

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

7 December 2020

Application to intervene

(Interest in the result of the case – Accredited Stakeholder Organisations)

Case numbers	Joined cases A-006-2020 and A-007-2020
Language of the cases	English
Appellants	BASF Colours & Effects GmbH, Germany (A-006-2020) BASF SE, Germany (A-007-2020)
Representatives	Christoph Rung, Rittershaus Rechtsanwälte, Germany
Contested Decisions	Case A-006-2020 against Decision CCH-D-2114505954-46-01/F; and Case A-007-2020 against Decision CCH-D-2114505955-44-01/F; both adopted by the European Chemicals Agency on 1 April 2020 pursuant to Article 41 of the REACH Regulation (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, 'the REACH Regulation'), following the dossier evaluation of "Reaction product of [29H, 31H-phthalocyaninato(2-)- N29,N30,N31,N32] zinc, sulphuric acid and caustic soda" (List number 939-524-8).
Applicant	Cruelty Free Europe ('CFE'), Belgium

THE BOARD OF APPEAL

composed of Antoine Buchet (Chairman and Rapporteur), Andrew Fasey (Technically Qualified Member) and Sakari Vuorensola (Legally Qualified Member)

Registrar: Alen Močilnikar

gives the following

Decision

Summary of the facts

1. On 1 April 2020, pursuant to Article 41 of the REACH Regulation, the Agency adopted two decisions (the 'compliance check decisions') following the dossier evaluation of the Appellants' dossiers for the substance "Reaction product of [29H, 31H-phthalocyaninato(2-)- N29,N30,N31,N32] zinc, sulphuric acid and caustic soda" (list number 939-524-8). The Agency adopted two different decisions as the Appellants are two distinct legal entities of the same corporate group, registering each a REACH registration dossier for the same substance. In those decisions, the Agency requested the Appellants to update their registration dossiers by 7 July 2022 with information on genotoxicity (Annex IX, Section 8.4), long-term toxicity testing on aquatic invertebrates (Annex IX, Section 9.1.5.), long-term toxicity testing on fish (Annex IX, Section 9.1.6.1.) and on the identification of degradation products (Annex IX, Section 9.2.3).
2. On 29 June 2020, the Appellants filed the respective appeals in A-006-2020 and A-007-2020 against the Contested Decisions.
3. On 28 September 2020, the Board of Appeal decided to join the two appeal cases.
4. On 1 October 2020, an announcement of the joined appeal cases was published on the Agency's website 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, as amended by Commission Implementing Regulation (EU) 2016/823, OJ L 137, 26.5.2016, p. 4; the 'Rules of Procedure').
5. On 20 October 2020, CFE applied for leave to intervene in the proceedings in support of the Appellants. CFE states that its objectives include the avoidance of animal testing and other related practices. CFE is an Accredited Stakeholder Organisation with the Agency.
6. CFE argues that the joined cases raise questions of principle related to:
 - (i) the requirements under Article 41(1)(a) of the REACH Regulation and whether ECHA should ensure that a registration *complies* with the requirements of Article 10 of the REACH Regulation and the testing annexes (Annexes VII to X) at the time of the compliance check, or if it *complied* with those provisions at the time the registration was submitted;
 - (ii) whether animal (and other) tests requested by ECHA comply with the objectives of the REACH Regulation to protect human health and the environment and whether these tests respond to real information needs according to Recital 63 of REACH; and
 - (iii) application of the last resort principle (Article 25).
7. On 26 October 2020, the application to intervene was served on the Appellants and the Agency for their observations.
8. The Appellants did not object to the application to intervene from CFE.
9. On 16 November 2020, the Agency stated that it "*leaves it to the discretion of the Board of Appeal to determine whether CFE has established a sufficient interest to intervene in the present appeal proceedings.*" The Agency also indicated that it "*reserves its right to reply to the arguments on the substance of the case raised by CFE (paragraphs 21-23 of the application) at the time of the observations on the statement in intervention, should the Board of Appeal consider that CFE has established a sufficient interest in intervening.*"

Reasons

10. The application to intervene complies with Article 8(2), (3) and (4) of the Rules of Procedure. The Board of Appeal will therefore examine whether CFE has established an interest in the result of the present case for the purposes of the first subparagraph of Article 8(1) of the Rules of Procedure.
11. An Accredited Stakeholder Organisation has an interest in the result of a case before the Board of Appeal for the purposes of the first subparagraph of Article 8(1) of the Rules of Procedure if that case raises questions of principle capable of affecting its interests (see Case A-001-2018, *BrüggemannChemical, L. Brüggemann GmbH & Co. KG*, Decision of the Board of Appeal of 29 June 2018 on the application to intervene by The European Coalition to End Animal Experiments, paragraphs 17 to 24).
12. CFE's interests include campaigning against all animal experimentation. The present joined cases raise questions of principle which directly relate to the way the Agency reaches its decisions requiring testing on vertebrate animals and how the Agency applies the REACH Regulation to ensure such testing is used as a last resort. These questions of principle may have consequences beyond the circumstances of the present case in relation to how compliance checks are conducted and how the Agency assesses available data before requesting tests on vertebrate animals.
13. As a result, CFE has an interest in the result of the present joined cases within the meaning of the first subparagraph of Article 8(1) of the Rules of Procedure. CFE's application to intervene must therefore be granted.

On those grounds,

THE BOARD OF APPEAL

hereby:

- 1. Admits the application to intervene by Cruelty Free Europe (CFE) in joined cases A-006-2020 and A-007-2020 in support of the Appellants.**
- 2. Instructs the Registrar to arrange for copies of the non-confidential versions of the Notice of Appeal and the Defence to be served on the Intervener.**
- 3. The Chairman of the Board of Appeal will prescribe a period within which CFE may submit a statement in intervention.**

Antoine Buchet
Chairman of the Board of Appeal

Alen Močilnikar
Registrar of the Board of Appeal