

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

**12 June 2013**

**Request for confidential treatment of certain information**

*(Confidentiality request in the notice of appeal – Information required for the appeal announcement and the final decision – Registration number)*

<b>Case number</b>	A-003-2013
<b>Language of the case</b>	English
<b>Appellant</b>	Poudres Hermillon France
<b>Representative</b>	Mr Peter Askeland USA
<b>Contested decision</b>	SUB-D-2114236900-55-01/F of 12 February 2013 adopted by the European Chemicals Agency (hereinafter the 'Agency') pursuant to Article 20(2) 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) and Article 3(6) 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 (OJ L 107, 17.4.2008, p. 6)

**THE CHAIRMAN OF THE BOARD OF APPEAL**

gives the following

## Decision

### SUMMARY OF THE FACTS

1. On 8 May 2013, the Appellant filed an appeal at the Registry of the Board of Appeal against the Contested Decision.
2. The notice of appeal contained a request that the appeal should be regarded as confidential. The Appellant indicated this request by ticking the box marked 'confidentiality requested' on the cover form which the Board of Appeal has made available to parties to help them submit procedural documents. The Appellant also stated that it requests the matter to be held confidential between it and the Agency. The Appellant did not justify the request or detail which information should be regarded as confidential.
3. By letter of 14 May 2013, the Registry of the Board of Appeal requested the Appellant to clarify the confidentiality request and to provide justifications for it.
4. By letter received at the Registry on 24 May 2013, the Appellant clarified that it requested that the appeal and, if successful, the re-instatement of the registration number, remain unpublished. The Appellant added that if this is not permitted by Commission Regulation (EC) No 771/2001 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; hereinafter the 'Rules of Procedure'), it requests that the announcement of the appeal published on the Agency's website state only whether the registration number was re-instated or a new number was issued by the Agency. The Appellant stated that its reputation may be harmed if its customers and suppliers become aware of the circumstances of the appeal and that the changes required as a result of the change in registration number would be costly and demanding.

### REASONS

5. It is clear from the Appellant's clarification of the confidentiality request that the Appellant seeks to ensure that, as far as possible, the existence of the appeal and the facts that lead to it being lodged are not made public.
6. The Chairman observes however that Article 6(6) of the Rules of Procedure creates the obligation to publish on the Agency's website an announcement concerning every appeal brought before the Board of Appeal. Similarly, Article 21(5) of the Rules of Procedure requires the Board of Appeal to publish all final decisions.
7. In addition, it should be remembered that, pursuant to Article 8(2) of the Rules of Procedure, applications to intervene must be submitted within two weeks of publication of the announcement. The publication of an announcement is therefore essential to allow potential interveners to exercise their rights.
8. Furthermore, the Chairman notes that, given the adversarial and public nature of proceedings before the Board of Appeal, applicants for confidential treatment should foresee the possibility that some of the information forming part of their appeal may need to be made public (see, by analogy, Order of the President of the Fourth Chamber of the General Court of 22 February 2005 in Case T-383/03, *Hynix Semiconductor Inc. v Council of the European Union*, [2005] ECR II-621, paragraph 46). It should also be noted that exercising the right to appeal against the Agency's decisions is an essential element in the system for legal redress created pursuant to the REACH Regulation. As such, being a party to proceedings before the Board of Appeal does not imply per se a negative effect on an appellant's reputation.
9. In view of the above considerations, and in particular the public nature of proceedings before the Board of Appeal pursuant to Article 6(6) and Article 21(5) of the Rules of Procedure, it is not possible to keep the existence of an appeal or its central aspects

confidential. The Appellant's request to treat the existence of the appeal as confidential is therefore rejected.

10. It can be implied from the Appellant's clarification of the confidentiality request that the Appellant is in particular requesting that the registration number relevant to the present appeal is not made public in connection with the appeal.
11. The Chairman observes that it may be possible to exclude certain information from the appeal announcement and the final decision following a reasoned request from one of the parties. The second subparagraph of Article 6(6) of the Rules of Procedure provides that the Chairman shall decide whether information indicated by an appellant as confidential in a notice of appeal should be regarded as such and shall ensure that confidential information is not published when an appeal is announced on the Agency's website. The same obligation to protect confidential information also applies to final decisions of the Board of Appeal. To that effect, Article 21(5) of the Rules of Procedure provides that final decisions of the Board of Appeal shall be published in full, unless the Chairman decides otherwise upon a reasoned request of a party.
12. The information required for the announcement is set out in Article 6(6) of the Rules of Procedure and the Decision of the Board of Appeal of 30 September 2009 on implementing the rules on publication of an announcement of the notice of appeal on the website of the Agency. In particular, the announcement shall include the name and address of the Appellant, the subject matter of the proceedings, the remedy sought by the Appellant, and a summary of the pleas in law and the main supporting arguments.
13. Similarly, pursuant to Article 21(1) of the Rules of Procedure, the final decision shall include inter alia the names of the parties, a statement of the remedy sought by the parties, a summary of the facts and the grounds on which the decision is based.
14. The registration number therefore is not specifically required by Article 6(6) or Article 21(1) of the Rules of Procedure for the announcement or the final decision. Furthermore, the Chairman considers that the registration number is not necessary to allow an understanding of the present case or for the purpose of allowing potential interveners to exercise their rights. In that respect, there is no public interest in the disclosure of the registration number as part of the present proceedings.
15. For these reasons, the registration number shall not be included in the announcement of the notice of appeal or the final decision to be published on the Agency's website.

### ORDER

On those grounds,

THE CHAIRMAN OF THE BOARD OF APPEAL

hereby:

**Decides that the registration number shall not be disclosed in the appeal announcement or in the published version of the Board of Appeal's final decision.**

**Decides to reject the Appellant's request that the existence of the present appeal is kept confidential.**

Mercedes ORTUÑO  
Chairman of the Board of Appeal