

Announcement of appeal¹

Case	A-002-2013
Appellant	Distillerie DE LA TOUR, Pons, France
Appeal received on	19 April 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 – Administrative charge</i>
Contested decision	SUB-D-2114235940-52-01/F
Language of the case	French

Remedy sought by the Appellant

The Appellant requests the Board of Appeal to:

- annul the contested decision rejecting the registration and revoking previous decision assigning the registration number;
 - uphold the Appellant's request to rectify information provided in its registration dossier without having to pay an administrative charge;
 - annul the Agency's invoice imposing the administrative charge;
- or, in alternative, should the Board of Appeal not grant its requests:
- order that the Appellant benefits, first, from the modifications introduced by the ECHA Management Board Decision of 12 February 2013 permitting enterprises to rectify their declaration regarding their status and, second, from a 50 % reduction of the administrative charge;
 - declare that the Agency should reimburse the fees paid by the Appellant when submitting its registration dossier and
 - order the Agency to pay the costs.

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.

Pleas in law and main arguments

After a SME (small and medium size enterprise) verification, the Agency had concluded on 20 July 2012 that the Appellant had declared a wrong company size. Consequently, the Appellant was charged the balance to the fee(s) applicable to the correct enterprise category. The Agency also sent a reminder, extended the due date and warned the registrant about the potential revocation of the registration number if the supplementary fee was not paid on time. In addition, an invoice for the administrative charge, dated 23 July 2012, was sent to the Appellant.

The contested decision was adopted on 22 January 2013. In the decision the Agency states that the registration is rejected and the registration number is revoked as the registration dossier had been found incomplete due to the non-payment of the registration fees corresponding to the correct enterprise category.

The Appellant contests the Agency's decision to reject the Appellant's registration and revoking its registration number. The Appellant's claims and arguments can be summarised as follows:

1. Regarding the verification of the company's size category, the Appellant alleges breaches of the principle of sound administration, the principles of legality and the strict interpretation of European Union law, the principle of legal certainty and the principle of equity of procedure.

Determining the size and status of an enterprise, when completing the registration formalities is a difficult and complex process. This was made even more difficult by the fact that the relevant information was not available in French language. The fact that such information, essentially of a technical and legal nature, was inadequate, unclear or not available is a circumstance which should be considered to justify the mistake the Appellant made in determining the enterprise's status. Hence, the Agency should in all equity have allowed the Appellant to rectify the information concerning its company size, without imposing the administrative charge

Also, any procedure likely to lead to the imposition of penalties, and an administrative charge amounts to one, must be also equitable and respect the equality of arms. This is not the case with the Agency's verification procedure. The latter is in fact the judge and an interested party in the verification procedure. There are also no guarantees as to the independence and impartiality of the Board of Appeal, in case of an appeal against such Agency's decision.

2. Regarding administrative charge, the Appellant also alleges infringement of the principle of proportionality and the absence of legal basis for the scale of administrative charges.

Any administrative charge imposed should remain proportional to the service effectively provided by the Agency, according to the actual terms of the REACH Regulation and the Fee Regulation. The administrative charge may only be provided for in those regulations and not by a decision of the Management Board; and can only be justified by the expenses incurred by the Agency.

3. In addition, the Appellant claims that by modifying the scale and granting certain enterprises a 50 % reduction in the administrative charge (since the Decision of 12 February 2013), the Agency infringes the principle of equal treatment, as the Appellant is treated differently than other registrants.

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>