

Announcement of appeal¹

Joined cases	A-007-2013 to A-009-2013
Appellant	Hermann Trollius GmbH, Lauterhofen, Germany
Appeals received on	15 August 2013
Subject matter	Decisions taken by the European Chemicals Agency (the 'Agency') pursuant to Article 20(2) of Regulation (EC) No 1907/2006 (the 'REACH Regulation') and Article 3(6) of Regulation (EC) No 340/2008 (the 'Fee Regulation')
Keywords	<i>Rejection of registration – Revocation of registration number – Wrongly declared SME status – Failure to pay supplementary registration fee</i>
Contested decisions	Case A-007-2013 contests Decision SUB-D-2114248108-51-01/F Case A-008-2013 contests Decision SUB-D-2114248236-50-01/F Case A-009-2013 contests Decision SUB-D-2114248174-52-02/F
Language of the case	English

Remedy sought by the Appellant

The Appellant requests the Board of Appeal to:

- revoke or annul the Contested Decisions or alternatively order the Agency to act to that effect;
- instruct the Agency to reinstate the references to the registration numbers in the Agency's IT systems;
- annul invoices imposing supplementary registration fees or alternatively instruct the Agency to act to that effect; and
- order the Agency to refund the appeal fees.

Pleas in law and main arguments

As part of the process of verifying the Appellant's status as a small and medium size enterprise (hereinafter 'SME'), the Agency requested additional documentary evidence from the Appellant. Since the Appellant did not respond to the Agency's requests, the Agency informed the Appellant that its eligibility for the SME fee reduction had not been demonstrated. With regards to each of the registrations subject to the Contested Decisions

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.

the Appellant was therefore charged the balance of the full fee for large entities. 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.

Since the Appellant did not pay the supplementary fees, the Agency adopted the Contested Decisions stating 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 and the Agency's invoices regarding the supplementary fees. In its appeal the Appellant contests the Agency's decision that the registrant is ineligible for the reduced registration fees applicable to SMEs. The Appellant contends that, as a small company, it had correctly claimed SME status in the course of its registration.

The Appellant claims that the SME verification procedure, including the decisions adopted by the Agency during that procedure, was in breach of Article 3 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 of the REACH Regulation. According to that provision, documents addressed by a Community body to a Member State or persons subject to the jurisdiction of a Member State must be written in the language of that State.

The Appellant states that during the SME verification process the Agency had communicated with the Appellant exclusively in English. The Appellant adds that its employees were unable to understand the Agency's communications, including the Contested Decisions, due to a lack of knowledge of the English language. As a result, the Agency had violated Regulation 1/58 as it was obliged to communicate with the Appellant in German. The Appellant claims that the Agency's incorrect choice of the language of communication had adverse consequences on the Appellant as it was not able to fulfil the requirements set out in the correspondence concerning the SME verification.

The Appellant claims in addition that the breach of Regulation 1/58 means that the Contested Decisions were neither promulgated nor validly served on the Appellant and that it did not have knowledge of the Contested Decisions or the communications leading to their adoption.

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>