

Announcement of appeal¹

Case	A-001-2010
Appellant	N.V. Elektriciteits – Produktiemaatschappij Zuid-Nederland EPZ, Borssele, The Netherlands
Appeal received on	21/12/2010
Subject matter	Decision taken pursuant to Article 20 of the REACH Regulation
Contested decision	SUB-D-2114130952-53-01/F
Language of the case	English

Form of order sought

The appellant requests that the Board of Appeal should order the Agency to reimburse the registration fee.

Pleas in law and main arguments

In the contested decision the Agency rejected the registration because of the late payment of the fee and also stated that the fee for this registration would not be reimbursed.

The appellant argues that the Agency's decision not to reimburse the registration fee paid by the appellant is unfair for the following reasons.

The appellant claims that it was due to the newness and the unclarity of the website that the appellant did not pay the registration fee before the extended due date. Further, the appellant claims that there were different payment terms caused by unclear information on the ECHA website. As a result, it was unclear which extended due date for the payment of the registration fee was applicable to the registration.

The appellant also states that because the Agency rejected its registration in the contested decision the only remedy for the appellant was to re-register and to pay the registration fee once more. According to the appellant, as a consequence of this payment the Agency received the fee twice for one registration, whereby the payment made in relation to the contested decision was paid unduly. The appellant argues

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.

further that the Agency should have been more reasonable and not accepted the payment or reimbursed the fee. Consequently, the appellant requests the Agency to pay back the fee and bases this claim on the considerations of good faith and the undue nature of the payment.

Moreover, the appellant claims that they did not receive the Agency's message setting the new payment deadline in time because the reminder invoice was not in the REACH-IT message box.

The appellant also argues that it is completely reasonable that it first waited with the payment in order to make certain that the technical completeness check was successful. However, the appellant also states that its decision to finally pay the registration fee at the time when the REACH-IT was still stating that the technical completeness check had not been successfully passed showed the appellant's *"good will, during an unclear situation, to pay the registration fee"*. The appellant claims that it was unreasonable from the Agency to reject the registration without taking this into account.

Further information

The rules related to appeal proceedings and other relevant background information are available on the "Appeals" section of ECHA's website at:

http://echa.europa.eu/appeals/app_procedure_en.asp