

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

_____)	
)	
In re:)	
)	
SPITZER GREAT LAKES LTD., CO.)	TSCA Appeal No. 99-3
)	
Docket No. TSCA-V-C-082-92)	
)	
_____)	

ORDER DENYING MOTION FOR RECONSIDERATION

On June 30, 2000, this Board issued a Final Decision and Order (“Final Order”) in the above captioned matter. In that Final Order we affirmed an initial decision issued pursuant to 40 C.F.R. § 22.27, and ordered Spitzer Great Lakes Ltd. (“Spitzer”) to pay a civil penalty of \$165,000. *In re Spitzer Great Lakes*, TSCA Appeal No. 99-3, slip op. at 29 (EAB, June 30, 2000), 9 E.A.D. _____. By motion filed on July 14, 2000, Spitzer requests that we reconsider our Final Order, allow Spitzer to present an oral argument, and either vacate or suspend the Final Order until we hear oral argument. Motion for Reconsideration at 2. The U.S. Environmental Protection Agency, Region 5 (“Region”) filed a response on July 20, 2000, which stated that oral arguments occur only at the discretion of the Board.

The Board has explained that, “[r]econsideration 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 Knauf Fiber Glass, GMBH*, PSD Appeal Nos. 99-8 to -72, Order on Motions for Reconsideration

at 3 (EAB, Feb. 4, 2000). As discussed below, Spitzer has not shown a mistake of law or fact that would warrant reconsideration.

In federal appeals court litigants generally have a right to oral argument. Fed. R. App. P. 34(a)(2). That right, however, does not apply in federal administrative proceedings, nor does due process require that federal agencies confer such a right. *See Federal Communications Commission v. WJR, The Goodwill Station*, 337 U.S. 265, 274-275 (1949) (reversing a Court of Appeals decision that would have recognized a right to oral argument in administrative proceedings). The regulations that establish the procedures before this Board are located at 40 C.F.R. Part 22.¹ Pursuant to those regulations, oral arguments are granted at the sole discretion of the Board. 40 C.F.R. §§ 22.16(d), 22.30(d).

Generally, the practice of the Board has been not to hold oral arguments when we determine that such arguments will not be of material assistance in the resolution of an issue. *See, e.g., In re BWX Technologies*, RCRA (3008) Appeal No. 97-5, slip op. at n. 29 (EAB, April 4, 2000) 9 E.A.D. ____; *In re General Motors Corporation, CPC Pontiac Fiero Plant*, 7 E.A.D. 465, n. 28 (EAB 1997); *In re Rybond, Inc.*, 6 E.A.D. 614, n. 3 (EAB 1996); *In re Everwood Treatment Company*, 6 E.A.D. 589, n. 40 (EAB 1996); *In re National Cement Company of California*, 5 E.A.D. 415, n. 25 EAB (1994); *In re Great Lakes Division of National Steel Corp.*, 5 E.A.D. 355, n. 1 (EAB 1994).

As we observed in the Final Order in this case, Spitzer agreed in this proceeding that no material facts were in dispute that would affect either liability or penalty. *In re Spitzer Great Lakes*, TSCA Appeal No. 99-3, slip op. at 7, 10 (EAB, June 30, 2000) 9 E.A.D. ____, (citing Response of

¹ The regulations at 40 C.F.R. Part 22 were amended by 64 Fed. Reg. 40,176 (July 23, 1999), effective August 23, 1999.

Spitzer Great Lakes to Order to Show Cause at ¶ 1, Motion to Cancel Hearing at 1). Moreover, Spitzer did not mount a meaningful challenge to the manner in which the law and policy pertaining to penalty assessment were applied to the undisputed facts. *See id.* at 15. In light of these and other considerations, we did not then, nor do we now, find that oral argument would be of material assistance in the resolution of the issues in this case. The fact that the Board did not rule on a previous request for oral argument prior to issuing the decision in this matter was an oversight, but in no way alters our current assessment that oral argument and reconsideration are unnecessary. Accordingly Spitzer's Motion for Reconsideration is denied.

So ordered

Dated: 8/04/00

ENVIRONMENTAL APPEALS BOARD

By: _____ /s/
Scott C. Fulton
Environmental Appeals Judge

Certificate of Service

I hereby certify that copies of the foregoing Order Denying Motion for Reconsideration in the matter of Spitzer Great Lakes, Ltd., TSCA Appeal No. 99-3, were sent to the following persons in the manner indicated:

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Dated: 8/07/00

/s/

Annette Duncan
Secretary