



UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

In the Matter of:)
)
Silky Associates, LLC,) Docket No. RCRA-03-2018-0131
)
Respondent.)

ORDER OF REMAND

This proceeding was initiated by the filing of an Administrative Complaint, Compliance Order and Notice of Opportunity for Hearing (“Complaint”) with the Regional Hearing Clerk, Region III, U.S. Environmental Protection Agency, on July 24, 2018. On July 26, 2018, the Agency served Respondent with copies of the Complaint and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. §§ 22.1 to 22.45 (“Rules of Practice”), as required by 40 C.F.R. § 22.5(b)(1).

Respondent failed to file an Answer with the Regional Hearing Clerk within 30 days after service of the Complaint. *See* 40 C.F.R. § 22.15(a). However, on August 21, 2018, Lakhmir Bagga, Respondent’s representative, sent a letter addressing the Compliance Order, in an apparent attempt to demonstrate compliance with the underground storage tank (“UST”) regulations, directly to Melissa Toffel, a program officer for the UST program in Region III’s Land and Chemicals Division. *See* Respondent’s Answer to the Complainant (Aug. 27, 2018). On August 27, 2018, counsel for the Agency contacted Mr. Bagga to explain the consequences for failing to timely file an Answer. *Id.* Mr. Bagga clarified that the letter to Ms. Toffel should be considered Respondent’s Answer to the Complaint and requested that Agency counsel file it on Respondent’s behalf, which the Agency’s counsel did the same day. *Id.* Two days later, the Regional Hearing Clerk forwarded this matter to the Office of Administrative Law Judges pursuant to 40 C.F.R. § 22.21(a).

I was designated to preside over this proceeding on August 30, 2018. On August 31, 2018, I issued a Prehearing Order that ordered the parties to file preliminary statements and prehearing exchanges of information. The Agency timely filed a Preliminary Statement and Initial Prehearing Exchange.

On October 22, 2018, Silky Bagga filed a letter dated October 16, 2018, on Lakhmir Bagga’s behalf, requesting an extension of time to the deadlines in the Prehearing Order or for the deadlines to be dropped altogether because Mr. Bagga was in India seeking medical

treatment until November 11, 2018.¹

On October 29, 2018, the undersigned issued an order requiring Respondent to file an Answer to the Complaint by November 16, 2018, because Respondent's letter to Ms. Toffel was not filed with the Regional Hearing Clerk, did not request a hearing upon the issues, and did not clearly and directly admit, deny, or explain *each* of the factual allegations contained in the Complaint.

On October 31, 2018, the Agency filed Complainant's Response to Respondent's October 16, 2018 Letter consenting to a reasonable extension of time and opposing a dismissal of the Complaint to the extent that the letter was construed as a motion to dismiss.

On November 16, 2018, Silky Bagga filed a letter dated two days earlier, on Lakhmir Bagga's behalf, clarifying that Respondent was not able to meet the deadlines due to Mr. Bagga's health problems. She attached a letter from Mr. Bagga's doctor which stated that "[d]ue to his current health state, Mr. Bagga would benefit from an extension of 3-4 weeks to comply with any requirements."

On November 23, 2018, the Agency filed Complainant's Rebuttal Prehearing Exchange in which it proposed a penalty of \$186,095.00 and provided a detailed explanation of how it reached that amount.

On December 7, 2018, the Agency filed a Motion seeking leave to file a Joint Motion for the Appointment of a Neutral beyond the deadline established for such joint motions by the August 31st Prehearing Order.

For proceedings commenced in an EPA Regional Office, the Regional Judicial Officer serves as Presiding Officer "until the respondent files an answer[.]" 40 C.F.R. § 22.4(b). "When an answer is filed, the Regional Hearing Clerk shall forward a copy of the complaint, the answer, and any other documents filed in the proceeding to the Chief Administrative Law Judge who shall serve as Presiding Officer or assign another Administrative Law Judge as Presiding Officer." 40 C.F.R. § 22.21(a). Although Respondent indicated that its letter to a UST Program Officer should be construed as an Answer to the Complaint, the letter was insufficient to serve as an Answer because it "was not filed with the Regional Hearing Clerk, did not request a hearing upon the issues, and did not clearly and directly admit, deny, or explain *each* of the factual allegations contained in the Complaint." *See* Order for Respondent to File Answer at 2. Further, Respondent was provided the opportunity to file an Answer with this Tribunal yet failed to do so. Because an Answer has not been filed, it is inappropriate for this Tribunal to retain jurisdiction of this matter or to continue to serve as Presiding Officer.

Consequently, this matter is **REMANDED** to the Regional Judicial Officer, Region III, U.S. Environmental Protection Agency for disposition consistent with the Rules of Practice. Accordingly, the undersigned declines to issue rulings on Respondent's requests for additional

¹ Silky Bagga's letters of October 16th and November 14th do not reveal her relationship to Respondent or Lakhmir Bagga.

time and the Complainant's Motion seeking leave to file the parties' Joint Motion for Appointment of a Neutral.

SO ORDERED.

A handwritten signature in black ink, appearing to read 'S. Biro', is written above a horizontal line.

Susan L. Biro
Chief Administrative Law Judge

Dated: December 10, 2018
Washington, D.C.

In the Matter of *Silky Associates, LLC*, Respondent.
Docket No. RCRA-03-2018-0131

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Order of Remand**, dated December 10, 2018, and issued by Chief Administrative Law Judge Susan L. Biro, was sent this day to the following parties in the manner indicated below.



Mary Angeles
Paralegal Specialist

Original and One Copy by Personal Delivery to:

Mary Angeles, Headquarters Hearing Clerk
U.S. Environmental Protection Agency
Office of Administrative Law Judges
Ronald Reagan Building, Room M1200
1300 Pennsylvania Ave., NW
Washington, DC 20004

Copy by Electronic Mail to:

Jennifer M. Abramson
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 3
Mail Code 3RC50
1650 Arch Street
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For Complainant

Copy by Certified Mail to:

Attn: Lakhmir Bagga
Silky Associates, LLC
200 E. Williamsburg Road
Sandston, VA 23150
Certified Mail No: 7005 1160 0004 4342 4397
For Respondent

Dated: December 10, 2018
Washington, D.C