

Announcement of appeal¹

Case	A-021-2013
Appellant	Zementwerk Hatschek GmbH, Austria
Appeal received on	20 November 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 in time</i>
Contested Decision	SUB-D-2114258638-36-01/F
Language of the case	English

Remedy sought by the Appellant

The Appellant requests the Board of Appeal to repeal the Contested Decision without replacing it and order the Agency to pay the cost arising from the appeal proceedings.

Pleas in law and main arguments

When submitting a registration dossier to the Agency in 2010, the Appellant paid a reduced fee applicable for medium-sized enterprises. During a SME ('small and medium-sized enterprises') verification, the Appellant self-declared that it was not a SME but a large company.

On 3 May 2013 the Agency concluded that the Appellant was not eligible for fee reductions when submitting a registration. As a result, the Appellant was charged the balance of the fee applicable to the correct enterprise category (hereinafter, the 'supplementary registration fee') and an administrative charge.

On 18 June 2013, the Agency sent a payment reminder to the Appellant via REACH-IT system, indicating an extended due date of 20 July 2013.

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 22 August 2013, since the Appellant did not pay the supplementary registration fee by the deadline set, the Agency adopted the Contested Decision stating that the registration dossier was incomplete due to the non-payment of the registration fee corresponding to the correct enterprise category. According to the Contested Decision, the Appellant's registration is rejected and the registration number previously issued revoked. After receiving the Contested Decision, the Appellant settled the outstanding sums due.

The Appellant contests the revocation of the registration number.

The Appellant first contends that the SME verification procedure, including the procedure resulting in the adoption of the Contested Decision, as well as its notification, breached the provisions of Regulation No 1 of 15 April 1958 determining the languages to be used by the European Economic Community (hereinafter 'Regulation 1/58'), which is also applicable to the Agency pursuant to Article 104(1) of the REACH Regulation. That violation prevented the Appellant to act earlier. In the case at hand the Agency's communication exclusively in English meant that the Appellant was not in position to fulfil the requirements resulting from the SME verification, namely paying the supplementary registration fee and charges to avoid revocation of the registration. The Appellant claims that according to the Regulation 1/58, documents addressed by an organ of the European Union to a Member State or a person subject to the sovereignty of a Member State must be written in the official language of that State.

Secondly, the Appellant claims that the Agency unlawfully rejected its registration after the difference in registration fee had not been paid on time. A rejection of the registration due to non-payment of the registration fee has not been provided for in the fourth subparagraph of Article 20(2) of the REACH Regulation. In that regard the Appellant argues that the registration fee is not a part of the registration dossier. Consequently, when all the required data was submitted in a timely manner, the failure to pay the registration fee cannot lead to a decision that the registration dossier is incomplete. Instead of rejecting the registration, the Agency should have taken a separate decision under finance law for non-payment of the registration fee.

Finally, the Appellant contends that, by continuously changing the mode of communication between using the postal services and REACH-IT system, the Agency is responsible for the fact that the Appellant did not pay on time the required sums. The Appellant was expecting that the invoices, mentioned in the decision on SME verification, would be, as the decision itself, sent by post. The Appellant claims that the Agency should not have been allowed to reject the registration because the invoices for the supplementary registration fee had not been validly served on the Appellant and consequently payment deadlines never began to run.

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>