

**DECISION OF THE BOARD OF APPEAL
OF THE EUROPEAN CHEMICALS AGENCY**

7 December 2020

Application to intervene

(Interest in the result of the case – Accredited Stakeholder Organisations)

Case numbers	Joined cases A-006-2020 and A-007-2020
Language of the cases	English
Appellants	BASF Colours & Effects GmbH, Germany (A-006-2020) BASF SE, Germany (A-007-2020)
Representative	Christoph Rung, Rittershaus Rechtsanwälte, Germany
Contested Decisions	Case A-006-2020 against Decision CCH-D-2114505954-46-01/F; and Case A-007-2020 against Decision CCH-D-2114505955-44-01/F; both adopted by the European Chemicals Agency on 1 April 2020 pursuant to Article 41 of Regulation (EC) No 1907/2006 of the European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (OJ L 396, 30.12.2006, p. 1, the 'REACH Regulation'), following the dossier evaluation of "Reaction product of [29H, 31H-phthalocyaninato(2-)-N29,N30,N31,N32] zinc, sulphuric acid and caustic soda" (List number 939-524-8).
Applicant	PETA International Science Consortium Ltd. ('PISC'), United Kingdom

THE BOARD OF APPEAL

composed of Antoine Buchet (Chairman and Rapporteur), Andrew Fasey (Technically Qualified Member) and Sakari Vuorensola (Legally Qualified Member)

Registrar: Alen Močilnikar

gives the following

Decision

Summary of the facts

1. On 1 April 2020, pursuant to Article 41 of the REACH Regulation, the Agency adopted two decisions (the 'compliance check decisions') following the dossier evaluation of the Appellants' dossiers for the substance "Reaction product of [29H, 31H-phthalocyaninato(2-)- N29,N30,N31,N32] zinc, sulphuric acid and caustic soda" (list number 939-524-8). The Agency adopted two different decisions as the Appellants are two distinct legal entities of the same corporate group, each submitting a registration dossier for the same substance. In those decisions, the Agency requested the Appellants to update their registration dossiers by 7 July 2022 with information on genotoxicity (Annex IX, Section 8.4), long-term toxicity testing on aquatic invertebrates (Annex IX, Section 9.1.5.), long-term toxicity testing on fish (Annex IX, Section 9.1.6.1.) and on the identification of degradation products (Annex IX, Section 9.2.3).
2. On 29 June 2020, the Appellants filed the respective appeals in A-006-2020 and A-007-2020 against the Contested Decisions.
3. On 28 September 2020, the Board of Appeal, taking into account the clear connections between the two appeal cases at issue, decided to join them for the purpose of the written and oral procedure and the final decision.
4. On 1 October 2020, an announcement of the joined appeal cases was published on the Agency's website in accordance with Article 6(6) of Commission Regulation (EC) No 771/2008 laying down the rules of organisation and procedure of the Board of Appeal of the European Chemicals Agency (OJ L 206, 2.8.2008, p. 5; the 'Rules of Procedure').
5. On 20 October 2020, PISC applied for leave to intervene in the proceedings in support of the Appellants. PISC states that its objectives include the reduction, and ultimately the elimination, of the use of animals in regulatory testing and other scientific procedures. PISC argues that its interest in the result of the case is demonstrated, amongst other things, by the fact that it is an Accredited Stakeholder Organisation with the Agency and that the case raises questions of principle which may affect its interests and those of its members to an appreciable extent.
6. PISC argues that the joined cases raise questions of principle related to:
 - (i) whether the Agency is obliged to consider new facts in the dossier evaluation process and whether a cut-off point applies;
 - (ii) the circumstances under which ECHA uses the compliance check procedure to require new tests on animals;
 - (iii) how the Agency meets the principle of proportionality, and Article 25(1) of the REACH Regulation (vertebrate tests only as a last resort);
 - (iv) how the Agency determines the circumstances under which additional tests on animals may be requested based on the results of "previous tests with limited validity"; and
 - (v) the circumstances under which the Agency accepts or rejects adaptations to information requirements.
7. On 26 October 2020, the application to intervene was served on the Appellants and the Agency for their observations.
8. The Appellants did not object to the application to intervene from PISC.
9. On 16 November 2020, the Agency stated that it leaves it to the "*discretion of the Board of Appeal to determine whether PISC has established a sufficient interest to intervene in the present appeal proceedings*". The Agency also indicated that it "*reserves its right to reply to the arguments on the substance of the case raised by PISC (paragraphs 17-20 of the application) at the time of the observations on the statement in intervention, should the Board of Appeal consider that PISC has established a sufficient interest in intervening.*"

Reasons

10. The application to intervene complies with Article 8(2), (3) and (4) of the Rules of Procedure. The Board of Appeal will therefore examine whether PISC has established an interest in the result of the present joined cases for the purposes of the first subparagraph of Article 8(1) of the Rules of Procedure.
11. An Accredited Stakeholder Organisation has an interest in the result of a case before the Board of Appeal for the purposes of the first subparagraph of Article 8(1) of the Rules of Procedure if that case raises questions of principle capable of affecting its interests (see Case A-001-2018, *BrüggemannChemical, L. Brüggemann GmbH & Co. KG*, Decision of the Board of Appeal of 29 June 2018 on the application to intervene by The European Coalition to End Animal Experiments, paragraphs 17 to 24).
12. PISC's interests include the reduction, and ultimately the elimination, of the use of animals in regulatory testing and other scientific procedures. The present joined cases raise questions of principle which directly relate to the way the Agency reaches its decisions requiring testing on vertebrate animals and how the Agency applies the REACH Regulation to ensure such testing is used as a last resort. These questions of principle may have consequences beyond the circumstances of the present cases in relation to how compliance checks are conducted and how the Agency assesses available data before requesting tests on vertebrate animals.
13. As a result, PISC has an interest in the result of the present joined cases within the meaning of the first subparagraph of Article 8(1) of the Rules of Procedure. PISC's application to intervene must therefore be granted.

On those grounds,

THE BOARD OF APPEAL

hereby:

- 1. Admits the application to intervene by PISC in joined cases A-006-2020 and A-007-2020 in support of the Appellants.**
- 2. Instructs the Registrar to arrange for copies of the non-confidential versions of the Notice of Appeal and the Defence to be served on the Intervener.**
- 3. The Chairman of the Board of Appeal will prescribe a period within which PISC may submit a statement in intervention.**

Antoine Buchet
Chairman of the Board of Appeal

Alen Močilnikar
Registrar of the Board of Appeal