EUROPEAN CHEMICALS AGENCY
BOARD OF APPEAL

Announcement of appeal[1]

Published on	1 September 2021
Case	A-009-2021
Appellant	SCAS Europe S.A./N.V., Belgium
Appeal received on	11 June 2021
Subject matter	A decision taken by the European Chemicals Agency pursuant to Article 46(1) of the REACH Regulation
Keywords	*Substance evaluation – Legal certainty – Misuse of powers – Proportionality – Error of assessment*
Contested Decision	Decision of 12 March 2021 on the substance evaluation of resorcinol (EC No 203-585-2; CAS No 108-46-3)
Language of the case	English

Remedy sought by the Appellant

By the Contested Decision, the Agency required the registrants of resorcinol to submit information on a larval amphibian growth and development assay ('LAGDA') according to OECD test guideline 241.

A first substance evaluation of resorcinol took place in 2017. At that time, the evaluating Member State competent authority considered that performing a LAGDA would not provide relevant new information on the endocrine disrupting properties of resorcinol. The Contested Decision was adopted following a second substance evaluation of resorcinol conducted by another evaluating Member State competent authority.

The Appellant, who is the lead registrant of resorcinol, requests the Board of Appeal to annul the Contested Decision.

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

[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.

Pleas in law and main arguments

The Appellant argues that by adopting the Contested Decision the Agency breached the provision of Article 47(1) of the REACH Regulation concerning the conditions under which the Agency can adopt a second substance evaluation decision on the same substance.

The Appellant also argues that the Agency breached the principle of legal certainty in conducting a new substance evalution of resorcinol and reaching an opposite conclusion on the need for further information on the endocrine disrupting properties of that substance.

The Appellant argues that, during the second substance evaluation of resorcinol, the Agency misused its powers by applying substance evaluation procedure under REACH to pursue an objective related to the national endocrine disruptor strategy of the evaluating Member State competent authority.

The Appellant also argues that the Agency breached the principle of proportionality, erred in the assessment of the available data and failed to take all relevant information into account by concluding that resorcinol poses a potential risk to human health or the environment and that the information requested has a realistic possibility of leading to improved risk management measures.

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