

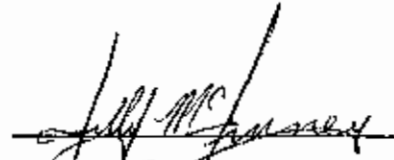
UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III

In the matter of:)
)
Marc Mathys d/b/a Green Tree Spray) Docket No. RCRA-03-2005-0191
Technologies LLC,)
Respondent)

Motion to Extend time to Appeal until Presiding Officer Renders Decision on Respondent's Previously filed Motion to Dismiss for Lack of Jurisdiction, Motion to Set Aside Default, and Motion to Reopen Hearing.

1. On January 5, 2005 Respondent filed a Motion to Dismiss for Lack of Jurisdiction, Motion to Set Aside Default, and Motion to Reopen Hearing with the Presiding Officer.
2. Respondent respectfully requests that Appeals Board extend the time to appeal the Initial Decision in this matter until after a decision had been rendered on those motions by the Presiding Officer.
3. After reviewing the Consolidated Rules of Practice Governing the Administrative Assessment of the Civil Penalties and the Revocation/Termination or Suspension of Permits, consultation the Law Clerk of the ALJ, and researching on the EPA's web site for case decision, I was unable to determine whether one must file an appeal pursuant to 40 C.F.R. §22.30 if a motion to Dismiss for Lack of Jurisdiction, Motion to Set Aside Default, and Motion to Reopen Hearing had been filed with the Presiding Officer in the matter. Thus, I have made this motion to extend the time within which a Notice of Appeal is required in the above matter to ensure that the time for appeal is not lost while those motions were heard by the Presiding Officer.
4. This motion is timely.
5. A default Order was issued in this matter on December 7, 2005. The certificate of service states that a copy was sent to Tyler Clark, Director of Research & Development, Green Tree Spray, 105 Park Avenue, Seaford, DE 19973 by facsimile and regular mail on December 7, 2005.
6. The Presiding Officer's clerk confirmed that the service is made by mail and the facsimile copy is a courtesy copy to ensure receipt of the order.
7. A Notice of Appeal must be filed 30 days after the Initial Decision is served. 40 CFR § 22.30(a).
8. When service is made by mail 5 days is added to the time allowed for a reply. 40 CFR 22.7(c).

9. This motion must be filed by January 9, 2006. Thus, it has been filed timely. See Certificate of Service.



Kelly McKenney

McKenney & Mathys, LLC

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Aspen, CO 81623

Phone (970) 922-5500

Fax (970) 920-7991

CERTIFICATE OF SERVICE

I certify that on January 9, 2006, the forgoing Motion to Extend time to Appeal until the Presiding Officer Renders Decision on Respondent's Previously filed Motion to Dismiss for Lack of Jurisdiction, Motion to Set Aside Default, and Motion to Reopen Hearing was sent this day in the following manner. I attempted to file this Motion by fax with the Regional Clerk's Office for Region III by faxing a copy to her at (215) 814-2603 but the fax at that number did not pick up. I called the Regional Hearing Clerk, Lydia Guy, at (215) 814-2489 and stated that I was trying to fax this motion to her office and asked if the fax was working. She indicated that to her knowledge it was working. I tried several more times to fax this to the regional Hearing Clerk's Office to no avail. I have mailed copies this day by first class mail, and attempted to send a courtesy copy by fax, to the following:

Original and one copy by first class mail to:

Environmental Appeals Board
Clerk of the Board
Mail Code 1103B
United States Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460-2001
Fax: (202) 233-0121

One copy by first class mail to:

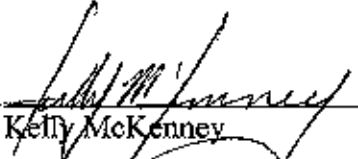
Lydia Guy
Regional Hearing Clerk
U.S. EPA/ Region III
Mail Code 3RC00
1650 Arch Street
Philadelphia, PA 19103-2029
Fax: (215) 814-2603

Copy by first class mail to and fax to:

United States Environmental Protection Agency
Office of Administrative Law Judge
Mail Code 1900L
Judge Carl Charnoski
1200 Pennsylvania Avenue, NW
Washington, DC 20460-2001
Fax: (202) 565-0044

Copy by priority mail return receipt requested and by fax to:

Louis F. Ramalho, Esq.
Associate Regional Counsel
U.S. EPA/ Region III
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