

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

12 June 2017

(Withdrawal of appeal by appellant)

Case number	A-003-2016
Language of the case	English
Appellant	Solutia Europe SPRL/BVBA, Belgium
Representative	Jean-Philippe Montfort and Thomas Delille Mayer Brown Europe-Brussels LLP, Belgium
Contested Decision	Decision of 1 October 2015 on the substance evaluation for the mixture of two components: 1. N-(1,3-dimethylbutyl)-N'-phenyl-p-phenylenediamine 2. N1-(1,3-dimethylbutyl)-N4-(4-(1-methyl-1-phenylethyl)phenyl)benzene-1,4-diamine adopted by the European Chemicals Agency pursuant to Article 46(1) 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')

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gives the following

Decision

1. The Appellant is a registrant of two substances belonging to the group of para-Phenylenediamines: 1. N-(1,3-dimethylbutyl)-N'-phenyl-p-phenylenediamine and 2. N1-(1,3-dimethylbutyl)-N4-(4-(1-methyl-1- phenylethyl)phenyl)benzene-1,4-diamine.
2. On 20 March 2013, the Agency published the updated Community Rolling Action Plan (hereinafter the 'CoRAP') including a mixture of two components: 1. N-(1,3-dimethylbutyl)-N'-phenyl-p-phenylenediamine and 2. N1-(1,3-dimethylbutyl)-N4-(4-(1-methyl-1- phenylethyl)phenyl)benzene-1,4-diamine (hereinafter the 'Substance'), which consisted of the two substances registered by the Appellant. The Competent Authority of the Slovak Republic (hereinafter the 'eMSCA') was appointed to carry out the evaluation.
3. On 1 October 2015, the Agency adopted the Contested Decision, requiring further information from its addressees. The Appellant was not one of the addressees of the Contested Decision. On 13 April 2016, the Appellant filed the present appeal at the Registry of the Board of Appeal against the Contested Decision. The Appellant claimed that it became aware of the Contested Decision on 13 January 2016 after consulting the Agency's website.
4. On 20 June 2016, the Member State Authority of the Slovak Republic applied for leave to intervene in the current proceedings.
5. On 12 July 2016, the Appellant requested the Board of Appeal to stay the appeal proceedings for a period of two months.
6. On 17 August 2016, in accordance with the first paragraph of Article 25 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, 2.8.2008, p. 5, as amended by Commission Implementing Regulation (EU) 2016/823, OJ L 137, 26.5.2016, p. 4; hereinafter the 'Rules of Procedure'), after having heard the Agency, the Board of Appeal decided to stay the proceedings until 17 October 2016.
7. On 17 October 2016, the Agency informed the Board of Appeal of a letter sent to it by the eMSCA, informing the Agency that the eMSCA intended to conclude the evaluation of the Substance, as the addressee of the Contested Decision had ceased to manufacture the Substance.
8. On 3 November 2016, the Appellant informed the Board of Appeal that it wanted to wait until the eMSCA confirmed its position on the outcome of the substance evaluation procedure in a formal conclusion document under Article 48 of the REACH Regulation (hereinafter the 'conclusion document') before taking a decision on the pursuit or withdrawal of the appeal. The Appellant requested the Board of Appeal to adopt a second stay of proceedings until the Parties have been able to consider the conclusion document.
9. On 18 November 2016, the Board of Appeal decided to stay the proceedings until 31 January 2017.
10. On 30 January 2017, the Appellant informed the Board of Appeal that in its exchanges with the Agency, the latter had informed the Appellant that the eMSCA had sent a draft conclusion document to the Agency and had indicated that additional three to four weeks would be needed to finalise the conclusion document. The Appellant requested the Board of Appeal to extend the stay of the proceedings until 15 March 2017 in order to allow the time necessary for the eMSCA and the Agency to formalise their position.
11. On 8 February 2017, after having heard the Agency, the Board of Appeal decided to stay the proceedings until 15 March 2017.

12. On 6 March 2017, the Agency informed the Board of Appeal that the eMSCA had finalised its conclusion document pursuant to Article 48 of the REACH Regulation. According to the conclusion document, the eMSCA's had terminated the evaluation of the Substance as the Substance no longer had any active registrations.
13. On 24 March 2017, the Appellant informed the Registry of the Board of Appeal that it withdraws the present appeal provided that the Appellant's understanding that *'the information requests contained in the Contested Decision (i) have not been submitted and (ii) will not be requested from the addressees, and thus no longer apply, the Contested Decision is to be rectified by [the Agency]'* was correct and provided that the appeal fee is refunded.
14. On 7 April 2017, the Agency informed the Registry of the Board of Appeal that it shared the Appellant's view that the information requested in the Contested Decision no longer needed to be provided. The Agency did not however consider that there were grounds for rectifying the Contested Decision. It rather considered that the substance evaluation for the Substance was completed, and that, in the event further information was needed, a new decision would need to be taken under either Articles 40 or 41 or Article 46 of the REACH Regulation.
15. On 28 April 2017, responding to the Agency's submission of 7 April 2017, the Appellant confirmed the withdrawal of its appeal. As regards the refund of the appeal fee, it considered that the conclusion of the evaluation of the Substance *'equals to a de facto rectification of the Contested Decision, i.e. the information requests it contains are no longer binding'*. The Appellant reiterated its request that the appeal fee should be reimbursed. However, it also stated that it did not make the reimbursement of the appeal fee a condition for its withdrawal of the appeal and that it relied on the decision of the Board of Appeal in that regard.
16. In accordance with Article 1b of the Rules of Procedure, where an appeal is withdrawn, the Chairman shall close the proceedings.
17. 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 Regulation (EC) No 1907/2006 of the European Parliament and of the Council on the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) (OJ L 107, 17.4.2008, p. 6), 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) of the REACH Regulation or if the appeal is decided in favour of the appellant.
18. The Chairman observes that the eMSCA concluded in part A, point 3 of the conclusion document, that *'as [the Substance] no longer has any active registrations according to [the Agency's] register/dissemination website, the evaluation is terminated with several open concerns'* and that *'[i]f in the future the currently inactive registration is re-activated, or there are new registrants for the substance, authorities shall consider including the substance again in the CoRAP for obtaining the information which is considered important to clarify the concern related to [the Substance]'*.
19. The Chairman considers that the above conclusion of the eMSCA rendered the the Contested Decision, initially requiring its addressee to provide further information for the Substance, inoperative. This consideration does not mean however that the Contested Decision was substantively rectified as argued by the Appellant. The Appellant's argument is therefore rejected.
20. The Chairman therefore concludes that the Contested Decision was neither rectified by the Executive Director of the Agency nor was the appeal decided in favour of the Appellant. In the present case the conditions for the refund the appeal fee pursuant to Article 10(4) of the Rules of Procedure are not met.

21. The Chairman considers that it is not necessary to address the application for leave to intervene lodged by the Member State Authority of the Slovak Republic in the current proceedings, as the appeal has been withdrawn by the Appellant.

On those grounds,

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hereby:

- 1. Closes appeal case A-003-2016.**
- 2. Decides that the appeal fee shall not be refunded.**

Mercedes ORTUÑO
Chairman of the Board of Appeal

Alen MOČILNIKAR
Registrar of the Board of Appeal