

- E N G L I S H V E R S I O N -

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

2 September 2019

*(Opinion of the Biocidal Products Committee –
Admissibility – Competence of the Board of Appeal)*

Case number	A-011-2019
Language of the case	German
Appellant	Sikma D Vertriebs GmbH und Co KG, Germany
Contested Act	Opinion No ECHA/BPC/121/2016 of 11 October 2016 on an application for approval of the active substance silicon dioxide Kieselguhr for use in biocidal products of product-type 18, adopted by the Biocidal Products Committee of the European Chemicals Agency pursuant to Article 89(1) of Regulation (EU) No 528/2012 concerning the making available on the market and use of biocidal products (OJ L 167, 27.6.2012, p. 1; the 'Biocidal Products Regulation')

THE CHAIRMAN OF THE BOARD OF APPEAL

gives the following

Decision

Background to the dispute

1. The Appellant filed this appeal on 15 August 2019. In essence, it requests the Board of Appeal to review Opinion No ECHA/BPC/121/2016 on an application for approval of the active substance silicon dioxide Kieselguhr for use in biocidal products of product-type 18.
2. According to the Appellant, products containing the active substance silicon dioxide Kieselguhr cannot be biocidal products within the meaning of Article 3(1)(a), first indent, of the Biocidal Products Regulation because that active substance has a purely physical or mechanical action.

Reasons

3. Pursuant to the second subparagraph of Article 77(1) of the Biocidal Products Regulation, read in conjunction with Article 93(2) of Regulation (EC) No 1907/2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (OJ L 396, 30.12.2006, p. 1), the Chairman of the Board of Appeal may dismiss an appeal within 30 days of it being filed if he considers the appeal to be inadmissible.
4. Opinion No ECHA/BPC/121/2016 was adopted by the Biocidal Products Committee pursuant to Article 89(1) of the Biocidal Products Regulation and Article 7(2) of Commission Delegated Regulation (EU) No 1062/2014 on the work programme for the systematic examination of all existing active substances contained in biocidal products referred to in the Biocidal Products Regulation (OJ L 294, 10.10.2014, p. 1).
5. Opinion No ECHA/BPC/121/2016 is not, therefore, one of the types of decisions that fall within the competence of the Board of Appeal pursuant to the first subparagraph of Article 77(1) of the Biocidal Products Regulation. Nor does it bear any relation to any of those types of decisions.
6. This appeal must consequently be dismissed as inadmissible.
7. Pursuant to Article 4(3) of Commission Implementing Regulation (EU) No 564/2013 on the fees and charges payable to the European Chemicals Agency pursuant to the Biocidal Products Regulation (OJ L 167, 19.6.2013, p. 17), if an appeal is dismissed as inadmissible the appeal fee is not refunded.

On those grounds,

THE CHAIRMAN OF THE BOARD OF APPEAL

hereby:

- 1. Dismisses the appeal as inadmissible.**
- 2. Decides that the appeal fee will not be refunded.**

Antoine BUCHET
Chairman of the Board of Appeal

Alen MOČILNIKAR
Registrar of the Board of Appeal