

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

13 March 2017

(Withdrawal of appeal by appellant)

Case number	A-012-2016
Language of the case	English
Appellant	Zschimmer & Schwarz Italiana S.p.A., Italy
Contested Decision	TPE-C-2114344590-53-01/F adopted by the European Chemicals Agency (hereinafter the 'Agency') on 30 September 2016

THE CHAIRMAN BOARD OF APPEAL

gives the following

Decision

1. The Contested Decision, addressed to the Italian REACH Competent Authority and the Italian (MSCA/NEA) Focal Point with the Appellant in copy, was taken by the European Chemicals Agency (hereinafter 'ECHA') as follow-up to a testing proposal decision addressed to the Appellant concerning the substance sodium hydrogen N-(1-oxododecyl)-L-glutamate (EC No 249-958-3, CAS No 29923-31-7; hereinafter 'the Substance'). The testing proposal decision had requested the Appellant to provide information on a test performed on an analogue substance (I-Glutamic acid, N-coco acyl derivs., disodium salts, EC No 269-085-1, CAS No 68187-30-4) by 28 March 2016.
2. According to the Contested Decision, the Appellant did not provide the information requested in the testing proposal decision by the deadline set. The Contested Decision concludes that, as a result, the Appellant has not met its obligations following from the testing proposal decision and therefore is in breach of Article 40(4) 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 Contested Decision requests the national authority of the member state *'to address the non-compliance in [its] own competence by means of enforcement to execute ECHA's decision'*.
3. On 28 November 2016, the Appellant submitted an appeal claiming that it was unable to submit the information requested in the testing proposal decision because the lead registrant of the analogue substance was still discussing some points relating to the proposed testing with ECHA. The Appellant stated that the lead registrant of the

analogue substance therefore could not perform the test requested in the Contested Decision within the deadline set. The Appellant claimed that it had informed the Agency of this situation in a dossier update. The Appellant argued further that, whilst it could perform the test requested in the Contested Decision itself on the Substance, such an approach could be contrary to Article 25 of the REACH Regulation as an approved read-across could be employed in this case.

4. On 21 February 2017, an application to intervene in support of the remedy sought by the Appellant was received at the Registry of the Board of Appeal. On 22 February 2017, the Parties were invited to provide observations on the application to intervene by 8 March 2017.
5. On 2 March 2017, the Appellant informed the Board of Appeal that by its appeal it had sought advice on how to proceed in view of the on-going procedure related to the analogue substance. The Appellant stated that, since a decision has now been taken on the procedure related to the analogue substance, it had been clarified how the Appellant should proceed. The Appellant stated that it therefore has no interest in pursuing its appeal further and was therefore withdrawing its appeal.
6. In accordance with Article 1*b* 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), where an appeal is withdrawn, the Chairman shall close the proceedings. In these circumstances, there is no need to decide on the application to intervene.
7. 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) a refund of the fee levied for submission of an appeal only occurs if the Executive Director of the Agency rectifies the contested decision in accordance with Article 93(1) of the REACH Regulation, or if the appeal is decided in favour of the appellant. Since neither of these situations applies in the present case, the appeal fee is not refunded.

On those grounds,

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hereby:

- 1. Closes appeal case A-012-2016.**
- 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