EUROPEAN CHEMICALS AGENCY
BOARD OF APPEAL

Announcement of appeal[1]

Case	A-007-2017
Appellant	Infineum UK Ltd, United Kingdom
Appeal received on	19 June 2017
Subject matter	A decision adopted by the European Chemicals Agency (hereinafter the 'Agency') pursuant to Article 46(1) of the REACH Regulation
Keywords	*Substance evaluation – Compliance check – Standard information*
Contested Decision	Agency Decision of 23 March 2017 on the substance evaluation of 2,2',6,6'-tetra-tert-butyl-4,4'-methylenediphenol (EC No 204-279-1, CAS No 118-82-1)
Language of the case	English

Remedy sought by the Appellant

The Appellant requests the Board of Appeal to annul Part II, Section 1 and Part III, Section 1 of the Contested Decision regarding '*Concerns on endocrine disruption and reproductive toxicity*', which require the Appellant to conduct an Extended One Generation Reproduction Toxicity Study (OECD test guideline 443; 'EOGRTS') in rats (oral route).

The Appellant also requests the Board of Appeal to refund the appeal fee.

Pleas in law and main arguments

The Appellant states that it registered 2,2',6,6'-tetra-tert-butyl-4,4'-methylenediphenol (hereinafter the 'Substance') at the 10 to 100 tonnes per year tonnage band. The Appellant adds that it is part of a joint submission for the Substance and that other registrants have registered the Substance at the 100 to 1 000 tonnes per year tonnage band.

The Appellant argues that, pursuant to Annexes IX and X to the REACH Regulation, an EOGRTS is a standard information requirement for registrants of a substance in quantities above 1 000 tonnes per year and, subject to certain conditions, above 100 tonnes per year. The Appellant claims that as a result an EOGRTS is not a standard information requirement for its registration dossier.

[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, as amended by Commission Implementing Regulation (EU) 2016/823.

The Appellant claims that by requiring it to submit information that is a standard information requirement for some of the registrants but not for the Appellant, and which would have been more adequately obtained through a prior compliance check, the Agency has identified and pursued an illegitimate objective for the substance evaluation it conducted, namely the need to fill alleged data gaps in the registration dossiers.

The Appellant argues that by requiring it to provide information that it would have not been required to provide if a compliance check of its registration had been conducted, and by not justifying why standard information was requested under substance evaluation rather than dossier evaluation, the Agency breached Articles 41(1), 42(2) and 47(1) of the REACH Regulation as well as the proportionality principle.

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