

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

29 June 2016

(Withdrawal of appeal by appellant)

Case number	A-024-2015
Language of the case	English
Appellant	Elkem AS, Norway
Representative	Jean-Philippe Montfort Mayer Brown Europe-Brussels LLP
Contested Decision	SUB-D-2114302856-49-01/F of 9 June 2015, adopted by the European Chemicals Agency (the 'Agency') pursuant to Article 20 of 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; corrected by OJ L 136, 29.5.2007, p. 3; hereinafter the 'REACH Regulation')

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gives the following

Decision

1. On 15 December 2015, the Appellant filed an appeal at the Registry of the Board of Appeal against the Contested Decision. The Appellant claimed that the Contested Decision granted a registrant a registration number for its individual submission of a registration dossier for the substance 'Silica fume' (hereinafter the 'Substance') despite the fact that there was already a joint submission for the same substance.
2. The Appellant, who is the lead registrant of the joint submission for the Substance, requested the Board of Appeal to annul the Contested Decision in its entirety, to order the Agency to ensure the implementation of Article 11 for the Substance and to refund the appeal fee.
3. On 2 March 2016, Mediator A/S applied for leave to intervene in these proceedings.
4. On request of the Agency and after hearing the Appellant, the Board of Appeal decided to stay the proceedings between 13 April and 31 May 2016 pursuant to Article 25 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).
5. By letter of 31 May 2016 the Agency informed the Board of Appeal that the Executive Director had decided to revoke the Contested Decision in accordance with Article 93(1).
6. By letter of 13 June 2016, the content of which it clarified on 21 June 2016, the Appellant informed the Board of Appeal that the Agency had informed the Appellant that the Executive Director had decided to revoke the Contested Decision. The Appellant stated that it was therefore withdrawing its appeal.
7. In accordance with Article 1b 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; hereinafter the 'Rules of Procedure, as amended'), where an appeal is withdrawn, the Chairman shall close the proceedings.
8. Moreover, as regards the application for leave to intervene submitted by Mediator A/S, in accordance with the second subparagraph of Article 8(3) of the Rules of Procedure, as amended, intervention shall become devoid of purpose if the case is removed from the register of the Board of Appeal as a result of a party's discontinuance or withdrawal from the proceedings or of an amicable agreement between the parties, or where the notice of appeal is declared inadmissible. Therefore, as the appeal is withdrawn, there is no need to decide on the application for leave to intervene.
9. Pursuant to Article 10(4) of Commission Regulation (EC) No 340/2008 on the fees and charges payable to the European Chemicals Agency pursuant to Regulation (EC) No 1907/2006 of the European Parliament and of the Council on the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) (OJ L 107, 17.4.2008, p. 6) the fee levied for submission of an appeal shall be refunded if the Executive Director of the Agency rectifies a decision in accordance with Article 93(1), or if the appeal is decided in favour of the appellant.
10. In the present case, the Contested Decision has been revoked by the Executive Director in accordance with Article 93(1) and the appeal fee shall therefore be refunded.

On those grounds,

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hereby:

- 1. Closes appeal case A-024-2015.**
- 2. Orders the refund of the appeal fee.**
- 3. Finds that there is no need to decide on the application for leave to intervene submitted by Mediator A/S.**

Mercedes ORTUÑO
Chairman of the Board of Appeal

Alen MOČILNIKAR
Registrar of the Board of Appeal