymers as an unreacted impurity after polymerisation or as a degradation product, the Appellants raised two lines of argument.

First, according to the Appellants, ECHA did not have the power to request information on polymers because polymers are exempted from evaluation under Article 2(9) of the REACH Regulation.

Second, according to the Appellants, the information request breached the principles of proportionality and legal certainty.

With regard to the request for information concerning the PNEC, the Appellants argued, in essence, that this request was disproportionate.

Main findings of the Board of Appeal

- *ECHA has the power to request information on polymers following the substance evaluation of monomers*

The Board of Appeal found that, following the substance evaluation of a monomer, Article 46 allows ECHA to request information on the presence of that monomer in polymers as an unreacted impurity after polymerisation or as a degradation product (paragraphs 42 to 53 of the Decision).

The Board of Appeal found that Article 2(9) of the REACH Regulation exempts polymers from registration and evaluation but does not prevent ECHA from requiring the information at issue (paragraphs 54 to 83 of the Decision).

The Board of Appeal therefore held that Article 46, read in conjunction with Article 2(9), means that ECHA has the power to request information on the presence of a monomer in polymers as an unreacted impurity after polymerisation, or as a degradation product of those polymers, pursuant to the substance evaluation of a monomer (paragraphs 84 to

87 of the Decision).

The Appellants' claim that ECHA did not have the power to request the information at issue was therefore rejected.

- *A substance evaluation decision cannot oblige registrants to provide information which they can neither assuredly obtain nor generate themselves (paragraphs 88 to 144 of the Decision)*

The Contested Decision required the Appellants to submit information on the presence of nonylphenol in polymers, including information held by the Appellants' downstream users.

The Board of Appeal examined the requirements of the principles of proportionality and legal certainty with regard to requests for further information under substance evaluation. It held that a substance evaluation decision cannot oblige registrants to provide information which they can neither assuredly obtain nor generate themselves (paragraphs 97 to 103 of the Decision).

The Board of Appeal found that, even assuming that information on the presence of nonylphenol in polymers is standard information for the registration of nonylphenol, downstream users could submit their own downstream user reports under Article 37(4) rather than provide this information to the Appellants. Therefore, the Board of Appeal found that downstream users could not be obliged to provide information on the presence of nonylphenol in their polymers to the Appellants (paragraphs 104 to 116 of the Decision).

The Board of Appeal therefore annulled the Contested Decision insofar as it required the Appellants to submit information held by their downstream users.

In contrast, the Board of Appeal upheld the Contested Decision insofar as it required the Appellants to submit information on the presence of nonylphenol in polymers that the Appellants already have or can generate themselves (paragraphs 123 to 144 of the Decision)

- *Information concerning the PNEC (paragraphs 145 to 193 of the Decision)*

The Board of Appeal rejected the Appellants' claims concerning the information requests relating to the PNEC. It held that the information requested in this regard was proportionate (paragraphs 160 to 182 of the Decision). The Contested Decision was therefore upheld insofar as it required the Appellants to submit further information concerning the PNEC.

NOTE: The Board of Appeal of ECHA is responsible for deciding on appeals lodged against certain ECHA decisions. The ECHA decisions that can be appealed to the Board of Appeal are listed in Article 91(1) of the REACH Regulation. Although the Board of Appeal is part of ECHA, it makes its decisions independently and impartially. Decisions taken by the Board of Appeal may be contested before the General Court of the European Union.

Unofficial document, not binding on the Board of Appeal

The full text of the decision is available on the Board of Appeal's section of ECHA's website:
<http://echa.europa.eu/about-us/who-we-are/board-of-appeal>