

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

6 October 2022

*(Closure of the proceedings – Withdrawal of the Contested Decision by the Executive Director
– Withdrawal of the appeal by the Appellant)*

Case number	A-007-2022
Language of the case	English
Appellant	SoftOx Solutions AS, Norway
Representative	Bobby Arash Ramberg Advokater KB, Sweden
Contested Decision	Decision of 13 May 2022 on application for technical equivalence concerning the substance active chlorine released from hypochlorous acid, adopted by the European Chemicals Agency under Article 54(4) of Biocidal Products Regulation ¹ The Contested Decision was notified to the Appellant under annotation number TAP-D-1571123-32-00/F

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gives the following

¹ Regulation (EU) No 528/2012 of the European Parliament and of the Council concerning the making available on the market and use of biocidal products (OJ L 167, 27.6.2012, p. 1).

Decision

1. On 25 and 26 February 2021, respectively, the European Commission adopted Implementing Regulations (EU) No 2021/347² and 2021/365³ (the **Implementing Regulations**), approving active chlorine released from hypochlorous acid (the **Active Substance**) as an active substance for use in biocidal products of product-types 1, 2, 3, 4 and 5.
2. On 9 September 2021, the Appellant submitted an application seeking to establish technical equivalence of its alternative source of the Active Substance with the reference source of the Active Substance as defined in the Implementing Regulations. On 13 May 2022, the Agency adopted the Contested Decision, that rejected the Appellant's application.
3. On 5 August 2022, the Appellant filed the present appeal seeking the annulment of the Contested Decision.
4. In its appeal, the Appellant argued that the Agency made several errors in the decision-making process leading to the Contested Decision and in the assessment of the technical equivalence.
5. On 5 September 2022, the Agency informed the Board of Appeal that the Acting Executive Director of the Agency had decided to rectify the Contested Decision. The Acting Executive Director considered that there were deficiencies in the reasoning of the Contested Decision. In view of this procedural error, the Acting Executive Director decided to withdraw the Contested Decision in its entirety.
6. On 28 September 2022, the Appellant withdrew its appeal.
7. Under Article 1b of the Rules of Procedure⁴, if an appeal is withdrawn the Chairman closes the proceedings.
8. Under Article 4(4) of the Fee Regulation⁵, the appeal fee is refunded if the Executive Director of the Agency rectifies a decision in accordance with Article 93(1) of the REACH Regulation⁶, which is applicable to the present case in accordance with Article 77(1), second paragraph of the Biocidal Products Regulation. Therefore, the appeal fee must be refunded.

² Commission Implementing Regulation (EU) 2021/347 approving active chlorine released from hypochlorous acid as an active substance for use in biocidal products of product-types 2, 3, 4 and 5 (OJ L 68, 26.2.2021, p. 170).

³ Commission Implementing Regulation (EU) 2021/365 approving active chlorine released from hypochlorous acid as an active substance for use in biocidal products of product-type 1 (OJ L 70, 1.3.2021, p. 9).

⁴ 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).

⁵ Commission Implementing Regulation (EC) No 564/2013 on the fees and charges payable to the European Chemicals Agency pursuant to the Biocidal Products Regulation (OJ L 167, 19.6.2013, p. 17).

⁶ 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).

On those grounds,
THE CHAIRMAN OF THE BOARD OF APPEAL
hereby:

- 1. Closes Case A-007-2022.**
- 2. Decides that the appeal fee is refunded.**

Antoine BUCHET
Chairman of the Board of Appeal

Alen MOČILNIKAR
Registrar of the Board of Appeal