

Announcement of appeal¹

Case	A-010-2013
Appellant	Tecosol GmbH, Germany
Appeal received on	29 August 2013
Subject matter	A decision taken by the European Chemicals Agency (the 'Agency') pursuant to Article 20(2) of Regulation (EC) No 1907/2006 ('REACH Regulation') and Article 3(6) of Regulation (EC) No 340/2008 ('Fee Regulation')
Keywords	<i>Rejection of registration – Revocation of registration number – Wrongly declared SME status – Failure to pay supplementary registration fee</i>
Contested Decisions	SUB-D-2114248178-44-01/F SUB-D-2114249239-43-01/F SUB-D-2114249256-47-01/F
Language of the case	English

Remedy sought by the Appellant

The Appellant seeks the annulment of the Contested Decisions and requests the reinstatement of the registration numbers revoked by the Contested Decisions.

Pleas in law and main arguments

On 2 October 2012, as part of the SME (small and medium size enterprise) verification process, the Agency requested additional information from the Appellant to allow the size of the company, and therefore its eligibility for a registration fee reduction, to be checked. The Appellant did not respond to that request.

On 31 January 2013, the Agency informed the Appellant that, since it had not provided the requested information, its eligibility for the SME fee reduction had not been demonstrated. The Appellant was therefore charged the balance of the full fee for large entities and an administrative charge. The Agency also sent a payment reminder with an extended due date and warned the Appellant about the potential revocation of the registration number if the supplementary fee was not paid on time.

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.

On 4 June 2013, since the Appellant had not paid the supplementary fee, the Agency adopted the Contested Decisions declaring that the registration dossiers were incomplete due to the non-payment of the registration fees corresponding to the correct enterprise category. According to the Contested Decisions, the Appellant's registrations are therefore rejected and the registration numbers previously issued are revoked.

The Appellant contests the revocation of the registration numbers.

The Appellant claims that it was supported in its registration obligations by an industry association which, unknown to it, did not follow up communications received from the Agency in REACH-IT. Consequently, the Appellant claims that it was unaware of the invoices issued by the Agency. Furthermore, the Appellant claims that the letters sent by the Agency via registered mail were not understood by the Appellant as they were written in English rather than German. The Appellant also claims that the Agency should have made additional efforts to contact the Appellant, for example by means of telephone.

The Appellant claims that only upon receipt of the Contested Decisions by registered mail did it realise that there was a problem with its registrations. The Appellant, having enlisted the help of a consultant, then obtained its REACH-IT account details from the industry association and only then became aware of the Agency's invoices. As a result, the Appellant provided the Agency as soon as possible with information to prove its status as a small enterprise at the time of registration.

The Appellant claims therefore that it had correctly claimed to be a small enterprise at the time of registration and that the Agency's decision that it is a large company does not reflect reality. The Appellant claims that the Contested Decisions, as well as the invoices preceding them, are therefore based on incorrect assumptions and not facts.

The Appellant also claims that, in particular as it is able to demonstrate that it is a small company, the Contested Decisions are disproportionate and unjustified.

Other information

On 22 January 2014, the Appellant informed the Board of Appeal that it had decided to withdraw its appeal as it had reached an agreement with the Agency on the settlement of the dispute. As a result, on 22 January 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>

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

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