

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

11 February 2015

(Withdrawal of appeal by appellant)

Case number	A-016-2014
Language of the case	English
Appellant	Oxiteno Europe SPRL (OR2) Belgium
Representative	Daniel Ries KFT Chemieservice GmbH Germany
Contested Decision	CCH-D-0000004054-83-06/F adopted by the European Chemicals 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 BOARD OF APPEAL

composed of Mercedes Ortuño (Chairman and Rapporteur), Andrew Fasey (Technically Qualified Member) and Dimitrina Petrova (Legally Qualified Member)

Registrar: Sari Haukka

gives the following

Decision

1. On 17 December 2014, the Appellant filed an appeal at the Registry of the Board of Appeal seeking the rectification of the Contested Decision in its favour. The Contested Decision was adopted following a compliance check of the registration submitted by the Appellant for isopentyl acetate (hereinafter the 'Substance') and requested the Appellant to provide information on hydrolysis as a function of pH in accordance with Section 9.2.2.1 of Annex VIII to the REACH Regulation (test method: Hydrolysis as a function of pH, EU C.7/OECD 111). The Appellant was required to provide the requested information by 25 March 2015.
2. In its appeal the Appellant claims that data demonstrating that a substance is readily biodegradable represents a valid alternative to the information requested in the Contested Decision. The Appellant claims further that its registration dossier contains a summary of a study report demonstrating that the Substance is readily biodegradable (OECD TG 301 F, GLP, Study No. 99-E70, Givaudan). According to the Appellant, this information was included in a registration dossier update after the adoption of the Contested Decision due to the fact that the Appellant needed to change the status of the joint submission, a process which took longer than expected. In addition, the Appellant claims that its registration dossier contains data from another study on the biodegradability of the Substance (OECD TG 301 C, Muckle, 2013) which points to the conclusion that the Substance would only be inherently biodegradable. The Appellant concludes that in a weight of evidence approach, taking into consideration the results of both studies, the Substance is readily biodegradable.
3. On 2 February 2015, the Appellant informed the Board of Appeal that it had received a letter from the European Chemicals Agency (hereinafter the 'Agency') dated 28 January 2015 in which the Agency stated that it had exceptionally examined the Appellant's dossier update before the expiry of the deadline set in the Contested Decision to provide the requested information and had concluded that the registration dossier, as updated, shows that the Substance is readily biodegradable. The Agency continued that, as a result, one of the two adaptation criteria in Column 2 of Section 9.2.2.1 of Annex VIII is fulfilled. According to the Agency's letter, the Agency is therefore of the preliminary view that the registration dossier complies with Section 9.2.2.1 of Annex VIII. The Agency informed the Appellant that the letter did not constitute a formal decision and that it would formally follow-up on the compliance check in accordance with Article 42 of the REACH Regulation after the deadline set in the Contested Decision.
4. In its letter of 2 February 2015 the Appellant informed the Board of Appeal that, in light of the Agency's communication of 28 January 2015, the Appellant was withdrawing its appeal. In view of the Appellant's decision to withdraw the appeal, the present appeal case should be closed.
5. Pursuant to Article 10(4) of Commission Regulation (EC) No 340/2008 of 16 April 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 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.

ORDER

On those grounds,

THE BOARD OF APPEAL

hereby:

- 1. Closes appeal case A-016-2014.**
- 2. Decides that the appeal fee shall not be refunded.**

Mercedes Ortuño
Chairman of the Board of Appeal

Alen Močilnikar
On behalf of the Registrar of the Board of Appeal