

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

2 December 2015

Application to intervene

(Interest in the result of the case – Co-registrant)

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| Case number | A-015-2015 |
| Language of the case | English |
| Applicants | Solvay Advanced Silicas Poland SP ZOO, Poland |
| Representatives | Bruno Jestin and Guylaine Vella Solvay Silica |
| Contested Decision | Decision of 11 March 2015 on the substance evaluation of silicon dioxide adopted by the European Chemicals Agency pursuant to Article 46(1), and in accordance with the procedure laid down in Articles 50 and 52, 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; corrected by OJ L 136, 29.5.2007, p. 3; hereinafter the 'REACH Regulation') |
| Appellants | Evonik Degussa GmbH and Others |
| Representatives | Ruxandra Cana, Indiana de Seze, Eléonore Mullier Steptoe & Johnson LLP |

THE BOARD OF APPEAL

composed of Mercedes Ortuño (Chairman), Andrew Fasey (Technically Qualified Member and Rapporteur) and Sari Haukka (Legally Qualified Member)

Registrar: Alen Močilnikar

gives the following

Decision

Summary of the facts

1. On 10 June 2015, the Appellants filed an appeal at the Registry of the Board of Appeal against the Contested Decision.
2. On 19 August 2015, an announcement of the Notice of Appeal was published on the website of the Agency 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; hereinafter the 'Rules of Procedure').
3. On 2 September 2015, the Applicant filed an application with the Registry of the Board of Appeal seeking leave to intervene in the proceedings in support of the Appellants.
4. On 30 September 2015, the application to intervene was served on the Appellants and the Agency. On 9 and 20 October 2015 respectively, the Agency and the Appellants submitted their observations on the application to intervene.

Arguments

Applicant's arguments

5. The Applicant claims an interest in the result of the case brought before the Board of Appeal for the following reasons:
 - (a) The Applicant is a co-registrant of the substance subject to the present appeal proceedings. However, since it was not a registrant on 4 April 2013, the date the draft of the Contested Decision was sent to the Appellants for comments, it was not a recipient of the Contested Decision. The Applicant claims that it will have to assess whether to update its dossier with the information requested in the Contested Decision as it is a co-registrant in the same joint submission for the substance subject to these proceedings;
 - (b) The Contested Decision, resulting in the request to perform additional testing on toxicity and physicochemical properties of the substance, will equally affect the Applicant with regard to its registration of the substance and the compliance thereof. The toxicity tests have to be developed and funded, if the Contested Decision is upheld, in cooperation with the lead registrant and the other co-registrants of the substance. Furthermore, even if the information must be submitted individually, the information requested on the physicochemical properties of the (forms of the) substance may require some degree of cooperation to coordinate the testing efforts in an effort to avoid a waste of time and resources;
 - (c) The Applicant is directly concerned by the Contested Decision as compliance of its registration dossier depends on the validity of the substance definition and its adequacy for the joint submission; and
 - (d) The Applicant is also individually concerned by the Contested Decision. It belongs to a closed category of persons whose registrations of the substance may become invalid if the Contested Decision is upheld. Its individual concern

stems from the fact that it is a manufacturer and/or importer of the substance and it has registered it under the REACH Regulation by joining the joint submission for the substance. Since it has joined the joint submission, this specific category of registrants will be affected by any amendments to the joint submission dossier including changes in the substance identification.

Arguments of the Agency and the Appellant

6. The Agency does not object to the application to intervene. The Agency adds that the Applicant is a co-registrant for the joint submission of the substance subject to the Contested Decision and therefore may have an interest in the result of the case.
7. The Appellants do not object to the application to intervene.

Reasons

8. In accordance with Article 8(1) of the Rules of Procedure, any person establishing an interest in the result of a case submitted to the Board of Appeal may intervene in that case.
9. Article 8(2) of the Rules of Procedure provides further that an application to intervene must state the circumstances establishing the right to intervene and must be submitted within two weeks of publication of the announcement of the notice of appeal on the website of the Agency. Furthermore, pursuant to Article 8(3) the application must be limited to supporting or opposing the remedy sought by one of the parties. In addition, Article 8(4) lists the information the application shall contain.
10. Since the application complies with Article 8(2), 8(3) and 8(4) of the Rules of Procedure, the Board of Appeal will examine whether the application also complies with Article 8(1) of the Rules of Procedure, in other words whether the Applicant has established an interest in the result of the present case.
11. For the purposes of the present application, an interest in the result of the case, within the meaning of Article 8(1) of the Rules of Procedure, must be defined in the light of the precise subject-matter of the dispute and be understood as meaning a direct, existing interest in the decision on the form of order sought and not as an interest in relation to the pleas in law and arguments put forward. The expression 'result' is to be understood as meaning the operative part of the final decision of the Board of Appeal. It is necessary, in particular, to ascertain whether the Applicant is directly affected by the contested decision and whether its interest in the result of the case is established (see, by analogy, for example the Order of the Eighth Chamber of the General Court of 17 February 2010 in Case T-587/08, *Fresh Del Monte Produce v Commission*, EU:T:2010:42, paragraph 25 and the case-law cited therein and Case A-004-2014, *MCCP Registrants*, Decision of the Board of Appeal of 6 October 2014 on the application to intervene by REACH Law Oy, paragraph 11).
12. The Board of Appeal observes that the Applicant is not an addressee of the Contested Decision due to the fact that it was not a registrant of the substance at the time the draft decision was sent to the Appellants. Nonetheless, the Applicant is now a co-registrant of, and a member of the joint submission for, the substance which is the subject-matter of the Contested Decision and the lead registrant is one of the Appellants.

13. The Board of Appeal also observes that the Contested Decision requests certain information, inter alia, on the *'physicochemical properties of each individual [...] form that is manufactured, imported and/or placed on the market'*. The Agency adds that *'the information included by the Registrant(s) of the substance [...] in their respective dossiers is not sufficient to identify and characterise the individual forms of the substance manufactured, imported and/or placed on the market by their legal entities. Consequently, the scope of the registered substance cannot be verified and therefore safe use of the substance is not demonstrable based on the information provided'*.
14. Since the information requested in the Contested Decision may require amendments to the joint submission, including possible changes to the substance identification, the Applicant is directly affected by the Contested Decision.
15. In view of all of the above, the Board of Appeal finds that the Applicant has clearly established its interest in the final decision of the Board of Appeal. As a result, the application to intervene submitted by the Applicant must be granted.

Order

On those grounds,

THE BOARD OF APPEAL

hereby:

- 1. Admits the application to intervene by Solvay Advanced Silicas Poland SP ZOO in Case A-015-2015 in support of the Appellants.**
- 2. Instructs the Registrar to arrange for copies of the procedural documents to be served on the Intervener once any issues related to requests for confidentiality by the Parties have been resolved.**
- 3. Allows the Intervener a period of one month, following the serving of the procedural documents, to lodge observations on the Notice of Appeal and the Defence.**

Mercedes ORTUÑO
Chairman of the Board of Appeal

Alen MOČILNIKAR
Registrar of the Board of Appeal