

Announcement of appeal¹

Case	A-005-2012
Appellant	SEI EPC ITALIA SpA, Brescia, Italy
Appeal received on	1 August 2012
Subject matter	A decision taken by the European Chemicals Agency (the 'Agency'), and subsequent invoice sent, pursuant to Article 13(3) and 13(4) of the Fee Regulation
Keywords	<i>Administrative charge – SME status</i>
Contested decision	SME(2011) 1275 and invoice No. 10029662
Language of the case	English

Remedy sought by the Appellant

The Appellant seeks the annulment of the contested decision in so far as it imposes an administrative charge.

Pleas in law and main arguments

The Appellant submitted a dossier for the registration of the substance '*methylammonium nitrate*'. In its REACH-IT account the Appellant stated that its enterprise is a "Medium enterprise" and by that time it was not requested by the Agency to prove its size. Consequently, the Appellant paid a reduced registration fee and the registration was confirmed by the Agency.

In September 2011, the Agency requested the Appellant to substantiate its claims related to its small or medium-sized company (SME) status otherwise an administrative charge would follow. In response, the Appellant informed the Agency by an email of 22 November 2011 that it had not received in time the earlier correspondence because of a change of address. Furthermore, the company stated that it is a large enterprise and not a medium sized one.

As a result, in the contested decision, dated 28 November 2011, the Agency considered the Appellant to be a large enterprise for the purposes of its registration submissions. Following its conclusion, the Agency issued and sent to the Appellant, among others, an invoice for the administrative charges. The contested invoice, dated 1 December 2011, levied an administrative charge of 20 700 euros on the Appellant.

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 (OJ L 206, 2.8.2008, p. 5).

The Appellant claims that it became aware of the contested decision only on 4 May 2012 when the Agency sent it a reminder.

The Appellant reasons its request to withdraw the administrative charge by the following pleas and arguments:

1. The amount of the administrative charge infringes the principle of proportionality, particularly if comparing the Agency's additional workload [related to verifying the size status of an enterprise] and the amount of the administrative charge, i.e. 20 700 euros. In this respect, the Appellant refers to Article 11 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) ('Fee Regulation'). The Appellant is of the opinion that due to the size of the administrative charge, the charge actually amounts to a penalty.
2. The information related to the size of the enterprise is not required upon the submission of the registration dossier and, as it is only included in the REACH-IT account, the Appellant never received the information about the importance of correcting that information. The Appellant also claims that the Agency violated the Appellant's right to good administration (Article 41 of the Charter of Fundamental Rights of the European Union ('the Charter')) by not putting it in the position to comply with the law.
3. The Appellant argues further that the Agency also infringed the principle of legal certainty as it informed registrants about the need to correct the information related to the size of their company only by *News Alerts*, which the Appellant had not subscribed to and, consequently, did not have the opportunity to read them. Consequently, the Appellant was not in position to comply with the rules.
4. Because the Agency's decision on the size of the enterprise is immediately followed by a fine to be paid within 30 days, the Appellant is of the opinion that there is no real possibility to contest such a decision as administrative charges are automatic. Consequently, the Agency violated Article 41(2) of the Charter.
5. The Appellant is of the opinion that the scope of the Board of Appeal's competence is defined in Article 91 of the REACH Regulation and includes decisions about the dossier submission, the Agency's fees and completeness. The Appellant claims that cases that do not fall under the Board of Appeal's competence are defined *a contrario*. By referring to the principles of right to be heard and access to justice the Appellant also states that the lack of clarity as to where an appeal against administrative charges may be brought has had consequences on the Appellant's ability to get an effective remedy.

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>