

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

25 April 2023

Request for confidential treatment of certain information

(Name, EINECS and CAS numbers of a substance)

Case number	A-004-2023
Language of the case	English
Appellant	Evonik Operations GmbH, Germany
Contested decision	Decision of 9 December 2022 on the follow-up to a compliance check of the registration for the substance 2,4,6-tris(dimethylaminomethyl)phenol, adopted by the European Chemicals Agency under Article 42(1) of the REACH Regulation The Contested Decision was notified to the Appellant under annotation number CCH_D-2114621395-51-01/F

THE CHAIRMAN OF THE BOARD OF APPEAL

gives the following

Decision

1. On 7 March 2023, the Appellant filed an appeal against the Contested Decision.
2. On the same date, the Appellant requested that the name of the substance at issue in this case, including its Chemical Abstracts Service (**CAS**) and European Inventory of Existing Commercial Substances (**EINECS**) numbers, should be kept confidential in accordance with Article 6(1)(g) of the Rules of Procedure¹ with regard to all publications and notices which are accessible to third parties, including announcements and decisions of the Board of Appeal.
3. The Appellant justifies its request by stating that it is the only registrant of the substance at issue, and that the Contested Decision is not public or known to third parties yet. The fact that the Agency is requesting additional information from the Appellant may lead to a classification of the substance. In this case, customers of the Appellant may be unsure about the permitted use of the substance in the future and may therefore refrain from buying the substance from the Appellant. The publication of the name of the substance, including its CAS and EINECS numbers, would therefore lead to a commercial damage for the Appellant.
4. Article 6(6) of the Rules of Procedure provides:
'An announcement shall be published on the website of the Agency, indicating the date of registration of an appeal initiating proceedings, the names and addresses of the parties, the subject matter of the proceedings, the remedy sought by the appellant and a summary of the pleas in law and of the main supporting arguments.
Without prejudice to the first subparagraph, the Chairman shall decide whether information indicated by an appellant pursuant to paragraph 1(g) is to be regarded as confidential and shall ensure that any information which is regarded as confidential is not published in the announcement. The practical details of publication shall be prescribed in accordance with the procedure set out in Article 27(3).'
5. The name of the substance at issue in this case, including its CAS and EINECS numbers, is not expressly listed in the first subparagraph of Article 6(6) of the Rules of Procedure as information which must necessarily be published in the announcement of the appeal case.
6. In view of the Appellant's request, it is therefore necessary to examine whether the information at issue is in fact confidential and, if it is, whether the information should nevertheless be published in the announcement of the appeal case.
7. As a first step, with regard to the confidential nature of the information, it must be noted that the name of the substance, including its CAS and EINECS numbers, is publicly known. It is also stated on the Agency's website that the Appellant is a registrant of the substance, and that the substance has been the subject of compliance check decisions and of a follow-up decision. The Agency's website further states that the follow-up decision is currently under appeal in case A-004-2023.²
8. Nevertheless, and although there is public information already available on the Substance and the ongoing compliance check process, the Agency's website does not state explicitly that the Appellant has failed to bring its registration dossier for the Substance into compliance with the information requirements of the REACH

¹ Commission Regulation (EC) No 771/2008 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).

² The information can be accessed in the Agency's publicly available 'PACT' database, av. at <https://echa.europa.eu/pact>

Regulation. For the purposes of the present decision, it cannot therefore be assumed that the information at issue is easily and entirely accessible to the public.

9. It is consequently necessary, as a second step, to weigh in the balance the competing interests at issue. In the present case, those interests are the Appellant's legitimate concern to prevent serious harm to its interests and the equally legitimate concern of any possible interveners to fully assert their rights by intervening in the case before the Board of Appeal.³
10. On the one hand, the Appellant states that the publication of the name of the substance in this case, including its EINECS and CAS numbers, would harm its commercial interests because the requested information may lead to a classification of the substance, and its customers may then refrain from buying the substance from the Appellant. That assertion is hypothetical and unsubstantiated. The appeal does not concern the classification of the substance or its safe use, but the possible need to conduct a study to determine the intrinsic properties of the substance. It is also not apparent how knowing of the present case may make the Appellant's customers unsure about the permitted use of the substance.
11. On the other hand, the mention of the name of the substance, including its CAS and EINECS numbers, in the public announcement of the appeal case is necessary in order to inform any persons concerned of the subject-matter of the case, so that they can determine whether they have an interest in the case and protect that interest by intervening. For example, national authorities, other registrants of the Substance (if any), downstream users or non-governmental associations would not be able to assess whether the appeal case is of concern to them if the information at issue was not published in the announcement, and would therefore not be able to seek leave to intervene in the proceedings. In the present case, this interest prevails.
12. It follows that the Appellant's request that the name of the substance at issue in this case, including its CAS and EINECS numbers, should be kept confidential must be rejected.

On those grounds,

THE CHAIRMAN OF THE BOARD OF APPEAL

hereby:

Rejects the Appellant's request the name of the substance at issue in this case, including its CAS and EINECS numbers, should be kept confidential

Antoine BUCHET
Chairman of the Board of Appeal

Alen MOČILNIKAR
Registrar of the Board of Appeal

³ See, to that effect, decision of the Chairman of the Board of Appeal of 12 March 2014, *Cinic Chemicals Europe*, A-001-2014, paragraph 13.