

Announcement of appeal¹

Case	A-022-2015
Appellant	Manufacture Française des Pneumatiques Michelin, France
Appeal received on	10 November 2015
Subject matter	A decision taken by the European Chemicals Agency (the 'Agency') pursuant to Article 46(1) of the REACH Regulation, in accordance with the procedure laid down in Articles 50 and 52 of the REACH Regulation
Keywords	<i>Substance evaluation – Request for further information – Environmental exposure – Downstream user</i>
Contested Decision	Decision of 29 May 2015 on substance evaluation for N,N-dicyclohexylbenzothiazole-2-sulphenamide
Language of the case	English

Remedy sought by the Appellant

The Appellant requests the annulment of the parts of the Contested Decision that require further information to be provided on i) assumptions underlying environmental exposure assessment, ii) environmental exposure assessment for the production and use of tyres and general rubber products as well as iii) environmental releases from the use of tyres (Part III, Section 3, points a, c, and d), or alternatively, the rectification of those parts of the Contested Decision, and the refund the appeal fee.

Pleas in law and main arguments

The Contested Decision was adopted by the Agency on 29 May 2015 following a substance evaluation for N,N-dicyclohexylbenzothiazole-2-sulphenamide (hereinafter the 'Substance') by the German Competent Authority.

The Appellant, who is not an addressee of the Contested Decision, is a manufacturer of tyres and a downstream user of the Substance. The Appellant claims to have a legal standing to appeal against the Contested Decision as the decision is of direct and individual concern to it.

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 Agency misused its margin of discretion in breach of Article 46 of the REACH Regulation by failing to carefully and impartially examine all the facts and circumstances of the case. The Appellant submits in support of this plea that the Agency did not take into account the information provided by the Registrants of the Substance showing that the Substance is used almost exclusively in the inner parts of the tyres and that the Substance is entirely consumed during the vulcanisation reaction. The Appellant submits that the Agency, by not taking this information into account, erroneously concluded that residues of the Substance were expected to be contained in the tyres and could potentially be released to the environment through abrasion. The Appellant further submits that the Agency had a duty to ensure that the information required from the Registrants on the use of the Substance in tyres, and which was available to the downstream users like the Appellant, was adequately provided by the Registrants for its review by the evaluating Member State and the Agency.

The Appellant also claims that the Agency should have conducted, prior to the substance evaluation, a compliance check of the registration dossier to request the contested information. The Appellant submits that the Agency therefore breached Articles 41(1), 42(2) and 47(1) of the REACH Regulation.

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>

The CoRAP list of substances is available here:

<http://echa.europa.eu/information-on-chemicals/evaluation/community-rolling-action-plan/corap-table>