

**THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

In re: _____ :

Silky Associates, L.L.C. : Appeal No. RCRA 21-02

DECLARATION OF MELISSA TOFFEL

I, Melissa Toffel, hereby declare that:

1. I am currently employed as an Environmental Protection Specialist, credentialed Inspector, and Case Development Officer with the Enforcement and Compliance Assurance Division (formerly the Land and Chemicals Division and Waste and Chemicals Management Division), U.S. EPA, Region III. I have been employed in this capacity since 2007.
2. As an Environmental Protection Specialist and credentialed Inspector with the Enforcement and Compliance Assurance Division, my duties include investigative work to determine compliance with Subtitle I of the Resource Conservation and Recovery Act ("RCRA I") and EPA's underground storage tank ("UST") regulations at 40 C.F.R. Part 280. As a Compliance Officer, my duties include calculating penalties in administrative cases for violations of RCRA I and the UST regulations. I am responsible for performing targeted inspections, writing and reviewing inspection reports, and developing cases.
3. My involvement with the case of Silky Associates, L.L.C. started in approximately February 2017, after EPA's July 18, 2016 Compliance Evaluation Inspection (CEI) at the Lucky Mart facility located at 200 E Williamsburg Road in Sandston, Virginia concluded.
4. I am personally familiar with the investigative case file, including the inspection report and all subsequent case development and enforcement activities. The attachments to Appellee's brief are true copies of the original documents.

5. On March 31, 2017, I telephoned Appellant's representative, Mr. Bagga. Mr. Bagga requested a two-week extension to respond to the IRL because he was experiencing lingering flu symptoms.
6. On April 18, 2017, and again on April 20, 2017, I left telephone messages for Mr. Bagga asking if Mr. Bagga had sent Appellant's IRL response to EPA.
7. On April 24, 2017, Appellant's IRL response was received by EPA. ¶.
8. On September 5, 2017, I spoke by telephone with Mr. Bagga asking if he intended to respond to the Show Cause letter. Mr. Bagga acknowledged receiving the Show Cause letter but stated he had already given EPA everything that was requested. I ended the conversation stating I would follow up by telephone with Mr. Bagga on September 14, 2017.
9. On September 14, 2017, I spoke with Mr. Bagga by telephone. Mr. Bagga gave me an update on the status of compliance measures for the facility UST equipment. Appellant remained in noncompliance.
10. Appellant never requested a conference as offered by the Show Cause letter and never submitted a written response to EPA's Opportunity to Show Cause letter.
11. On several occasions between March 2017 and April 2019, I encouraged Mr. Bagga to retain counsel to represent Appellant in this matter,
12. On December 12, 2017, I spoke with Mr. Bagga and learned of Appellant's progress towards compliance with the UST regulations. Appellant remained in noncompliance.
13. On December 15, 2017, I sent a list to Mr. Bagga outlining the actions required by the UST regulations to come into compliance. ¶.
14. On January 3, 2018, I spoke with Mr. Bagga to learn the status of the compliance documentation Mr. Bagga had previously promised to forward to EPA.
15. On January 10, 2018, EPA received Appellant's documentation. The documentation showed Appellant remained in noncompliance with the UST regulations.
16. On February 21, 2018, EPA issued an amended NIPD letter to Appellant pursuant to Section 9012 of RCRA, 42 U.S.C. § 6991k. The NIPD was amended because the information received from Appellant on January 10, 2018 documented compliance with some of the violations in the November 30, 2017, and also documented the existence of a new violation not previously identified. Appellant was required to respond by March 25, 2018.

17. On March 2, 2018, Mr Bagga spoke with me and stated he would need an extension of time to complete the tasks necessary to come into compliance with the UST regulations. Because Appellant had been in noncompliance with the UST regulations for at least two years, an extension of time was not granted.
18. On April 3, 2018, Appellant's USTs were "red tagged," prohibiting delivery of gasoline for sale. That same day, Mr. Bagga telephoned me and asked if Appellant could receive delivery of gasoline. I informed Mr Bagga that the delivery prohibition would not be lifted until Appellant returned to compliance with the UST regulations.
19. On April 6, 2018, Mr. Bagga telephoned me and again requested that Appellant be allowed to accept delivery of gasoline. I informed Mr. Bagga that the delivery prohibition could not be lifted until Appellant returned to compliance with the UST regulations.
20. On April 24, 2018, Appellant asked permission to remove a red tag from one of Appellant's USTs to perform a repair. EPA consented to this request on April 25, 2018.
21. On September 7, 2018, Ms. Abramson and I, in telephone conference with Mr. Bagga, informed Mr Bagga of the calculated penalty. Mr. Bagga stated he would be unable to pay the calculated penalty. In response, Ms. Abramson requested that Mr. Bagga supply Appellant's financial information to substantiate Appellant's claim that it is unable to pay the proposed penalty. (ATP claim).
22. On October 12, 2018, Mr. Bagga informed EPA that the UST compliance measures at Appellant's facility had been completed. EPA authorized the removal of the last delivery restriction from Appellant's USTs, two and half years after EPA's first enforcement contact with Appellant.
23. Appellant was out of compliance with the 1998 authorized Virginia management program regulations as set forth in the Virginia Administrative Code, *Underground Storage Tanks: Technical Standards and Corrective Action Requirements* (VA UST Regulations), 9 VAC §§ 25-580-10 *et seq.* from the date of the EPA CEI on July 18, 2016 until October 12, 2018. Appellant's noncompliance status is evidenced by its failure to submit the documentation as required by the VA UST regulations demonstrating compliance with the VA UST Regulations, despite the many requests I made to Appellant's representative, Mr. Bagga, for the required documentation.
24. As of July 23, 2020, and to the present date, Appellant has never submitted the information EPA requested related to Appellant's claim that it is unable to pay a penalty.

I make this Declaration in support of Appellee's Response Brief.

/s/

Melissa Toffel

Signed per revised EAB Order on electronic filing in EAB
Part 22 proceedings dated August 12, 2013.

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