



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

Richard Karl, Director  
Superfund Division  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, IL 60604-3507

APR 26 2012

ENVIRONMENTAL APPEALS BOARD

Re: Cleveland Trencher  
Docket Number: V-W-10-C-950  
Petition Number: CERCLA 106(b) 12-02

Dear Mr. Karl:

This is to advise you that the Environmental Appeals Board received on April 23, 2012, filed by Patrick Thomas, Attorney, Janik L.L.P. on behalf of Safe Environmental Corporation of Indiana pursuant to CERCLA Section 106(b). The petition seeks reimbursement of costs incurred by the Petitioner.

A copy of the petition can be found on the Board's website at [www.epa.gov/eab](http://www.epa.gov/eab) and enclosed (one box) are the exhibits. Click on "EAB Dockets" in the left-hand menu, and click on the "Active Dockets" link, and then click on the appropriate case name. If you have any difficulty accessing this document, please let me know.

The Board has issued a revised guidance document dated February 23, 2012, which supersedes the Board's November 10, 2004 guidance document describing the Board's procedures for addressing Section 106(b) reimbursement petitions. This revised guidance will apply to this case. The document can be found on the Board's website at <http://www.epa.gov/eab> and click on EAB Guidance Documents (left-hand menu) and click the last link CERCLA Guidance 02-23-12 FINAL.pdf. If you have difficulty accessing this document, please let me know.

Accordingly, please have your staff prepare and submit a response to the petition, as described more fully in Section IV.A of the Board's guidance. If your response challenges the petitioner's eligibility to seek reimbursement, without regard to the merits of the reimbursement claim, the response should be filed not later than May 25, 2012. If, however, your response does address the merits of the reimbursement claim, the response should be filed not later than June 25, 2012. Filing may be accomplished electronically pursuant to the Board's Order of January 28, 2010.<sup>1</sup> Alternatively, filing may be accomplished by filing a paper original (signed in blue

---

<sup>1</sup> The Board has issued an Order authorizing the electronic filing of documents in cases involving permit appeals. See Order Authorizing Electronic Filing in Proceedings Before the Environmental Appeals Board Not Governed by 40 C.F.R. Part 22 (Jan. 28, 2010), available at <http://www.epa.gov/eab> (click "Standing Orders" on sidebar). Instructions on registration and document filing are available by using the "Electronic Filing" link on the Board's website. Documents containing confidential business information should not be filed electronically as the Board considers business confidentiality claims

ink) and two copies of these materials with the Board (at the address shown below) by the date specified above and send a copy of the response to the petitioner's attorney.

Please include with the response a certified index to the administrative record that was compiled in connection with the issuance of the underlying CERCLA Section 106(a) Order. Please also include copies of any documents that are relied on in the response and that have not already been submitted to the Board by the petitioner.

All documents including the materials due May 25, 2012 or June 25, 2012, must reference the petition number. **IMPORTANT:** In addition, any envelope or other packaging containing documents sent to the Environmental Appeals Board's mailing address or hand-delivery address, as prescribed below, must bear a complete and accurate return address in the upper left hand corner. The envelope or packaging must also clearly state the case name and appeal number in the lower left hand corner.

**All documents that are sent through the U.S. Postal Service, Express Mail, hand-delivered, via Courier must include the name of the organization, address, facsimile number, telephone number, and an email address, if available.<sup>2</sup>**

Documents that are sent through the U.S. Postal Service (except by Express Mail) must be addressed to the Environmental Appeals Board's mailing address which is:

U.S. Environmental Protection Agency  
Clerk of the Board  
Environmental Appeals board 1103B  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460-0001

---

waived when a document is electronically filed. *Id.* at 5-6. Please note that if a party, or its attorney or other representative, electronically files any document, such as a notice of appeal, brief, or motion, that exceeds fifty (50) pages in length, inclusive of the certificate of service, table of contents, and table of authorities, but exclusive of exhibits or attachments, it must also send one paper copy of that document to the Board by U.S. Mail, hand, courier, or commercial delivery service within one business day of the date of the electronic filing. *See id.* at 4-5. Such paper copy must be accompanied by a signed certification stating that it is identical to the electronically filed document. *Id.* at 5. If the combined page length of all of the exhibits or attachments submitted in support of a brief or motion exceeds fifty (50) pages, the requirement to submit a paper copy, and its timing, applies to the entire set of exhibits or attachments. *Id.* Anyone electronically filing exhibits or attachments in support of a brief, motion, or other document should submit them separately from the associated brief or motion. *Id.* at 3.

<sup>2</sup> All mail sent to the Environmental Protection Agency may be delayed by a random sterilization procedures. Parties are encouraged to utilize the Board's e-filing system or hand or courier delivery when filing pleadings with the Board. Additional information regarding mail delivery to the Board is available on the Environmental Appeals Board website ([www.epa.gov/eab](http://www.epa.gov/eab)) at the Clerk of the Board or Frequently Asked Questions links.

Documents that are sent to the Environmental Appeals Board's hand-delivery address through the U.S. Postal Service (except by Express Mail) will be returned to the sender and shall not be considered as filed.

Documents that are hand-carried in person, delivered via courier, mailed by Express Mail, or delivered by a non-U.S. Postal Service carrier (e.g., Federal Express or UPS) must be delivered to:

U.S. Environmental Protection Agency  
Clerk of the Board, Environmental Appeals Board  
Ronald Reagan Building, EPA Mail Room  
1300 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004

Documents that are hand-carried may be delivered to the Ronald Reagan Building, EPA Mail Room, from 8:00 a.m. to 4:30 p.m., Monday through Friday (excluding federal holidays). Documents filed electronically may be filed at any time up to 11:59 p.m. Eastern Time on the day the document is required to be filed with the Board.

Thank you for your attention to this matter.

Sincerely,



Eurika Durr  
Clerk of the Board

cc: Patrick Thomas  
JANIK L.L.P.  
Attorneys at Law  
9200 South Hills Blvd.  
Cleveland, OH 44147-3521

Earl C. Salo  
Office of General Counsel (2366A)  
Solid Waste and Emergency Response Division  
U.S. EPA, Headquarters  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460-0001

Robert Kaplan, Regional Counsel  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, IL 60604-3507