

Announcement of appeal¹

Case	A-026-2015
Appellants	Envigo Consulting Limited, United Kingdom; and DJChem Chemicals Poland Spolka Akcyjna, Poland
Appeal received on	22 December 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 – Proportionality – Persistence – Bioaccumulation</i>
Contested Decision	Decision on substance evaluation for 1,4-Benzenediamine, N,N'-mixed phenyl and tolyl derivatives (CAS No 68953-84-4, EC No 273-227-8) of 1 October 2015
Language of the case	English

Remedy sought by the Appellants

The Appellants request the Board of Appeal to annul the Contested Decision in so far as it:

- requests the Appellants to carry out simulation testing on ultimate degradation in surface water (test method: Aerobic mineralisation in surface water - simulation biodegradation test, EU C.25/ OECD 309; hereinafter the 'OECD 309 test'), and
- requests the Appellants to carry out additional sediment simulation testing (test method: Aerobic and anaerobic transformation in aquatic sediment system, EU C.24/ OECD 308; hereinafter the 'OECD 308 test'), and
- concludes that 1,4-Benzenediamine, N,N'-mixed phenyl and tolyl derivatives (hereinafter the 'Substance') fulfils the bioaccumulation criteria.

The Appellants also request the Board of Appeal to order the refund of the appeal fee and take such other or further measures as justice may require.

If the appeal is found inadmissible or is dismissed the Appellants request the Board of Appeal to amend the deadline set in the Contested Decision to take account of the suspensive effect of the appeal.

Pleas in law and main arguments

The Contested Decision requires the Appellants to update their registration dossiers to provide information inter alia on the alleged persistence of the Substance. The Contested Decision also concludes that the Substance meets the bioaccumulation criterion set out in Annex XIII to the REACH Regulation.

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 Appellants submit that the Contested Decision breaches the principle of proportionality. In particular, the Appellants submit that the requested OECD 309 and OECD 308 tests are neither necessary nor appropriate to establish whether the Substance meets the persistent or very persistent criteria of Annex XIII to the REACH Regulation.

The Appellants argue that extensive data on how the Substance reacts in the water phase is already available in the Appellants' registration dossiers and that this data shows that the Substance is not persistent in water according to the criteria in Annex XIII to the REACH Regulation. The Appellants claim that the OECD 309 test is therefore unnecessary. The Appellants also claim that the Agency did not assess the available data in accordance with the obligatory weight of evidence approach set-out in Annex VIII to the REACH Regulation.

The Appellants claim that the requested tests are inappropriate because water is not a 'compartment of concern' and therefore the test is not environmentally relevant. According to the Appellants, the test is also inappropriate because it will not clarify whether the Substance meets the Annex XIII criteria for persistence.

The Appellants argue that the request for an OECD 308 test is disproportionate because it will not provide persistence indicators that are comparable with the criteria in Annex XIII to the REACH Regulation.

In addition, the Appellants claim that the requested OECD 309 and 308 tests will not produce conclusive results and therefore will not lead to improved risk management measures for the Substance.

The Appellants also claim that, by requesting the Appellants to carry out the OECD 309 and 308 tests rather than an OECD 307 test, the Agency did not have recourse to the least onerous measure.

The Appellants further submit that the Agency breached the principle of equal treatment and non-discrimination as it has requested an OECD 307 test, rather than the OECD 309 and 308 tests, for substances in comparable situations.

The Appellants claim that the Agency committed an error of assessment in concluding that, on the basis of the data currently available in the Appellants' registration dossiers, the Substance is bioaccumulative within the meaning of Annex XIII to the REACH Regulation.

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 at the following:

<http://echa.europa.eu/web/guest/information-on-chemicals/evaluation/community-rolling-action-plan/corap-list-of-substances>