



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

VIA EAB Electronic Filing System

April 23, 2021

Ms. Eurika Durr
Clerk of the Board
U.S. Environmental Protection Agency
Environmental Appeals Board
1201 Constitution Avenue, NW
U.S. EPA East Building, Room 3332
Washington, DC 20004

Re: In re Silky Associates, LLC
Appeal No. RCRA 21-02

Dear Ms. Durr:

Enclosed please find a Motion for Leave to file a Reply and Appellee's Proposed Reply to the Appellant's April 18 and April 21, 2021 filings with the Board.. Thank you.

Respectfully submitted,

/s/

Joyce A. Howell
Senior Assistant Regional Counsel

Cc: Lakhmir Bagga, Silky Associates, L.L.C. (via electronic mail)
luckymart200@gmail.com

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

In re: :
Silky Associates, L.L.C. : Appeal No. RCRA 21-02

MOTION FOR LEAVE TO FILE A REPLY

Appellee, the United States Environmental Protection Agency, Region 3 (Appellee), hereby moves the United States Environmental Appeals Board for leave to file a Reply to Appellant's April 18, 2021 "Answer to Order Electing to Exercise Sua Sponte Review and Establishing Briefing Schedule" and April 22, 2021 "Response to Melissa Toffel Declaration" filings with the United States Environmental Appeals Board. Appellee makes this motion for the purpose of correcting mistakes or misrepresentations made in Appellant's April 18 and April 22, 2021 filings.

Appellee requested Appellant's consent to this motion. Appellant has not consented to this motion.

Respectfully submitted,

/s/

Joyce A. Howell

Signed per revised EAB Order on electronic filing in EAB Part 22 proceedings dated August 12, 2013.

Joyce A. Howell
Senior Assistant Regional Counsel,
USEPA Region 3 (MC 3RC40)
1650 Arch Street
Philadelphia, PA 19103
Phone: 215.814.2644

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

In re:	:	
Silky Associates, L.L.C.	:	Appeal No. RCRA 21-02

**PROPOSED REPLY OF APPELLEE
RESPONDENT EPA REGION 3**

Appellant’s April 18, 2021 “Answer to Order Electing to Exercise Sua Sponte Review and Establishing Briefing Schedule” and April 22, 2021 “Response to Melissa Toffel Declaration.” filings with the United States Environmental Appeals Board contain a number of mistakes and mischaracterizations. It is respectfully submitted it may assist the Environmental Appeals Board in its review of this matter to correct the record with regard to some of these mistakes and mischaracterizations as follows:

1. Wilbur Martinez is employed as an environmental engineer and inspector by the United States Environmental Protection Agency. Mr. Martinez is a United States citizen. *See* Executive Order 11935. (only United States citizens and nationals may be appointed to competitive service federal jobs).

2. The arguments contained in Appellant's April 18 and 22, 2021 filings are not part of the record under review by the Board because these assertions were not raised by Appellant in an Answer to the Complaint, Pre-Hearing Exchange or Response to Complainant's Motion for Default.
3. However characterized by Appellant's representative, Mr. Bagga, the compliance assistance rendered by Ms. Toffel to Appellant did not relieve Appellant of its duty to comply with the Underground Storage Tanks: Technical Standards and Corrective Action Requirements, 9 VA.Admin. Code §§ 25-580-10 *et seq.* (Virginia UST regulations).
4. Events which took place in 2003 – 2004 are irrelevant to this proceeding because these events occurred before the EPA Compliance Evaluation Inspection on July 18, 2016. Default Order and Initial Decision dated February 9, 2021, I.1. (Initial Decision).
5. The representations by the seller or the understanding of the buyer with regard to Appellant's purchase of the facility are not relevant to this proceeding and outside the jurisdiction of this tribunal. 40 C.F.R. § 22.4(a)(1).
6. The Virginia UST regulations are self-regulating. Appellant is obligated to comply with the regulations without direction from the Virginia Department of Environmental Quality. *See e.g.*, Initial Decision II, 23, 33, 42, 51, 60.

7. The April 14, 2021 inspection report prepared by representatives of the Virginia Department of Environmental Quality indicates Appellant is out of compliance with several requirements of the Virginia UST regulations. Exhibit Reply-1.

Respectfully submitted,

/s/

Joyce A. Howell

Signed per revised EAB Order on electronic filing in EAB Part 22 proceedings dated August 12, 2013.

Joyce A. Howell
Senior Assistant Regional Counsel,
USEPA Region 3 (MC 3RC40)
1650 Arch Street
Philadelphia, PA 19103
Phone: 215.814.2644
Email: howell.joyce@epa.gov

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

In re: _____ :

Silky Associates, L.L.C. _____ : Appeal No. RCRA 21-02

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion for Leave to file a Reply Brief and Proposed Reply of Appellee were filed electronically with the EAB's electronic filing system and to Appellant via electronic mail on this twenty-third day of April, 2021.

Via electronic mail:
Lakhmir Bagga
Silky Associates, L.L.C.
200 E. Williamsburg Road
Sandston, VA 23150
luckymart200@gmail.com

/s/
Joyce A. Howell
Signed per revised EAB Order on electronic filing in EAB Part 22
proceedings dated August 12, 2013.

Joyce A. Howell
Senior Assistant Regional Counsel,
USEPA Region 3 (MC 3RC40)
1650 Arch Street
Philadelphia, PA 19103
Phone: 215.814.2644
Email: howell.joyce@epa.gov