

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

In re:)	
)	
Super Chem Corporation)	FIFRA Appeal No. 02-05
)	
Docket No. FIFRA-9-2000-21)	

ORDER DENYING MOTION FOR RECONSIDERATION

I. BACKGROUND

On September 20, 2002, Super Chem Corporation ("Super Chem") filed a motion for reconsideration of the Environmental Appeals Board's September 9, 2002 Order Dismissing Appeal in the above-captioned matter. See Motion to Reconsider Final Order Issued 09-09-2002 (Sept. 20, 2002). The Board's September 9 Order dismissed Super Chem's Appeal as untimely filed. Super Chem's one-page Motion for Reconsideration states as follows:

Super Chem Corporation claims that this matter was erroneously decided based on the following errors:

- C Violation of Section 12(a)(1)(A) based on a canceled EPA approved label.
- C 15 violations of section 12(a)(1)(A) based on 15 invoices provided by Super Chem Corporation.
- C Quat Super was not sold as a disinfectant/sanitizer with a cancelled EPA label.
- C Quat Super was sold with a generic label as odor control and does not make any claims that would be regulated by the EPA.
- C Sodium Hypochlorite is regulated by EPA when used as a disinfectant/sanitizer. When Sodium

- C Hypochlorite is sold as a "bleach," no EPA regulation is required.
- C Super Chem's original registration of Quat Super used Barquat MB-80 from Lonza, Inc. as the active ingredient. Super Chem no longer uses Barquat MB-80 and does not sell Quat Super as a registered disinfectant/sanitizer.
- C Variquat 80 ME purchased from Chem Tech is bought for purposes other than Barquat MB-80's use.

Motion at 1.

II. DISCUSSION

Under 40 C.F.R. § 22.32 (Motion to reconsider a final order) of the Consolidated Rules of Practice, parties may file a motion for reconsideration within ten (10) days after service of the final order. Any such motion "must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors." 40 C.F.R. § 22.32.

As the Board has repeatedly pointed out, reconsideration is generally reserved for cases in which the Board is shown to have made a demonstrable error in its final order, such as a mistake of law or fact. See *In re Chempace Corp.*, FIFRA Appeal Nos. 99-2 & 99-3 (EAB, July 25, 2000) (Order Denying Motion for Reconsideration); *In re Roger Antkiewicz and Pest Elim. Prod. Of America, Inc.*, FIFRA Appeal Nos. 97-11 & 97-12 (EAB, March 26,

1999) (Order Denying Motion for Reconsideration); *In re Gary Development Co.*, RCRA (3008) Appeal No. 96-2 (EAB, Sept. 18, 1996) (Order Denying Motion for Reconsideration).

As stated above, the basis for the Board's September 9, 2002 order dismissing the appeal was Super Chem's failure to file its appeal in a timely manner. Nothing in the Motion for Reconsideration suggests that the Board's conclusion in this regard was factually or legally erroneous. The Motion, therefore, fails to present any grounds for reconsideration.

III. CONCLUSION

For the above-stated reason, Super Chem's motion to reconsider the Board's September 9, 2002 Order Dismissing Appeal is denied. Super Chem shall pay the full amount of the civil penalty, \$45,000, within thirty (30) days of receipt of this order, unless otherwise agreed by the parties. Payment shall be made by forwarding a cashier's check or certified check in the full amount payable to the Treasurer, United States of America at the following address:

Mellon Bank
EPA-Region 9
Regional Hearing Clerk
P.O. Box 360863M
Pittsburgh, PA 15251

So ordered ¹

ENVIRONMENTAL APPEALS BOARD

Dated: September 23, 2002

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

¹ The three-member panel deciding this matter is comprised of Environmental Appeals Judges Scott C. Fulton, Ronald L. McCallum, and Edward E. Reich. See 40 C.F.R. § 1.25(e)(1) (2001).

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order Denying Motion for Reconsideration, in the Matter of Super Chem Corp., FIFRA Appeal No. 02-5, were sent to the following persons in the manner indicated:

First Certified Mail,
Return Receipt Requested:

Thomas Fessler, President
Super Chem Corp.
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By Pouch Mail:

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Judge Carl C. Charneski
Office of Administrative
Law Judges (MC 1900L)
U.S. EPA
1200 Pennsylvania Ave., NW
Washington, D.C. 20460

Dated: September 23, 2002

_____/s/_____
Annette Duncan