



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

In re:
Silky Associates, LLC
Docket No. RCRA-03-2018-0131
RCRA (9006) Appeal No. 21-02

ORDER DENYING MOTION FOR RECONSIDERATION AND REGARDING SUPPLEMENTAL FILINGS

On August 5, 2021, the Environmental Appeals Board ("Board") received by email a document entitled "Motion to Request Reconsider Judgement Submitted Some Real Facts of this Case" from Silky Associates, LLC ("Respondent"). Motion to Request Reconsider Judgement Submitted Some Real Facts of this Case (Aug. 5, 2021). On August 8, 2021, the Board received by email another document from Respondent, this one entitled "Instructions to Avoid Penalty," in which Respondent asserts it has resolved all violations and does not understand how it could be "guilty of these violations." Instructions to Avoid Penalty (Aug. 8, 2021). Attached to Respondent's "Instructions to Avoid Penalty" is a single, undated page of instructions that appears to be part of a larger document—an "Amended Underground Storage Tank \* \* \* Notice of Intent to Prohibit Deliveries." Subsequently, on August 19, 2021, the Board received by email another document from Respondent titled "Request to Dismiss This Case Because Under

1 Respondent emailed the Board certificates of service for the "Motion to Request Reconsider Judgement Submitted Some Real Facts of this Case" and the "Instructions to Avoid Penalty" documents on August 11, 2021.

the Title 9 Environment Title of Regulation 9VAC25-580 Under the Subject Spill and Overfill Prevention Equipment,” in which he asserts he did not violate the regulations. Request to Dismiss This Case Because Under the Title 9 Environment Title of Regulation 9VAC25-580 Under the Subject Spill and Overfill Prevention Equipment (Aug. 19, 2021) (“Request to Dismiss”).

Respondent is not represented by legal counsel. And the Board endeavors to construe submissions by parties who are not represented by legal counsel liberally so as to fairly identify the substance of the arguments being raised. *See, e.g., In re To Your Rescue! Services*, FIFRA Appeal No. 04-08, at 3 (EAB Sept. 30, 2005) (Final Order); *In re Sutter Power Plant*, 8 E.A.D. 680, 687 (EAB 1999). The Board therefore construes Respondent’s “Motion to Request Reconsider Judgement Submitted Some Real Facts of this Case” document as a motion for reconsideration of the Board’s July 6, 2021 final order in this matter. *See* Final Order and Vacatur of Order Electing to Exercise Sua Sponte Review (July 6, 2021) (“Final Order”). In addition, the Board construes Respondent’s “Instructions to Avoid Penalty” and “Request to Dismiss” documents as filings in support of the motion for reconsideration and a challenge to the Board’s Final Order in this matter.

Under the governing regulations, any motion to reconsider a final order must be filed within ten days after service of the final order. *See* 40 C.F.R. § 22.32. Here, the Board served the Final Order by email on July 6, 2021, and the deadline for filing a motion for reconsideration was therefore July 16, 2021. *See id.*; 40 C.F.R. § 22.7(c). Because the Board received Respondent’s August 5, 2021 motion for reconsideration thirty (30) days after the date of service, its August 8, 2021 supplemental filing thirty-three days (33) days after the date of service, and its August 19, 2021 supplemental filing forty-four (44) days after the date of service,

the Board denies the motion as untimely. *See In re Super Chem Corp.*, FIFRA Appeal No. 02-05, at 1-2 (EAB Oct. 15, 2002) (Order Denying Motion for Reconsideration and Errata); *see also In re Sun Pipe Line Co.*, UIC Appeal No. 02-01, at 1-2 (EAB Aug. 8, 2002) (Order Denying Motion for Reconsideration).

Even if Respondent's motion for reconsideration were timely filed, the Board would deny the motion. Motions for reconsideration "must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors." 40 C.F.R. § 22.32. The Board has explained that a motion for reconsideration is not an opportunity for a party to reargue its case, and it cannot be employed to introduce new information that could have been adduced earlier or to tender a new legal theory for the first time. *See In re Pyramid Chem. Co.*, RCRA (3008) Appeal No. 03-03, at 3 (EAB Nov. 8, 2004) (Order Denying Motion for Reconsideration). Instead, reconsideration of a final order under 40 C.F.R. § 22.32 is "generally reserved for cases in which the Board is shown to have made a demonstrable error, such as a mistake of law or fact." *In re Chempace Corp.*, FIFRA Appeal Nos. 99-2 & 99-3, at 3 (EAB July 25, 2000) (Order Denying Motion for Reconsideration). Respondent's reconsideration motion fails to show any demonstrable error in the Board's Final Order in this matter, and the Board would therefore deny Respondent's motion for reconsideration even if it were timely filed.

Similarly, even if the Board were to consider Respondent's untimely "Instructions to Avoid Penalty" and "Request to Dismiss" documents, the Board would still deny reconsideration. Neither document shows any demonstrable error in the Board's Final Order in this matter.

In addition, we note that Respondent's "Instructions to Avoid Penalty" document does not specify what violations the document pertains to, nor does the attached page of instructions


specify the dates for the alleged violations. *See* Instructions to Avoid Penalty at 1-2. To the extent that Respondent’s “Instructions to Avoid Penalty” document is intended to seek the Board’s review of the Region’s decision to issue the attachment to Respondent for violations that were not alleged in the complaint or adjudicated by the Regional Judicial Officer in this matter, Respondent has identified no basis for the Board to review that decision by the Region, nor is the Board aware of any basis for it to review that decision by the Region. *See, e.g., In re Antrim Twp.*, NPDES Appeal No. 09-14, at 3-4 (EAB Aug. 26, 2010) (Order Dismissing Appeal for Lack of Jurisdiction). In that regard, based on our review of the material, it seems Respondent should contact the Region, not the Board, concerning the Region’s issuance of the attachment to Respondent.

Based on the foregoing, the motion for reconsideration is denied. These proceedings are concluded and based on the record and information before the Board we would deny any further pleadings or requests for reconsideration in this matter. *In re Sierra Pac. Indus.*, PSD Appeal No. 14-01, at 2 (EAB June 2, 2014) (Order Denying Second Motion for Reconsideration and Motion to File Supplemental Information).

So ordered.<sup>2</sup>

**ENVIRONMENTAL APPEALS BOARD**

Dated: **Aug. 24, 2021**

By:   
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Aaron P. Avila  
Environmental Appeals Judge

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<sup>2</sup> The three-member panel deciding this matter consists of Environmental Appeals Judges Aaron P. Avila, Mary Kay Lynch, and Kathie A. Stein.

## CERTIFICATE OF SERVICE

I certify that copies of the foregoing *Order Denying Motion for Reconsideration and Regarding Supplemental Filings* in the matter of Silky Associates, LLC, RCRA (9006) Appeal No. 21-02, were sent to the following persons in the manner indicated.

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Dated: Aug 24, 2021



Emilio Cortes  
Clerk of the Board