

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

14 November 2016

(Rectification of contested decision – Withdrawal of appeal by appellant)

Case number	A-008-2016
Language of the case	English
Appellant	Emerald Kalama Chemical B.V., the Netherlands Lanxess Deutschland GmbH, Germany Ineos Chloro Toluenes Belgium NV, Belgium
Representative	Scott Megregian, Raminta Dereskeviciute and Zanda Romata K&L Gates LLP, the United Kingdom
Contested Decision	CCH-D-2114332899-33-01/F of 13 June 2016 adopted by the European Chemicals Agency (hereinafter the 'Agency') pursuant to Article 41 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')

THE CHAIRMAN OF THE BOARD OF APPEAL

gives the following

Decision

1. On 13 September 2016, the Appellants filed an appeal at the Registry of the Board of Appeal seeking the annulment of the Contested Decision. The Contested Decision was adopted by the Agency on 13 June 2016 following a compliance check, under the dossier evaluation procedure, of the registration submitted by the lead registrant for benzaldehyde (hereinafter the 'Substance'). The Contested Decision is addressed to the lead registrant and requests that its registration dossier be updated with additional information by 20 June 2019.
2. In their appeal the Appellants argue in particular that their right to be heard was violated as the Agency did not take any additional steps, beyond its established practice, to determine whether more information was available on the endpoints identified in the Contested Decision. In particular, the Appellants claim that the lead registrant became aware of the draft decision only after the deadline to provide comments as the responsible person had been on medical leave at the time the draft decision was notified. The Appellants state that as soon as they became aware of the draft decision they contacted the Agency and requested the opportunity to discuss the draft decision and provide further justifications for the read-across approach provided in the registration dossier. The Appellants state that they also provided explanations as to why the requirements in the draft decision had already been met at the Member State Committee meeting at which the Substance was discussed. The Appellants add that, prior to the adoption of the Contested Decision, the lead registrant updated its registration dossier with additional justifications for the adaptations proposed in its registration dossier. The Appellants consider that the Agency's refusal to deviate from its established practice in the extenuating circumstances of the case lead to unnecessary information requests.
3. On 13 October 2016, the Agency informed the Board of Appeal that, pursuant to Article 93(1) of the REACH Regulation, the Executive Director of the Agency had rectified the Contested Decision by revoking it in its entirety.
4. The Agency informed the Board of Appeal that the Executive Director had decided to revoke the Contested Decision because, in light of the specific circumstances of the case, the Agency could have exceptionally provided the addressee of the Contested Decision with a further possibility to comment on the draft decision. The Agency added that:

'In coming to this conclusion, the following factors were, in particular, taken into account:

 - (i) *the addressee's failure to respond to the initial draft decision was due to a medical emergency;*
 - (ii) *it is understood that the addressee of the Contested Decision was not aware that a compliance check process had been opened for his registration dossier;*
 - (iii) *the Contested Decision requires the addressee of the decision to perform testing which is expensive (over 1 million euros) and which involves a high number of vertebrate animals.'*
5. On 14 October 2016, the Appellants were requested to inform the Board of Appeal whether or not they intend to continue with their appeal following the rectification of the Contested Decision.
6. On 21 October 2016, the Appellants informed the Board of Appeal that they had decided to withdraw the appeal.
7. In accordance with Article 1b of 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 26.5.2016, p. 5, as amended by Commission Implementing Regulation (EU) 2016/823, OJ L 137 26.05.2016, p. 4), where an appeal is withdrawn, the Chairman shall close the proceedings.

8. As the Appellants have decided to withdraw the appeal the present case should be closed.
9. Pursuant to Article 10(4) of Commission Regulation (EC) No 340/2008 on the fees and charges payable to the European Chemicals Agency pursuant to the REACH Regulation, the fee levied for submission of an appeal shall be refunded if the Executive Director of the Agency rectifies a decision in accordance with Article 93(1), or if the appeal is decided in favour of the Appellants.
10. In the present case, the Contested Decision has been revoked by the Executive Director in accordance with Article 93(1) and the appeal fee shall therefore be refunded.

On those grounds,

THE CHAIRMAN OF THE BOARD OF APPEAL

hereby:

- 1. Closes appeal case A-008-2016.**
- 2. Orders the refund of the appeal fee.**

Mercedes ORTUÑO
Chairman of the Board of Appeal

Alen MOČILNIKAR
Registrar of the Board of Appeal