

In addition, the applicants claim that the inclusion of pitch, coal tar, high temp. on the candidate list of substances of very high concern will lead to the eventual inclusion of such substance in Annex XIV to REACH, which in turn will have several negative legal consequences for the applicants which flow directly from such identification.

The applicants submit that the contested act is unlawful because it infringes the applicable rules established for the identification of substances of very high concern under REACH, and of substances which are persistent, bioaccumulative and toxic and very persistent and very bioaccumulative, in particular. Accordingly, the contested decision is based on an error of assessment and an error of law because the identification of pitch, coal tar, high temp. as a substance of very high concern due to the fact that it is persistent, bioaccumulative and toxic and very persistent and very bioaccumulative is solely based on properties of constituent substances, which finds no legal basis in REACH.

In addition, the contested act is unlawful because it infringes the principles of equal treatment since it discriminates between the substance in question and other comparable substances without any objective justification.

Finally, the applicants claim that the contested act infringes the principles of proportionality since it is disproportionate in view of the choice of measures available to the defendant and the disadvantages caused in the relation to the aims pursued.

⁽¹⁾ Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ 2006 L 396, p. 1)

Action brought on 17 February 2010 — Rütgers Germany and Others v ECHA

(Case T-94/10)

(2010/C 113/96)

Language of the case: English

Parties

Applicants: Rütgers Germany GmbH (Castrop-Rauxel, Germany), Rütgers Belgium NV (Zelzate, Belgium), Deza, a.s. (Valašské Meziříčí, Czech Republic), Industrial Química del Nalón, SA

(Oviedo, Spain), Bilbaína de Alquitrantes, SA (Luchana-Baracaldo- Vizcaya, Spain) (represented by: K. Van Maldegem, R. Cana, lawyers and P. Sellar, Solicitor)

Defendant: European Chemicals Agency (ECHA)

Form of order sought

- declare the application admissible and well-founded;

- partially annul the contested act, as far as it relates to anthracene oil;

- order ECHA to pay the costs of these proceedings.

Pleas in law and main arguments

The applicants seek the partial annulment of the decision of the European Chemicals Agency ('ECHA') (ED/68/2009) to identify anthracene oil (CAS Number 90640-80-5) ('anthracene oil') as a substance meeting the criteria set out in Article 57(d) and (e) of Regulation (EC) No 1907/2006 ⁽¹⁾ ('REACH'), in accordance with Article 59 REACH.

On the basis of the contested decision, brought to the applicants' attention by means of an ECHA's press release, the anthracene oil was included in the list of 14 chemical substances of the Candidate List of Substance of Very High Concern ('SVHC') for eventual inclusion in Annex XIV to the REACH. The reasons stated in the contested act for the identification of anthracene oil as a SVHC are that the substance is carcinogenic and also persistent, bioaccumulative and toxic ('PBT') and very persistent and very bioaccumulative ('vPvB') in accordance with criteria set out in Annex XIII to the REACH.

The applicants consider that the contested act infringes the applicable rules established for the identification of SVHCs under the REACH and put forward four pleas in law in support of their application.

First, they argue that the decision is unlawful as it was adopted in breach of essential procedural requirements. In this regard, the applicants submit that the dossier on which the contested act was based did not contain any information on alternative substances in breach of Article 59(3) and Annex XV of the REACH. Further they contend that the defendant materially amended the proposal to identify anthracene oil as a SVHC by adding Article 57(a) and (b) as grounds for that identification without having any competency to do so, in breach of Article 59(5) and (7) REACH.

Second, the applicants submit that the contested act infringes the principle of non-discrimination and equal treatment since it discriminates against anthracene oil with regard to other comparable substances without any objective justification.

Third, they claim that the ECHA committed a manifest error of assessment by identifying the anthracene oil as a PBT and vPvB substance on the basis of the properties of its constituents which finds no basis in the REACH.

Fourth, the applicants argue that the contested act infringes the principle of proportionality since the contested act is disproportionate in view of the choice of measures available to the defendant and the disadvantages caused in relation to the aims pursued.

(Nyborg, Denmark), Koppers UK Ltd (Scunthorpe, United Kingdom) (represented by: K. Van Maldegem, R. Cana, lawyers and P. Sellar, Solicitor)

Defendant: European Chemicals Agency (ECHA)

Form of order sought

— declare the application admissible and well-founded;

— partially annul the contested act, as far as it relates to anthracene oil, anthracene low;

— order ECHA to pay the costs of these proceedings.

(¹) Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ 2006 L 396, p. 1)

Pleas in law and main arguments

The applicants seek the partial annulment of the decision of the European Chemicals Agency ('ECHA') (ED/68/2009) to identify anthracene oil, anthracene low (CAS Number 90640-82-7) ('anthracene oil (low)') as a substance meeting the criteria set out in Article 57(d) and (e) of Regulation (EC) No 1907/2006 (¹) ("REACH"), in accordance with Article 59 REACH.

Action brought on 17 February 2010 — Cindu Chemicals and others v ECHA

(Case T-95/10)

(2010/C 113/97)

Language of the case: English

Parties

Applicants: Cindu Chemicals BV (Uithoorn, Netherlands), Deza, a.s. (Valašské Meziříčí, Czech Republic), Koppers Denmark A/S

On the basis of the contested decision, brought to the applicants' attention by means of an ECHA's press release, the anthracene oil (low) was included in the list of 14 chemical substances of the Candidate List of Substance of Very High Concern ("SVHC") for eventual inclusion in Annex XIV to the REACH. The reasons stated in the contested act for the identification of anthracene oil, anthracene low as a SVHC are that the substance is carcinogenic, mutagenic and very bioaccumulative ("vPvB") in accordance with criteria set out in Annex XIII to the REACH.