

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

9 March 2016

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

Case number	A-018-2015
Language of the case	English
Appellants	CS Regulatory Limited, UK Galata Chemicals GmbH, Germany PCC Rokita SA, Poland ICC Industries B.V., The Netherlands CCD (Germany) GmbH, Germany Sustainability Support Services AB, Sweden
Representative	Marcus Navin-Jones, Keller and Heckman LLP
Contested Decision	Decision of 21 May 2015 on the substance evaluation of triphenyl phosphite adopted by the European Chemicals Agency pursuant to Article 46(1) and in accordance with the procedure laid down in Articles 50 and 52 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), Andrew Fasey (Technically Qualified Member and Rapporteur) and Sari Haukka (Legally Qualified Member)

Registrar: Alen Močilnikar

gives the following

Decision

1. On 19 August 2015, the Appellants filed an appeal at the Registry of the Board of Appeal against the Contested Decision.
2. On 4 and 5 November 2015 respectively, two applications to intervene in support of the remedy sought by the Appellant were received at the Registry of the Board of Appeal.
3. On 3 December 2015, the Agency informed the Board of Appeal that the Executive Director of the Agency had decided to partially rectify the Contested Decision by withdrawing the information requests concerning reproductive toxicity; i.e. an extended one-generation reproductive toxicity study and a pre-natal developmental toxicity study.
4. In light of the partial rectification of the Contested Decision, the Appellants were requested by letter of 9 December 2015 to inform the Registry of the Board of Appeal whether they intended to continue with their case before the Board of Appeal. A deadline of 29 January 2016 was given for the Appellants' response.
5. On 11 January 2016, the Appellants lodged a request for a stay of proceedings pursuant to 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; hereinafter the 'Rules of Procedure'). In support of their request, the Appellants argued that *'it may be in the best interests of all parties in these proceedings to allow time [for the Agency] and the Appellants to discuss possible settlement'* of the present case.
6. In accordance with the first paragraph of Article 25 of the Rules of Procedure, the Agency was invited to submit its observations on the Appellants' request to stay the proceedings. The Appellants were informed that the deadline for their response as to whether they intend to continue the case was suspended until the Board of Appeal decides on the request to stay the proceedings.
7. On 1 February 2016, the Agency informed the Board of Appeal that it defended the Contested Decision as rectified, opposed potential settlement discussions, and thus objected to the Appellants' request for a stay of proceedings.
8. In view of the position of the Agency, and in particular that the Agency did not foresee any discussions on a possible settlement of the present case, the Board of Appeal dismissed the request for a stay of the present proceedings. Accordingly, the Board of Appeal set a new deadline of 29 February 2016 for the Appellants to inform the Registry of the Board of Appeal whether they intended to continue with their case.
9. On 25 February 2016, the Appellants informed the Board of Appeal that they had decided to withdraw the appeal.
10. As the Appellants have decided to withdraw the appeal, the present case should be closed. In these circumstances, there is no need to decide on the applications to intervene.
11. 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) states that if the Executive Director of the Agency rectifies a contested decision in accordance with Article 93(1) of the REACH Regulation, the Agency shall refund the appeal fee. In the present case, the Executive Director rectified the Contested Decision by withdrawing the information requests concerning reproductive toxicity. As a result of the rectification the Appellants withdrew their appeal. Consequently, the Agency should be ordered to refund the appeal fee to the Appellants in the present case.

On those grounds,

THE BOARD OF APPEAL

hereby:

- 1. Closes appeal case A-018-2015.**
- 2. Orders the refund of the appeal fee.**

Mercedes ORTUÑO
Chairman of the Board of Appeal

Alen MOČILNIKAR
Registrar of the Board of Appeal