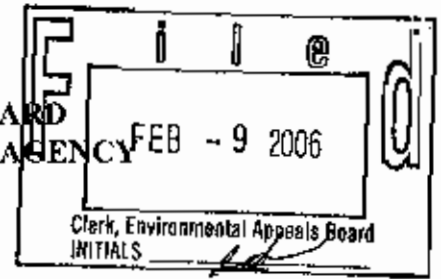


BEFORE THE ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.



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In re: Marc Mathys d/b/a/ Green Tree  
Spray Technologies LLC

)  
)  
) RCRA Appeal No. 06-(01)  
)  
)

Docket No. RCRA-03-2005-0191  
\_\_\_\_\_

**ORDER TO CLARIFY TIME FOR APPEAL.**

On January 10, 2006, Marc Mathys d/b/a Green Tree Spray Technologies LLC ("Green Tree Spray Technologies") filed a motion with the Board requesting an extension of the time in which to file an appeal from the initial decision of the Presiding Officer in this matter arising under the Resource Conservation and Recovery Act., 42 U.S.C. §§ 6901 *et seq.* As a basis for the motion, Green Tree Spray Technologies represents that the company has filed a Motion to Dismiss for Lack of Jurisdiction, Motion to Set Aside Default, and Motion to Reopen Hearing with the Presiding Officer. We accept these representations as true for purposes of this Order and issue this Order to clarify the status of any appeal from the Presiding Officer's disposition of these pending motions.

The timing of an appeal from an administrative assessment of a civil penalty is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("CROP"), 40 C.F.R. Part 22. The CROP provides for appeal of an "initial decision within 30 days after the initial decision is served." 40 C.F.R. § 22.30. However, the CROP also provides that "[t]he filing of a motion

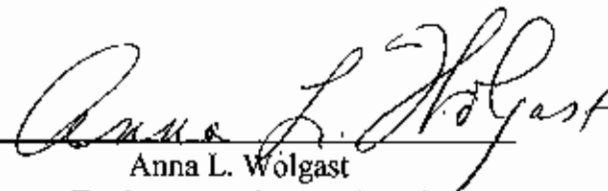
to reopen a hearing shall automatically stay the running of the time periods for an initial decision becoming final under § 22.27(c) and for appeal under § 22.30.” 40 C.F.R. § 22.28(b). Section 22.28(b) also states that “[t]hese time periods shall begin again in full when the motion is denied or an amended initial decision is served.” *Id.* While not specifically addressed in Section 22.28(b), the Board also has held that the filing of a timely motion for reconsideration will stay the running of the time period for an initial decision becoming final under 40 C.F.R. § 22.27(c) and for appeal under § 22.30. *In re JHNY, Inc.*, CAA Appeal No. 04-09, slip op. at 13, n.14 (EAB, Sept. 30, 2005), 12 E.A.D. \_\_\_\_.

Thus, any timely motions to reopen and to set aside the default judgment filed before the Presiding Officer in this case will toll the time period for an appeal to this Board, and that time period will begin again in full upon the Presiding Officer’s denial of such motions or the Presiding Officer’s issuance of an amended initial decision.<sup>1</sup>

So ordered.

**ENVIRONMENTAL APPEALS BOARD**

Dated: February 9, 2006

By:   
Anna L. Wolgast  
Environmental Appeals Judge

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<sup>1</sup>This Order does not address the timeliness of the motions made to the Presiding Officer.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order To Clarify Time for Appeal in the matter of Marc Mathys d/b/a/ Green Tree Spray Technologies LLP, RCRA Appeal No. 06-(01), were sent to the following persons in the manner indicated:

By Pouch Mail and facsimile:

Luis F. Ramalho, Esq.  
Associate Regional Counsel  
U.S. EPA/Region III, Mail Code 3RC30  
1650 Arch Street  
Philadelphia, PA 19103-2029  
Fax: (215) 814-2603

Lydia Guy  
Regional Hearing Clerk  
U.S. EPA/Region III  
1650 Arch Street, Mail Code 3RC00  
Philadelphia, PA 19103-2029  
Fax: (215) 814-2603

By First Class Mail and facsimile:

Kelly McKenney  
McKenney & Mathys, LLC  
465 N. Mill St., Ste. 18  
Aspen, CO 81623  
Fax: (970) 920-7991

By Inter-office Mail:

Judge Carl Charneski  
Office of Administrative Law Judges  
U.S. EPA  
1200 Pennsylvania Ave., NW, Mail Code 1900L  
Washington, DC 20460-2001

Date: FEB 19 2006

  
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Annette Duncan  
Secretary