

Announcement of appeal¹

Published on	25 April 2023
Case	A-002-2023
Appellant	Velsicol Chemical Ireland Ltd, Ireland
Appeal received on	28 February 2023
Subject matter	A decision taken by the European Chemicals Agency pursuant to Article 41 of the REACH Regulation ²
Keywords	<i>Dossier evaluation – Compliance check – Water, sediment and soil simulation testing – Identification of degradation products – Section 9.2. of Annex VIII – Bioaccumulation in aquatic species – Sections 0.6.1. and 4. of Annex I, and Section 2.1. of Annex XIII</i>
Contested Decision	DEV-01-2120740268-53-0000-CCH-1
Language of the case	English

Background and remedy sought by the Appellant

On 28 November 2022, the Agency adopted the Contested Decision following a compliance check of the registration for hexachlorocyclopentadiene (the **Substance**)³.

The Contested Decision required the Appellant to provide the following information on the Substance:

1. Simulation testing on ultimate degradation in surface water (Section 9.2. of Annex VIII; test method: EU C.25./OECD TG 309) at a temperature of 12°C. Non-extractable residues (**NER**) must be quantified and a scientific justification of the selected extraction procedures and solvents must be provided;
2. Soil simulation testing (Section 9.2. of Annex VIII; test method: EU C.23./OECD TG 307) at a temperature of 12°C. NER must be quantified and a scientific justification of the selected extraction procedures and solvents must be provided;
3. Sediment simulation testing (Section 9.2. of Annex VIII; test method: EU C.24./OECD TG 308) at a temperature of 12°C. NER must be quantified and a scientific justification of the selected extraction procedures and solvents must be provided;

¹ Announcement published 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).

² 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). All references to Articles and Annexes concern the REACH Regulation unless stated otherwise.

³ EC No 201-029-3; CAS No 77-47-4.

4. Identification of degradation products (Section 9.2. of Annex VIII; test method: EU C.25./OECD TG 309, EU C.23./OECD TG 307 or EU C.24./OECD TG 308); and
5. Bioaccumulation in aquatic species (Sections 0.6.1. and 4. of Annex I; Section 2.1. of Annex XIII; test method: EU C.13./OECD TG 305, aqueous exposure).

The Appellant requested the Board of Appeal to annul the Contested Decision and order the Agency to refund the appeal fee.

Pleas in law and main arguments

The Appellant raised two pleas in law in support of its appeal.

By its first plea, the Appellant argued that the Agency misinterpreted and breached various provisions of the REACH Regulation, and committed errors in the exercise of its margin of discretion.

As regards the required information on bioaccumulation in aquatic species, the Appellant argued that such information is not required for the purposes of registration at the Annex VIII level and cannot, therefore, be required by the Agency in a compliance check decision.

As regards information on the degradation of the Substance in water, sediment and soil and the identification of degradation products, the Appellant argued that the Agency based these requests on the erroneous conclusion that the Substance may be bioaccumulative.

By its second plea, the Appellant argued that the Agency breached Article 25 by requiring the Appellant to conduct a study on vertebrate animals to investigate bioaccumulation in aquatic species despite the fact that the relevant information is already available in the Appellant's registration dossier.

On 20 March 2023, the Executive Director of the Agency rectified the Contested Decision by withdrawing it in its entirety. The Appellant subsequently withdrew its appeal, and the Chairman of the Board of Appeal closed the case on 25 April 2023.

Further information

The rules for the appeal procedure and other background information are available on the 'Appeals' section of the Agency's website:

<https://echa.europa.eu/web/guest/regulations/appeals>