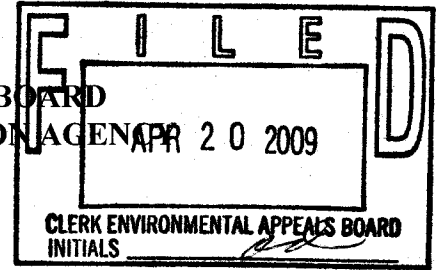


BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.



In re:)
)
)
Walton CWCA Golden West 70, LLC) CERCLA § 106(b) Petition
(U.S. Colloidal Site)) No. 08-03
)
)
)

ORDER CONTINUING STAY OF PROCEEDINGS

On December 11, 2008, Walton CWCA Golden West 70, LLC (“Petitioner”), filed a petition with the Environmental Appeals Board (“Board”) pursuant to section 106(b)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. § 9606(b)(2), seeking reimbursement of costs incurred in complying with an administrative order issued by United States Environmental Protection Agency, Region 9 (“Region”) under section 106(a) of CERCLA, 42 U.S.C. § 9606(a).¹ On February 6, 2009, the Board granted a joint motion from Petitioner and the Region requesting a stay of the matter. Order Granting Joint Motion to Stay Proceedings at 2. The matter was stayed until April 17, 2009. *Id.*

On April 16, 2009, the Board received a joint statement and motion from the parties requesting that the stay be extended and also requesting a “contingent dismissal.” Joint Statement of Status and Motion to Extend Stay with Contingent Dismissal (“Joint Statement”) at 2. The parties state that they have reached terms on a settlement and, pursuant to

¹ Petitioner seeks reimbursement of approximately \$438,897.40 in costs plus interest that it claims to have incurred in conducting CERCLA removal activities at a property in Rancho Cucamonga, California, commonly known as the “U.S. Colloidal Site.” Petition at 1-2.

section 122(i) of CERCLA, 42 U.S.C. § 9622(i), have published a notice of the proposed settlement in the Federal Register for public comment. *Id.* at 1. The comment period expires on April 30, 2009. *Id.* Under section 122(i)(3), if public comments “disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate,” EPA may withdraw from or withhold consent to the settlement. CERCLA § 122(i)(3), 42 U.S.C. § 9622(i)(3); *accord* Joint Statement at 1. The Region notes that, to date, it has not received negative comments. Joint Statement at 1.

Based on the current status of the proposed settlement, the parties request that the Board continue the stay until May 31, 2009. *Id.* at 2. The parties further request that the Board issue the stay with a “contingent dismissal,” which appears to be some sort of automatic dismissal that would allow the Board to “dismiss the Petition for Reimbursement with prejudice unless, prior to May 31, 2009, either Petitioner or Respondent informs the [Board] that, based on comments received in the public comment process * * *, EPA has withdrawn or withheld its consent to the proposed settlement.” *Id.*

Upon consideration of the foregoing, and in the interests of efficiency and judicial economy, the Board hereby grants the parties’ request for an extension of the stay. Because May 31 falls on a Sunday, however, the above-captioned matter is hereby STAYED until June 1, 2009. The Board, however, DENIES the parties request for a “contingent dismissal.” Instead, on or before June 1, 2009, the parties are ordered to submit a report regarding the status of the settlement, which shall include a discussion of whether it is appropriate to continue the stay, dismiss the petition, or establish a schedule for the Region to file a response to the petition. If,

however, the Board receives a motion requesting the withdrawal of the petition with prejudice on or before June 1, 2009, the parties need not file a status report.

So ordered.

ENVIRONMENTAL APPEALS BOARD

By: *Kathie A. Stein*
Kathie A. Stein
Environmental Appeals Judge

Dated: April 20, 2009

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order Continuing Stay of Proceedings in the matter of Walton CWCA Golden West 70, LLC (U.S. Colloidal Site), CERCLA § 106(b) Petition No. 08-03, were sent to the following persons in the manner indicated:

By Inter-Office Mail:

Clara Beitin
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Ave (MC 2272A)
Washington, D.C. 20460

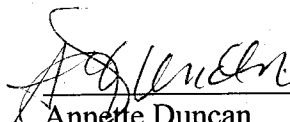
By Pouch Mail:

J. Andrew Helmlinger
Office of Regional Counsel (ORC-3)
U.S. EPA Region 9
75 Hawthorne Street
San Francisco, CA 94105

By First Class Mail:

Roger J. Holt
Greenberg Glusker Fields
Claman & Machtinger LLP
1900 Avenue of the Stars, 21st Floor
Los Angeles, CA 90067

Dated: APR 20 2009



Annette Duncan
Secretary