

Announcement of appeal¹

Case	A-018-2015
Appellants	CS Regulatory Ltd, UK Galata Chemicals GmbH, Germany PCC Rokita SA, Poland ICC Industries B.V., The Netherlands CCD (Germany) GmbH, Germany Sustainability Support Services (Europe) AB, Sweden
Appeal received on	19 August 2015
Subject matter	A decision taken by the European Chemicals Agency (hereinafter 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</i>
Contested Decision	ECHA Decision of 21 May 2015 on the substance evaluation of triphenyl phosphite. The Decision was notified to the Appellants through the following annotation numbers: SEV-D-2114301932-58-01/F, SEV-D-2114301933-56-01/F, SEV-D-2114301934-54-01/F, SEV-D-2114301935-52-01/F, SEV-D-2114301936-50-01/F, SEV-D-2114301937-48-01/F, SEV-D-2114301938-46-01/F
Language of the case	English

Remedy sought by the Appellants

The Appellants seek:

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 annulment of the Contested Decision and in particular the parts of the Contested Decision that require the Appellants to submit (i) an extended one-generation reproductive toxicity study (test method OECD 443); (ii) a pre-natal developmental toxicity study (test method EU B.31, OECD 414); (iii) a simulation test - aerobic sewage treatment, A: activated sludge units, B: biofilms (test method OECD 303A or B); and (iv) an aerobic mineralisation in surface water - simulation biodegradation test (test method EU C.25/OECD 309),
- the refund of the appeal fee, and
- the reimbursement of the costs incurred by the Appellants in these appeal proceedings.

Pleas in law and main arguments

The Contested Decision was adopted by the Agency on 21 May 2015 following a substance evaluation of triphenyl phosphite by the UK Competent Authority.

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

The Appellants submit that the information requested in the Contested Decision is not needed, in fact or in law, to address whether triphenyl phosphite constitutes a risk to human health or the environment or to clarify a suspected concern.

The Appellants also claim that the Agency used the substance evaluation procedure, and in particular Article 46(1) of the REACH Regulation, for the purposes of obtaining data of relevance to a data gap in a registration dossier. The Appellants claim that the information requested in the Contested Decision cannot therefore be required pursuant to a substance evaluation. The Appellants contend that, as a result, the Agency acted in breach of *inter alia* the principles of legal certainty and legitimate expectations; the requirement to act proportionately; and the requirement for good administration. The Appellants submit that, in any event, no data gap exists and there is no suspected concern relevant to the Contested Decision.

Moreover, the Appellants claim that the Agency did not take into account all the information which must be taken into account in order to assess a complex situation. The Appellants submit that there is a substantial deviation in the requirements in the draft decision compared with the requirements in the Contested Decision, impacting in particular on the Appellants' rights of defence.

As regards the extended one-generation reproductive toxicity study, the Appellants submit that the Agency's request for this study is not legally or scientifically justified and is illegal as *inter alia* it has been adopted in breach of the principle of proportionality, requirements regarding animal welfare, and the requirement to state reasons.

As regards the biodegradation data, the Appellants submit that the Agency's request is not legally or scientifically justified and is illegal as *inter alia* it has been adopted in breach of the principles of proportionality and legal certainty, and the requirement to state reasons.

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>