

Announcement of appeal¹

Joined cases	A-011-2013 to A-015-2013
Appellant	[CONFIDENTIAL]
Appeals received on	9 September 2013
Subject matter	Decisions taken by the European Chemicals Agency (the 'Agency') pursuant to Article 20(2) of Regulation (EC) No 1907/2006 (the 'REACH Regulation') and Article 3(6) of Regulation (EC) No 340/2008 (the 'Fee Regulation')
Keywords	<i>Rejection of registration – Revocation of registration number – Wrongly declared SME status – Failure to pay supplementary registration fee</i>
Contested Decisions	[CONFIDENTIAL]
Language of the case	English

Remedy sought by the Appellant

The Appellant requests the Board of Appeal to:

- annul the Contested decisions; and
- order the Agency to reimburse the Appellant the fees for, and costs arising from, appeal proceedings.

Pleas in law and main arguments

As part of the process of verifying the Appellant's status as a small and medium size enterprise (hereinafter 'SME'), the Agency requested additional documentary evidence from the Appellant. Since the Appellant did not respond to the Agency's requests, the Agency informed the Appellant that its eligibility for the SME fee reduction had not been demonstrated. As regards each of the registrations subject to the Contested Decisions the Appellant was therefore charged the additional amount up to the full fee for large (non-SME) entities. The Agency also sent a payment reminder with an extended due date and warned the Appellant about the potential revocation of the registration numbers if the supplementary fees were not paid on time.

Since the Appellant did not pay the supplementary fees, the Agency adopted the Contested Decisions stating that the related registration dossiers were incomplete due to the non-

¹ Announcement published in accordance with Article 6(6) of Regulation (EC) No 771/2008 laying down the rules of organisation and procedure of the Board of Appeal of the European Chemicals Agency.

payment of the registration fees corresponding to the presumed large enterprise category. As a consequence, with the Contested Decisions, the Agency rejected the Appellant's registrations and revoked previously issued registration numbers.

The Appellant contests the revocation of the registration numbers. In its appeal the Appellant contests the Agency's decision that the Appellant is ineligible for the reduced registration fees applicable to SMEs. The Appellant contends that it is a small company within the meaning of Article 2(2) of Annex to Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (the 'Recommendation 2003/361/EC').

The Appellant claims that the REACH Regulation and the Fee Regulation define the concept of a SME having recourse to the Recommendation 2003/361/EC. The documents submitted alongside its appeal show that the Appellant is a small enterprise within the meaning of Recommendation 2003/361/EC. As such, it accordingly paid the due reduced registration fees for small enterprises.

The Appellant further questions whether the Agency can reject and revoke a registration of the registrant that does not prove that it is a SME when requested to do so by the Agency, due to misunderstanding in electronic communication via REACH-IT. The Appellant also contends that subsequent changes in the circumstances, namely the fact that it furnished the proof that the Appellant is a small enterprise at the time relevant for the decision, should be considered in its favour.

Finally, the Appellant adds that the Contested Decisions affect its business extraordinarily hard.

Other information

On 11 March 2014, the Appellant informed the Board of Appeal that it had decided to withdraw its appeals as it had reached an agreement with the Agency on the settlement of the disputes. As a result, on 1 April 2014, the Board of Appeal adopted a decision closing the proceedings. All final decisions of the Board of Appeal are available on the 'Appeals' section of the Agency's website:

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

Further information

The rules for the appeal procedure and other background information are available on the 'Appeals' section of the Agency's website:

<http://echa.europa.eu/web/guest/regulations/appeals>