

Announcement of appeal¹

Case	A-007-2014
Appellant	SA Akzo Nobel Chemicals NV, Belgium
Appeal received on	27 May 2014
Subject matter	Decision adopted by the European Chemicals Agency (the 'Agency') pursuant to Article 40 of the REACH Regulation
Keywords	Testing proposal – Powers of the Agency – Read-across
Contested Decision	TPE-D-0000004399-63-02/F of 28 February 2014
Language of the case	English

Remedy sought by the Appellant

The Appellant requests the Board of Appeal to annul the Contested Decision in so far as it requests the Appellant to carry out certain tests to be performed on the Substance, and to order the Agency to refund the appeal fee.

Pleas in law and main arguments

The Appellant's registration dossier initially included several testing proposals. On 7 February 2012, the Agency launched an examination of those testing proposals and held a third party consultation between 16 May and 2 July 2012.

On 31 January 2013, the Agency sent the draft decision to the Appellant requiring several tests to be performed on the Substance concerned. The Appellant states that within the 30-day commenting period it commented on the draft decision and updated its dossier. In particular, the update removed the testing proposals contained in the initial dossier and replaced them with adaptations of the standard testing regime. The Appellant states that following the dossier update the Appellant's registration dossier no longer contained any testing proposals.

The Appellant claims that despite the dossier update the Agency proceeded with the testing proposal procedure and adopted the Contested Decision requiring certain tests to be performed using the Substance. The Contested Decision also set out the reasons for rejecting the read-across proposals.

¹ Announcement published in accordance with Article 6(6) of Regulation (EC) No 771/2008 laying down the rules of organisation and procedure of the Board of Appeal of the European Chemicals Agency.

The Appellant claims that the Contested Decision should be annulled on the grounds that it was adopted pursuant to the procedure under Article 40 of the REACH Regulation despite the fact that the updated registration dossier did not contain any testing proposals. In particular, the Appellant claims that, following the update of the registration dossier, the testing proposal procedure should have been terminated. The Appellant claims that the Contested Decision therefore breaches the REACH Regulation and that the Agency exceeded its competence.

The Appellant claims further that the Agency made a manifest error of assessment in concluding that the adaptations of the standard testing regime proposed by the Appellant were not sufficiently justified. The Appellant considers that the Agency was not permitted under Article 40 of the REACH Regulation to assess the adaptations set out in the registration dossier.

In addition, the Appellant claims that the Agency acted in breach of Article 25 of the REACH Regulation and that the Contested Decision is insufficiently justified and breaches the principle of proportionality. The Appellant also claims that one of the tests requested in the Contested Decision does not constitute an information requirement for the tonnage band at which the Substance is registered.

Other information

Pursuant to Article 93(1) of the REACH Regulation, the Executive Director of the European Chemicals Agency rectified the Contested Decision on 25 June 2014 by withdrawing it in its entirety. The appeal was subsequently withdrawn by the Appellant and the case was closed by the Board of Appeal on 11 July 2014.

Further information

The rules for the appeal procedure and other background information are available on the 'Appeals' section of the Agency's website:

<http://echa.europa.eu/web/guest/regulations/appeals>