

Announcement of appeal¹

Case	A-016-2013
Appellant	Marchi Industriale SpA, Florence, Italy
Appeal received on	15 October 2013
Subject matter	A decision taken by the European Chemicals Agency (the 'Agency') pursuant to Article 13(3) and 13(4) of the Fee Regulation
Keywords	<i>Verification of SME status – Invoicing of supplementary registration fees and administrative charge</i>
Contested Decision	SME(2013) 3747
Language of the case	English

Remedy sought by the Appellant

The Appellant requests the Board of Appeal to:

- revoke or annul the Contested Decision; and
- cancel the invoices resulting from the Contested Decision.

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. On the basis of the information submitted by the Appellant, the Agency concluded in the Contested Decision that the Appellant is ineligible for the claimed registration fee reductions available to a medium-sized enterprise. The Contested Decision informed the Appellant that the Agency will issue an invoice for the additional amount up to the full registration fee for a large enterprise, as well as an invoice for an administrative charge. Furthermore, the Contested Decision stated that failure to pay the balance to the correct registration fee will result in the rejection of the registrations concerned and revocation of registration numbers assigned by the Agency following completeness checks.

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.

In its appeal the Appellant contends that the Contested Decision can be appealed before the Board of Appeal as it falls within the situations envisaged by Article 20 of the REACH Regulation.

The Appellant claims that the Contested Decision is unlawful as it lacks motivation since the Agency failed to take any account of the Appellant's arguments contesting the calculation criteria used by the Agency to determine the company size. This omission means that the Appellant cannot fully defend itself nor understand the legal reasoning of the Agency when adopting the Contested Decision.

The Appellant also claims that the Contested Decision is completely unfounded as the Agency erroneously assessed the information that the Appellant had provided during the SME verification process concerning its relationship with other enterprises. The Appellant also disagrees with the Agency's broad interpretation of the notion of 'linked enterprises' and argues that this leads to incongruous results. Finally, the Appellant considers that the Agency should have concluded that the Appellant is a SME.

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>