

Announcement of appeal¹

Case	A-004-2016
Appellant	Huntsman P&A UK Limited, United Kingdom
Appeal received on	28 April 2016
Subject matter	A decision taken by the European Chemicals Agency (the 'Agency') pursuant to Article 41(3) of the REACH Regulation, in accordance with the procedure laid down in Articles 50 and 51 of the REACH Regulation
Keywords	<i>Dossier evaluation – Compliance check – Request for further information – Substance identity – Nanofoms</i>
Contested Decision	CCH-D2114321780-57-01/F
Language of the case	English

Remedy sought by the appellant

The Appellant requests the Board of Appeal to:

- declare the appeal admissible;
- annul the Contested Decision in so far as it requests the submission of information related to phases, nanofoms, and surface treated nanofoms as described in the Contested Decision;
- order the refund of 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 on 4 March 2016 following the rectification by the Executive Director of a decision adopted following a compliance check of titanium dioxide (hereinafter the 'Substance'). The Contested Decision concerns the same compliance check under the dossier evaluation procedure of the registration submitted by Huntsman P&A UK Limited, formerly Tioxide Europe Limited, on the Substance. The initial decision is contested in another pending appeal case (A-011-2014, *Tioxide Europe Limited*).

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.

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 the Appellant 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 Appellant claims that the Contested Decision is unlawful because the Executive Director does not have the power to rectify a contested decision, such as the one at issue in case A-011-2014, after the expiry of the time period of 30 days laid down in Article 93(1) of the REACH Regulation. Moreover, the Appellant contends that the rectification placed it in a worse position than the one in which it previously found itself. In the Appellant's view, the only possibility for the Agency to adopt a new decision would have been through a fresh compliance check under Article 41 of the REACH Regulation.

The Appellant further claims 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. In particular, by requesting significantly more detailed information than is requested in Annex VI, section 2 of the REACH Regulation, the Agency acted outside its competence and infringed that Regulation.

The Appellant also alleges that the Contested Decision is vitiated, in various regards, by breaches of the principle of proportionality, of the principle of legal certainty, of the principle of the protection of legitimate expectations and of the principle of equal treatment, by a manifest error of assessment and by a breach of the duty of sound administration.

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>