Case Studies----
The Last Resort Under REACH Requirement:
From Principle to Practice

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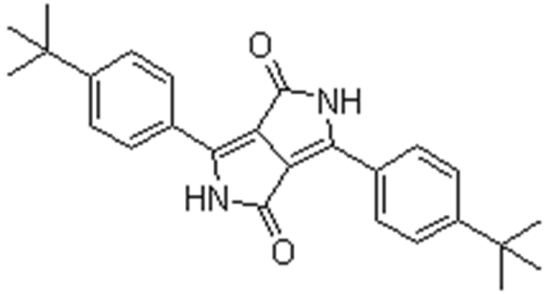
Human Safety
Ensuring Safe Products

Case Study 2.4: Board of Appeal (BOA) Case number A-001-2014

Substance Name: Pyrrolo[3,4-c]pyrrole-1,4-dione, 3,6-bis[4- (1,1-dimethylethyl)phenyl]-2,5-dihydro (Pigment Orange 73)

Trade Name: Cinilex SJ1C; IRGAZIN DPP ORANGE 16A
Appellant: CINIC Chemicals Europe Sárl, France
CAS Number: 84632-59-7
EC Number: 416-250-2



Consumer Uses: pigment material that is used in coating products, inks, toners and polymers.

Registration Tonnage Band: 100 – 1,000 tonnes

https://echa.europa.eu/information-on-chemicals/dossier-evaluation-status/-/dislist/details/0b0236e181033005
https://echa.europa.eu/about-us/who-we-are/board-of-appeal/decisions

REACH Data Requirement on Vertebrate Animal Testing for Human Safety Endpoints

10-100 tonnes (Annex VIII of REACH)	100-1000 tonnes (Annex IX of REACH)
Acute toxicity: oral	Acute toxicity: oral
Acute Toxicity: inhalation	Acute Toxicity: inhalation
In vivo skin irritation*	In vivo skin irritation*
In vivo eye irritation*	In vivo eye irritation*
Testing proposal for in vivo genotoxicity (if one of the in vitro tests is positive)	Testing proposal for in vivo genotoxicity (if one of the in vitro tests is positive)
Short-term repeated dose toxicity (28-day)	Short-term repeated dose toxicity (28-day)
	Sub-chronic toxicity (90 days)
Screening for reproductive/developmental toxicity (OECD 421)	Screening for reproductive/developmental toxicity (OECD 421)
	Pre-natal developmental toxicity in one species (OECD 414)
	Extended One-Generation Reproductive Toxicity (EOGRTS, OECD 443, if triggered)

* You are allowed to do an in vivo study only if you are not able to classify your substance based on the in vitro results.

https://echa.europa.eu/regulations/reach/registration/information-requirements

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Background of BOA: Timeline

Appellant

ECHA

- Substance registration by appellant
- OECD 421 screening study showed a degree of pup mortality
- Testing proposal included for OECD 443 EOGRTS to address the concern

6 July 2012

7 January 2013

Notified appellant its draft decision requiring to conduct the proposed OECD 443

8 March 2013

Notified its draft decision on the testing proposal to Member State Competent Authorities (MSCAs)

- Substance registration by other registrant containing recent and updated OECD 421 screening study.
- OECD 421 screening study with a different sub-strain of rats and different vehicle '*revealed no parental, reproductive or developmental toxicity*' up to limit dose (1000 mg/kg/day)

24 June 2013

15 October 2013

Adopted the Contested Decision on the Appellant's testing proposal which stated inter alia the following:

'*This decision does not take into account any updates after 8 March 2013, the date upon which [the Agency] notified its draft decision to the [MSCAs] pursuant to Article 51(1)….'*

BOA Background: Timeline

- On 15 January 2014, the Appellant lodged an appeal at the Registry of the Board of Appeal. ECHA breached its Article 25 (1) requirement by requesting animal testing without consideration of available information in other dossiers.

Article 25 (1):
"In order to avoid animal testing, testing on vertebrate animals for the purposes of this Regulation shall be undertaken only as a last resort. It is also necessary to take measures limiting duplication of other tests."

BOA Decision

- The BoA document stated that the other registrant's screening test was considered as substantial new information which could impact the need to carry out a new OECD 443.

- The BoA also found that "*The Agency's procedures in this respect were too rigid and led to the situation where the Contested Decision was adopted without taking into account substantial new information available prior to its adoption. This failure could have resulted in the unnecessary use of a substantial number of animals and associated costs*."

❖ **On 10 June 2015, BOA decision was made, and it was in favor of the appellant:**

- Annuls Decision TPE-D-0000003219-74-05/F adopted by the European Chemicals Agency on 15 October 2013.
- Remits the case to the competent body of the Agency for re-evaluation of the Appellant's testing proposal.
- Orders the refund of the appeal fee.

Registrant's Justification in the Updated Dossier

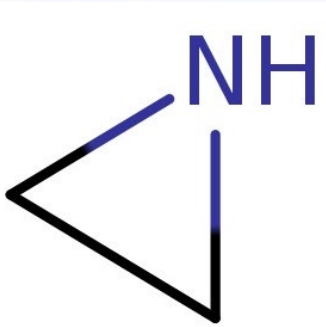
In accordance with Annex IX (8.7) of the REACH legislation, the reproductive toxicity studies do not need to be conducted if the substance is of low toxicity and there is no evidence of absorption from a toxicokinetic study and there is no significant human exposure.

Justification:

- ❑ Lack of toxicity and absorption were shown experimentally for a similar DPP pigment.
- ❑ No indication of systemic uptake was seen in the screening study for reproductive toxicity.
- ❑ There is no significant human exposure because the substance is handled at an inhalable dust only by industry specialized for handling of dusts. The pigment is incorporated into coatings at low concentrations so that there is no significant exposure of the general population.

Case Study 2.5. Aziridine, BOA case number: A-002-2012

Substance Name: Aziridine
Appellant: BASF SE, Ludwigshafen, Germany
CAS Number: 151-56-4
EC number: 205-793-9



Intended Uses: Used as a monomer in polymerization process

Estimated tonnage band: 100 – 1,000 tonnes

https://echa.europa.eu/about-us/who-we-are/board-of-appeal/decisions

REACH Data Requirement on Vertebrate Animal Testing for Environmental Safety Endpoints

For 100-1000 tonnes (Annex IX of REACH):

1) Short-term toxicity on fish 2) Long-term aquatic toxicity on fish 3) Bioaccumulation in aquatic species

Annex IX	Column 1 Standard Information Requirement	Column 2 Special Rules for Adaption From Column 1
9.1.6	Long-term toxicity on fish. The information shall be provided for one of the Sections 9.1.6.1, 9.1.6.2 or 9.1.6.3.	Long-term toxicity testing shall be proposed by the registrant if the chemical safety assessment according to Annex I indicates the need to investigate further the effects on aquatic organisms. The choice of the appropriate test(s) depends on the results of the chemical safety assessment.
9.1.6.1	Fish Early Life Stage (FELS, OECD 210)	
9.1.6.2	Fish short-term toxicity on embryo and sac-fry stages (OECD 212)	
9.1.6.3	Fish, Juvenile growth test	

- If exposure assessment and consequent quantitative/qualitative risk characterization has shown that there is no risk to the aquatic compartment, for example predicted environmental concentrations (PEC)/Predicted No-Effect Concentration (PNEC)<1, no risk.

Background of BOA: Timeline

Appellant

ECHA

- Substance Registration by appellant at 100-1,000 tonnes
- Testing proposal was submitted for OECD 212 fish short term toxicity

9 August 2010 → Testing proposal examination was initiated

8 July 2011 → Notified appellant its draft decision requiring to conduct OECD 210, rejected testing proposal for OECD 212

2 September 2011 → Notified its draft decision on the testing proposal (OECD 210) to Member State Competent Authorities (MSCAs)

21 December 2011 ← Appellant submitted an updated dossier including arguments to justify the waiving of the additional testing requirements

7 February 2012 → Adopted the Contested Decision on the testing proposal. Original proposed test rejected, Appellant is obliged to carry out a long-term toxicity test on fish

Registrant's Justification in the Updated Dossier

The registrant maintained that an OECD 210 test was unnecessary as there was no need to investigate further on the effects to aquatic organisms.

Justification for waiving:

The calculated RCRs (PEC/PNEC, Risk Characterization Ratio) are equal to or even below 0.1 although several worst-case assumptions were made. Therefore, the chemical safety assessment according to Annex I of the REACH regulation does not indicate a need to investigate further the effects on aquatic organisms.

Taking these arguments into account and for animal welfare reasons a vertebrate fish study is not provided.

BOA Background

- The Appellant claimed that the registration dossier had been updated to include a waiving statement. A decision on the testing proposal was no longer relevant since it was not contained in the updated dossier.

- The Agency subsequently informed it that any updates of a registration dossier after the time a draft decision has been sent to the Member State Competent Authorities for their comments cannot be taken into account for the purposes of that decision.

- On 30 April 2012, the Appellant filed an appeal at the Registry of the Board of Appeal against the contested decision which was taken in relation to a testing proposal.

BOA Decision

- On 30 May 2012, the Executive Director of the Agency rectified the contested decision.
- On 18 June 2012, the Appellant informed the Board of Appeal that it had decided to withdraw the appeal.
- Where the Executive Director of the Agency rectifies a contested decision, the Agency shall refund the appeal fee.

Summary and Learnings from Both Cases

Issue identified:

- ❑ Inflexible administrative process-----both cases
- ❑ Non-acceptance of existing data----- first case

- ❖ The examples show that animal testing has often been requested by eMSCA/ECHA as a default option and not as a last resort.
- ❖ They also show how the Board of Appeal functions as a gatekeeper, upholding Article 25 where necessary.
- ❖ Registrants could undergo thorough training on dossier preparation and submission to reduce this happening.

Acknowledgements

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Thanks for your attention!