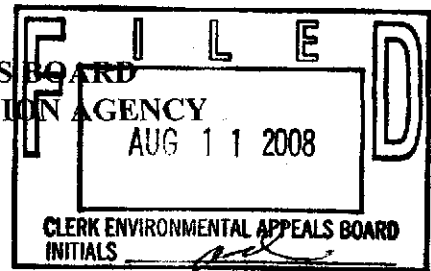


BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.



In re:)
)
Higman Barge Lines, Inc.)
)
)
NPDES Permit No. MA 0004341)
)

CERCLA 106(b) Appeal No. 08-01

ORDER DISMISSING PETITION FOR REIMBURSEMENT WITHOUT PREJUDICE

On May 14, 2008, Higman Barge Lines, Inc. ("Higman") filed a Petition for Reimbursement of Costs ("Petition") with the Environmental Appeals Board ("Board") in the above-captioned proceeding. The Petition sought reimbursement of \$75,000 in costs Higman claims it incurred in complying with the terms of a Unilateral Administrative Order ("UAO") that U.S. EPA Region 6 ("Region") issued to Higman and other potentially responsible parties ("PRPs") on May 7, 2007, pursuant to the Region's authority under section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"). See 42 U.S.C. § 9606(a). The UAO directed Higman and other PRPs to perform response actions at the Palmer Barge Line Superfund Site ("Site"). In its Petition, Higman asserted that the response actions under the UAO were completed on March 14, 2008, and that Higman is therefore entitled to reimbursement of its response costs on the grounds that it is not liable for the costs under CERCLA. See CERCLA § 9606(b)(2)(C), 42 U.S.C. § 9606(b)(2)(C).

On June 17, 2008, the Region filed with the Board a motion to dismiss the Petition ("Motion") on the basis that the Petition is "not ripe for review." In its Motion, the Region explains that pursuant to the terms of the UAO, the Region has not made a formal determination

that Higman completed the response actions in the UAO and thereby satisfied a prerequisite for obtaining reimbursement for costs of response actions under CERCLA.¹ The Region further explains that formal approval requires Higman and other PRPs to submit to the Region a final version of a Remedial Action Report (“RAP”), followed by the Region providing written notice of approval to the PRPs.² As the Region notes, “until the EPA formally approves the [RAP] for the Site, a possibility exists that additional remedial actions may have to be implemented at the Site.” For the above reasons, the Region requests “the dismissal of Higman’s [P]etition, without prejudice, on the grounds that it is not yet ripe and has been untimely filed.”³

On July 23, 2008, Higman filed with the Board a reply to the Region’s Motion in which Higman represents that “[s]ubject to and without waiving any rights which Petitioner may have otherwise, Petitioner does not oppose the Motion of [Region 6] to [d]ismiss the Petition * * * without prejudice .”

¹ Section 106(b)(2)(A) of CERCLA provides that “[a]ny person who receives and complies with the terms of any [UAO] * * * may, within 60 days after completion of the required action, petition the [EAB] for reimbursement from the [Superfund] for the reasonable costs of such action, plus interest.” 42 U.S.C. § 9606(b)(2)(A).

² The Region relates that the PRPs have so far only submitted a draft RAP for the Region’s review.


³ The Region observes that even if the Board were to accept March 14, 2008, as the date response actions under the subject UAO were completed, the Petition should be dismissed as untimely because Higman did not file its Petition within the sixty-day time period allowed for filing CERCLA petitions for reimbursement after completion of response actions. *See* CERCLA § 106(b)(2). Specifically, the Region contends that assuming a March 14th completion date, the sixty-day period for filing a petition for reimbursement expired on May 13, 2008, a day before Higman filed its Petition.

For good cause shown, the Board grants the Region's Motion. The Petition is hereby dismissed without prejudice.

So ordered.

ENVIRONMENTAL APPEALS BOARD

Dated: 8/11/08

By: 
for Anna L. Wolgast
Environmental Appeals Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order Dismissing Petition for Reimbursement Without Prejudice in the matter of Hignan Barge Lines, Inc., CERCLA 106(b) Appeal No. 08-01, were sent to the following persons in the manner indicated:

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Date: AUG 11 2008



Annette Duncan
Secretary