EUROPEAN CHEMICALS AGENCY
BOARD OF APPEAL

Announcement of appeal[1]

Case	A-009-2014
Appellants	Albemarle Europe Sprl, Louvain-La-Neuve, Belgium Chemical Inspection & Regulation Service Limited, Drogheda, Ireland ICL-IP Europe B.V., Amsterdam, the Netherlands
Appeal received on	22 August 2014
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	*Substance evaluation – Request for further information*
Contested Decision	Decision on substance evaluation for 1,1'–(ethane-1,2-diyl)bis [pentabromobenzene] of 22 May 2014. The Decision was notified to the Appellants through the following annotation numbers: SEV-D-2114280690-48-01/F, SEV-D-2114280693-42-01/F and SEV-D-21 14280692-44-01/F
Language of the case	English

Remedy sought by the Appellants

The Appellants request the Board of Appeal to annul the Contested Decision or, alternatively, amend the Contested Decision at least insofar as the deadline set to update the registrants' dossiers takes account of the suspensive effect of the appeal.

The Appellants also request the Board of Appeal to refund the appeal fee and take such other or further measures as justice may require.

Pleas in law and main arguments

The Contested Decision was adopted by the Agency on 22 May 2014 following a substance evaluation of 1,1'–(ethane-1,2-diyl)bis [pentabromobenzene] (the 'Substance') by the Competent Authority of the United Kingdom.

In the Contested Decision the Agency requests the Appellants to submit information on the results of several tests and to conduct a detailed exposure assessment (with sensitivity analysis) for the whole life cycle of the Substance. For certain of the requested tests the

[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.

Appellants are instructed to use 'the least pure form of the registered substance' whilst for other tests they are instructed that 'the test material should be the purest form of the registered substance, and should be appropriately radiolabelled'. The statement of reasons in the Contested Decision also draws parallels between the Substance and another separate substance.

The Appellants claim in particular that the Contested Decision imposes:

- Further testing resulting from the reliance on alleged properties of another substance while substance evaluation should be substance specific;

- Further testing on a substance in a form which is not manufactured or placed on the market by the addressees of the Contested Decision;

- Testing on a specific form of the Substance which is too imprecisely defined and impractical;

- Testing which requires significant deviations from the standard OECD protocols, without sound scientific justification, in imprecise terms and without the guarantee that the results of such tests will be exploitable in such a way that the Appellants would be able to comply with the Contested Decision to a sufficient degree of certainty. Further, the imposed protocols would require more time than the maximum period allowed in the Contested Decision.

The Appellants claim further that the Contested Decision breaches Article 46(1) of the REACH Regulation, the principles of proportionality and legal certainty, as well as the Appellants' legitimate expectations and right to be heard.

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:

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