

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

	)	
In re:	)	
	)	RCRA (9006) Appeal No. 21-02 <sup>1</sup>
Silky Associates, LLC	)	
	)	
Docket No. RCRA-03-2018-0131	)	
	)	

**ORDER STAYING PROCEEDINGS FOR 45 DAYS**

The Regional Judicial Officer for the U.S. Environmental Protection Agency, Region 3 (“Region”) issued an Initial Decision and Default Order (collectively, “Default Order”) in this matter on February 9, 2021. *See In re Silky Associates, LLC*, Dkt. No. RCRA-03-2018-0131 (RJO Feb. 9, 2021). The Default Order found Silky Associates, LLC (“Respondent”) in default for failing to file an Answer to the Administrative Complaint filed by the Region, which alleged five violations of the Underground Storage Tank program of Subtitle I of the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. §§ 6991-6991m, and the federally authorized Underground Storage Tank regulations of the Commonwealth of Virginia, 9 Va. Admin. Code §§ 25-580-10 *et seq.* *Id.* at 1-2.

On March 10, 2021, Respondent (who is not represented by legal counsel) filed with the Environmental Appeals Board (“Board”) a “Request Against [the] Default Order.” Request Against Default Order (Mar. 10, 2021). Upon examination of the Default Order, the Board

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<sup>1</sup> The Board hereby amends the docket number for this matter from “RCRA Appeal No. 21-02” to “RCRA (9006) Appeal No. 21-02.” The parties should use the “RCRA (9006) Appeal No. 21-02” docket number on all future filings in this matter.

decided to exercise sua sponte review on March 23, 2021. Order Electing to Exercise Sua Sponte Review and Establishing Briefing Schedule (EAB Mar. 23, 2021) (“Sua Sponte Order”).

The Region timely filed its response to Respondent’s appeal and the Board’s Sua Sponte Order. Appellee Resp. Br. (Apr. 8, 2021). Respondent then filed two documents in reply. Silky Associates Answer to Order Electing to Exercise Sua Sponte Review and Establishing Briefing Schedule (Apr. 18, 2021); Silky Associates Answer to Declaration of Melissa Toffel (Apr. 22, 2021).

In response, the Region filed a motion for leave to file a reply and a proposed reply brief, in which it represented that Respondent had not consented to the motion. Motion for Leave to File a Reply (Apr. 23, 2021). Respondent then filed a document in response. Answer to Joyce A. Howell (Apr. 30, 2021).

On May 5, 2021, the Region filed a letter with the Board stating that it had emailed Respondent to ascertain Respondent’s position on the Region’s motion to file a reply. Letter from Joyce A. Howell, Senior Assistant Regional Counsel, U.S. EPA Region 3, to Eurika Durr, Clerk of the Environmental Appeals Board (May 5, 2021). Believing that Respondent had not responded to that email, the Region explained that it had represented in its motion for leave to file a reply that Respondent did not consent to the Region’s motion. *Id.* The Region explained in its letter that Respondent had replied to the Region’s email regarding Respondent’s position on the Region’s motion, but the email (unlike prior emails from Respondent) had been routed to a “junk/spam” folder. *Id.* According to the Region, Respondent’s email stated, “I do not understand meaning of Leave to [R]eply to your recent filings.” *Id.* The Region’s letter does not state, in light of Respondent’s email, whether the Region contacted Respondent to explain its

motion for leave to file a reply or whether the Region attempted to ascertain Respondent's position on the Region's motion.

The Board's Sua Sponte Order recounted the somewhat unique sequence of events that occurred before the Regional Judicial Officer and Administrative Law Judge in this matter before entry of the Default Order. *See* Sua Sponte Order at 2-4 (detailing sequence of events that transpired before Regional Judicial Officer and Administrative Law Judge). As salient here, when this matter was pending before the Administrative Law Judge, the Region filed with the Administrative Law Judge a motion seeking leave to file a Joint Motion for Appointment of a Neutral. Order of Remand 2 (ALJ Dec. 10, 2018); Appellee Resp. Br. at ex. 8. The parties sought "the opportunity to reach an amicable resolution in this matter with the assistance of a neutral to mediate settlement discussions." Appellee Resp. Br. ex. 8 at 1. The Administrative Law Judge declined to issue a ruling on that motion and instead held that Respondent had failed to file an answer and remanded the matter to the Regional Judicial Officer. Order of Remand at 2-3.

In light of the parties' apparent interest in the appointment of a neutral to try to resolve this matter that went unanswered by the Administrative Law Judge, and that the Agency "strongly supports" where possible the use of alternative dispute resolution to deal with disputes and potential conflicts, thereby increasing the likelihood of compliance with environmental laws and regulations as well as better environmental outcomes,<sup>2</sup> the Board finds it appropriate in these circumstances to stay this proceeding for a finite period of time to provide the parties the

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<sup>2</sup> *EPA's Policy on Alternative Dispute Resolution*, 65 Fed. Reg. 81,858, 81,858-59 (Dec. 27, 2000).

opportunity to pursue amicable resolution of this matter through settlement or other means they may desire.<sup>3</sup>

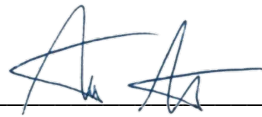
The Board will therefore defer further consideration of this matter for 45 days, until **June 28, 2021**.

The Board **ORDERS** that, on or before **June 28, 2021**, the Region must submit to the Board a report on the status of any discussions to resolve this matter and what efforts were made to discuss potential resolution. The Region should include whether further deferral of the Board's consideration of this matter would materially assist any ongoing discussions to resolve this matter. The Board encourages the parties to make a good faith effort to explore potential settlement prior to the filing of the status report. The Region's status report should also include whether it contacted Respondent to explain the Region's motion for leave to file a reply and whether Respondent consents to or opposes the Region's motion to file a reply.

So ordered.

**ENVIRONMENTAL APPEALS BOARD**

Dated: **May 13, 2021**

By:   
Aaron P. Avila  
Environmental Appeals Judge

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<sup>3</sup> While the parties may explore resolution in any manner they desire, the Board notes that U.S. EPA Region 3 has Regional Environmental Collaboration and Conflict Resolution Specialists. See U.S. EPA, *EPA Alternate Dispute Resolution Contacts* (May 2021), <https://www.epa.gov/adr/epa-alternative-dispute-resolution-contacts#CPRC%20Contacts> (click on "Regional ECCR Specialists (PDF)").

## **CERTIFICATE OF SERVICE**

I certify that copies of the foregoing *Order Staying Proceedings for 45 Days* 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: May 13, 2021



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Emilio Cortes  
Clerk of the Board