

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

**06 October 2014**

**Application to intervene**

*(Interest in the result of the case – Addressee of the Contested Decision)*

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|-----------------------------|---|
| <b>Case number</b>          | A-004-2014  |
| <b>Language of the case</b> | English   |
| <b>Applicant</b>            | REACH Law Oy<br>Espoo<br>Finland  |
| <b>Contested Decision</b>   | <p>ECHA Decision of 25 February 2014 on the substance evaluation of alkanes, C14-17 chloro (Medium-chain chlorinated paraffins, hereinafter 'MCCP') adopted by the European Chemicals Agency (hereinafter the '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').</p> <p>The Decision was notified to the Appellants through the following annotation numbers: SEV-D-2114273983-36-01/F, SEV-D-2114273973-37-01/F, SEV-D-2114273975-33-01/F, SEV-D-2114273969-26-01/F, SEV-D-2114273977-29-01/F, SEV-D-2114273979-25-01/F, SEV-D-2114273972-39-01/F, SEV-D-2114273980-42-01/F, and SEV-D-2114273978-27-01/F.</p> |
| <b>Appellants</b>           | Altair Chimica S.p.A., Italy<br>Caffaro Industrie S.p.A., Italy<br>FORTISCHEM a.s., Slovakia<br>INEOS Chlorvinyls Limited, United Kingdom<br>INEOS Enterprises France SAS, France<br>Kaustik Europe B.V., Netherlands<br>LEUNA-Tenside GmbH, Germany<br>Prakash Chemicals Europe B.V., Netherlands<br>QUIMICA DEL CINCA, S.L., Spain  |
| <b>Representative</b>       | Herbert Estreicher and Marcus Navin-Jones<br>Keller and Heckman LLP<br>Brussels<br>Belgium  |

### **THE BOARD OF APPEAL**

composed of Mercedes ORTUÑO (Chairman), Andrew FASEY (Technically Qualified Member and Rapporteur) and Barry DOHERTY (Legally Qualified Member)

Registrar: Sari HAUKKA

gives the following

### **Decision**

#### **SUMMARY OF THE FACTS AND ARGUMENTS OF THE PARTIES**

1. On 16 May 2014, the Appellants filed an appeal at the Registry of the Board of Appeal against the Contested Decision.
2. On 25 June 2014, an announcement of the appeal was published on the website of the Agency in accordance with Article 6(6) of Commission Regulation (EC) No 771/2008 of 1 August 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').
3. On 7 July 2014, REACH Law Oy filed an application with the Registry of the Board of Appeal seeking leave to intervene in case A-004-2014 in support of the Appellants.
4. In support of its application REACH Law Oy claims, first, that it has an interest in the result of the present case because, like the Appellants, it is a registrant of MCCC, the substance which is the subject matter of the Contested Decision, and an addressee of the Contested Decision itself.
5. Secondly, REACH Law Oy claims that it has an interest in the result of the present case because it cooperated with the Appellants in the preparation of the joint submission including information on the properties of MCCC under the REACH Regulation. In addition, REACH Law Oy states that, in line with the Agency's Guidance "ECHA-12-L-10-EN Substance Evaluation under REACH: Tips for Registrants and Downstream Users" (hereinafter the 'Agency's Guidance'), it coordinated its comments with the Appellants during the formal decision-making process on the substance evaluation of MCCC.
6. Thirdly, REACH Law Oy claims that it has an interest in seeing the Contested Decision annulled because it is required to provide the data listed in the Contested Decision in the same way as the Appellants are. Moreover, according to REACH Law Oy, the costs incurred as a result of carrying out the testing stipulated in the Contested Decision will generally apply to it in the same way as they will apply to the Appellants.
7. The application to intervene was served on the parties. On 25 and 28 July 2014 respectively, the Appellants and the Agency declared that they raised no objections against the intervention of REACH Law Oy in the present case.

**REASONS**

8. In accordance with Article 8(1) of the Rules of Procedure, any person establishing an interest in the result of a case submitted to the Board of Appeal may intervene in that case.
9. Article 8(2) of the Rules of Procedure provides further that an application to intervene must state the circumstances establishing the right to intervene and must be submitted within two weeks of publication of the announcement of the notice of appeal on the website of the Agency. Furthermore, pursuant to Article 8(3), the application must be limited to supporting or opposing the remedy sought by one of the parties. In addition, Article 8(4) lists the information the application shall contain.
10. The application to intervene submitted by REACH Law Oy complies with Articles 8(2), 8(3) and 8(4) of the Rules of Procedure. The Board of Appeal shall now examine whether the application also complies with Article 8(1) of the Rules of Procedure, in other words whether REACH Law Oy has established an interest in the result of the present case.
11. For the purposes of the present case, the concept of an interest in the result of the case, within the meaning of Article 8(1) of the Rules of Procedure, must be defined in the light of the precise subject-matter of the dispute and be understood as meaning a direct, existing interest in the ruling on the forms of order sought and not as an interest in relation to the pleas in law and arguments put forward. The expression 'result' is to be understood as meaning the operative part of the final decision of the Board of Appeal. It is appropriate, in particular, to ascertain whether the intervener is directly affected by the contested measure and whether its interest in the result of the case is established (see, to that effect, by analogy, order of the General Court of 17 February 2010 in Case T-587/08, *Fresh Del Monte Produce v European Commission*, ECLI:EU:T:2010:42, paragraph 8 and the case-law cited therein).
12. In the context of the present case, it should be noted that REACH Law Oy is a registrant of MCCP, the substance which is the subject matter of the Contested Decision. Under the REACH Regulation, all registrants of the same substance have to cooperate in the preparation of a joint submission including information on the properties of MCCP. In addition, during the formal decision-making process on the substance evaluation of MCCP, REACH Law Oy coordinated its comments with the Appellants, in line with the Agency's Guidance. Furthermore, REACH Law Oy is one of the addressees of the Contested Decision and is required to provide the data listed therein in the same way as the Appellants. In addition, it is likely that REACH Law Oy, as a registrant of MCCP and an addressee of the Contested Decision, will have to pay a share of the costs incurred as a result of carrying out additional testing as required by the Contested Decision.
13. In view of the above, the Board of Appeal considers that REACH Law Oy is directly affected by the Contested Decision and has established an interest in the result of the case. REACH Law Oy must, therefore, be entitled to intervene in the present case.
14. For reasons of completeness, the Board of Appeal notes that REACH Law Oy had an independent right of appeal against the Contested Decision under Article 92 of the REACH Regulation. However, since REACH Law Oy did not submit such an appeal within the prescribed time-limit, REACH Law Oy's rights as an intervener must be confined to supporting the form of order sought by the Appellants (see, to that effect, by analogy, order of the General Court of 17 February 2010 in Case T-587/08, *Fresh Del Monte Produce v European Commission*, ECLI:EU:T:2010:42, paragraph 8 and the case-law cited therein).

**ORDER**

On those grounds,

THE BOARD OF APPEAL

hereby:

- 1. Admits the application to intervene in Case A-004-2014 in support of the Appellants;**
- 2. Instructs the Registrar to arrange for a copy of the procedural documents to be served on the intervener.**

Mercedes ORTUÑO  
Chairman of the Board of Appeal

Sari HAUKKA  
Registrar of the Board of Appeal