EUROPEAN CHEMICALS AGENCY
BOARD OF APPEAL

Announcement of appeal[1]

Case	A-011-2014
Appellants	Tioxide Europe Limited, United Kingdom Cinkarna Metallurgical and Chemical Industry Celje d.d., Slovenia Cristal Pigment UK Limited, United Kingdom Du Pont Coordination Center, Belgium Evonik Industries AG, Germany Kronos International Inc., Germany Precheza a.s., Czech Republic Sachtleben Chemie GmbH, Germany Tronox Pigments (Holland) B.V., The Netherlands
Appeal received on	16 September 2014
Subject matter	A decision taken by the European Chemicals Agency (the 'Agency') in accordance with the procedure set out in Articles 50 and 51 of the REACH Regulation
Keywords	*Dossier evaluation – Compliance check – Request for further information – Substance identity - Nanoforms*
Contested Decision	CCH-D-0000004804-72-03/F
Language of the case	English

Remedy sought by the Appellants

The Appellants request that the Board of Appeal:

- declares the appeal admissible;
- annuls the Contested Decision in so far as it requests the submission of information related to phases, nanoforms, and surface treated nanoforms as described in the Contested Decision;
- orders the refund of the appeal fee, and;
- takes such other or further measures as justice may require.

[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.

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Pleas in law and main arguments

The Contested Decision was adopted on 17 June 2014 following a compliance check under the dossier evaluation procedure of the registration submitted by Tioxide Europe Limited for titanium dioxide (hereinafter the 'Substance').

In the Contested Decision the Agency found that the registration did not comply with the requirements of Article 10(a)(ii) as well as Annex VI, section 2 of the REACH Regulation and, as a result, requested Tioxide Europe Limited to submit the following information:

- Name or other identifier of the Substance (Annex VI, 2.1);
- Composition of the Substance (Annex VI, 2.3.), and;
- Description of the analytical methods used (Annex VI, 2.3.7).

The Appellants appeal collectively against the Contested Decision which is addressed to Tioxide Europe Limited as the Lead Registrant for titanium dioxide. The other Appellants consider that the Contested Decision is of direct and individual concern to them, *inter alia,* because they are co-registrants of titanium dioxide and have linked their individual registration dossiers to the joint submission of Tioxide Europe Limited.

The Appellants contest the Contested Decision on, amongst others, the following grounds.

The Appellants claim that the Contested Decision is unlawful in so far as it requires the update of the Substance registration dossier with specific information related to phases of the Substance, nanoforms, and surface treatment of nanoforms, as part of the Substance identification information.

The Appellants contend in particular that, by addressing the Contested Decision solely to Tioxide Europe Limited and requesting Tioxide Europe Limited in its capacity as Lead Registrant to submit information that can only be submitted individually by each registrant of titanium dioxide, the Agency acted *ultra vires* and breached the principles of legal certainty and legitimate expectations.

Furthermore, the Appellants claim that, by requesting significantly more detailed information than is requested in Annex VI, section 2 of the REACH Regulation, the Agency committed a manifest error of assessment and infringed the REACH Regulation. In addition, by requesting additional information that is not required by legislation and is not necessary, the Agency breached the principle of proportionality.

The Appellants submit that the information related to the identification of titanium dioxide currently included in the titanium dioxide registration dossier complies fully with the requirements of the REACH Regulation also taking into account the available guidance documents, and in particular the ECHA Guidance for identification and naming of substances under REACH and CLP.

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