

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

In re:)
))
Envirosafe Services of) RCRA Appeal No. 96-6
Ohio, Inc.))
))
))
))

REMAND ORDER

By joint motion dated January 21, 1997, Envirosafe Services of Ohio, Inc. ("ESOI") and U.S. EPA Region V have requested that ESOI's petition for review filed in the above-captioned matter be dismissed without prejudice. Joint Motion to Dismiss Without Prejudice ("Joint Motion"). In support of this request, the Joint Motion states, in part, that "[i]n light of ongoing settlement discussions, *it is anticipated that the issues raised by ESOI's appeal will be rendered moot.*" *Id.* at 1 (emphasis added). The motion further provides that "the parties have agreed in principle to resolve the matters at issue in this appeal," and "[a]t this time, the parties have reached final agreement on each of these matters, thereby rendering the issues raised by this appeal moot." *Id.* at 2-3. However, "in the event the settlement agreements reached on the contested issues ultimately prove unsuccessful," the motion states that ESOI should be given leave to reinstate the petition for review. *Id.* at 3.

It is unclear to us, based on the foregoing excerpts from the Joint Motion, whether the parties currently regard the petition for review as being moot because of agreements they have already consummated or whether they believe the petition for review may become moot at some future date based on agreements they have yet to consummate. Therefore, rather than dismissing the petition for review outright, as requested, the Board has decided to remand ESOI's permit to the Region without prejudice. Should settlement of this matter ultimately prove unsuccessful, ESOI will be permitted to reinstate its appeal by written notice to the Board. See *In re Safety-Kleen Corporation, Odenton Service Center*, RCRA Appeal No. 94-1 (EAB, July 19, 1994) (Order) (remanding appeal without prejudice and allowing reinstatement should settlement discussions prove unsuccessful).

So ordered.

Dated: 1/23/97

ENVIRONMENTAL APPEALS BOARD

By: _____/s/_____
Kathie A. Stein
Environmental Appeals Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of the forgoing Remand Order in the matter of EnviroSafe Services of Ohio, Inc., RCRA Appeal No. 96-6, were sent to the following persons in the manner indicated:

First Class Mail
Postage Prepaid:

E. Lynn Grayson
Jenner & Block
One IBM Plaza
Chicago, IL 60611

Timothy J. Thurlow
Associate Regional Counsel
U.S. EPA, Region V
77 West Jackson Blvd
Chicago, IL 60604

Deborah Golden
EnviroSource Management Group
1155 Business Center Dr.
Horsham, PA 19044-3454

Dated: 1/23/97

/s/
Mildred T. Johnson
Secretary