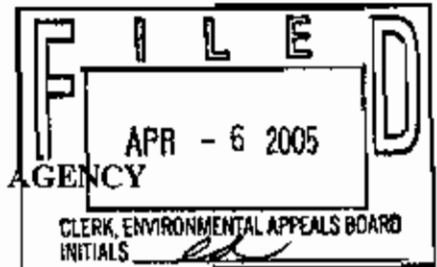


ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.



In the Matter of:

Grand Street Mercury Site,  
General Electric Company, Petitioner

CERCLA § 106(b) Petition No. 05-01

**ORDER GRANTING IN PART MOTION FOR STAY  
AND ORDER TO SHOW CAUSE WHY PETITION FOR REIMBURSEMENT  
SHOULD NOT BE DISMISSED IN PART AS PREMATURE**

By petition filed on March 1, 2005, the General Electric Company ("GE") seeks reimbursement of costs (plus interest) incurred in complying with the terms of two unilateral administrative orders ("UAO") issued by U.S. EPA Region 2 (the "Region") regarding the Grand Street Mercury Superfund Site, Hoboken, New Jersey. The petition refers to the first UAO, which was originally issued on February 24, 1997, as the "Site Maintenance UAO." The petition refers to the second UAO, which was originally issued on April 1, 1998, as the "Remedial Action UAO." Consistent with the Board's practice, the Clerk of the Environmental Appeals Board sent a letter to the Region requesting that the Region file a certified index to the administrative record and a response to GE's petition on or before April 4, 2005. Before the Environmental Appeals Board at this time is the Region's motion requesting a stay of the time for the Region to file its response and certified index until July 15, 2005. *See* Unopposed Motion to Stay EPA's Response to the Petition for Reimbursement of General Electric Company Pending EPA's Determination of Completion of Response Actions Required to be Performed by Petitioner (Mar. 31, 2005) (the "Motion for Stay").

The petition was filed under section 106(b)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, 42 U.S.C. § 9606(b)(2). This section states, in part:

Any person who receives and complies with the terms of any order issued under subsection (a) of this section may, within 60 days after *completion of the required action*, petition the President for reimbursement from the Fund for the reasonable costs of such action, plus interest.

CERCLA § 106(b)(2)(A), 42 U.S.C. § 9606(b)(2)(A) (emphasis added).<sup>1</sup>

As GE recognizes in its petition, "completion of the required action" is one of four statutory prerequisites that a petitioner must satisfy before the Board will consider a request for reimbursement. Petition at iii. As we have explained in a case where the UAO required post-cleanup testing and analysis, "while the analysis [required by the UAO] was proceeding and future remediation was still possible, the [potentially responsible parties] clearly continued to be subject to the obligations of the [UAO]," and therefore the required action had not been completed. *In re Findley Adhesives, Inc.*, 5 E.A.D. 710, 717-18 (EAB 1995). Where a petition has been filed before completion of the remedial action, we have also dismissed the petition without prejudice. *See, e.g., In re CoZinco, Inc.*, CERCLA § 106(b) Petition No. 95-2 (EAB, Sept. 11, 1995) (Order Dismissing Petition).

In the present case, the Site Maintenance UAO states in Section XII that "[w]hen EPA determines, after EPA's review of the Final Report, that all removal actions have been fully performed in accordance with this Order \* \* \* EPA will provide notice to the Respondents." Site Maintenance UAO at 23. GE has attached to its petition a letter from the Region stating that "this correspondence serves as a Notice of Completion as contemplated by Section XII of" the Site Maintenance UAO.

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<sup>1</sup> Executive Order 12580 (January 23, 1987) delegated the President authority to implement section 106(b) of CERCLA to the EPA Administrator. The Administrator has delegated to the Environmental Appeals Board the authority to receive, evaluate, and make determinations regarding petitions for reimbursement submitted pursuant to section 106(b). *See Delegation of Authority 14-27* ("Petitions for Reimbursement").

The second UAO, the Remedial Action UAO, states that “[i]f EPA concludes, following the initial or any subsequent certification of completion by Respondent that all phases of the Work required by the Remedial Action have been fully performed in accordance with this Order, that the Performance Standards have been attained, and EPA has approved the Draft Remedial Action Report, EPA shall notify Respondent that the Remedial Action has been fully performed.” Remedial Action UAO at 14, ¶ 58. GE has not alleged in its petition that it has received the notice of completion contemplated by the Remedial Action UAO. Instead, GE states that it is “uncertain about which specific event ‘complet[es] the required action.’” Petition at iv n.2. In contrast, the Region states that “until GE submits, and the EPA reviews and approves, the Remedial Action Report required under the Remedial Action UAO, and notifies GE that the response actions have been fully performed, the matter is not ripe for review.” Motion For Stay at 2.

It appears that GE remains subject to the Remedial Action UAO and that future remediation required by the Remedial Action UAO remains possible until the Region reviews GE’s final report and provides the contemplated notice of completion. Thus, GE’s petition appears to be premature to the extent it seeks reimbursement of costs of compliance with the Remedial Action UAO. Accordingly, GE is hereby ordered to show cause why its petition should not be dismissed without prejudice in so far as it seeks reimbursement of costs with respect to the Remedial Action UAO. GE shall show cause by filing an appropriate brief or pleading on or before Friday, April 22, 2005.

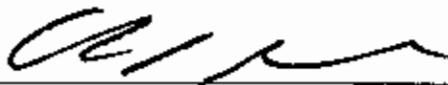
We also hereby grant the Region’s unopposed Motion For Stay of the time in which the Region must file its response to GE’s petition and certified index of the administrative record. The Region shall file on or before Friday, July 15, 2005, a status report on its review

of GE's final report under the Remedial Action UAO. A further order related to briefing in this case will be issued after receipt of that status report.<sup>2</sup>

So ordered.

Dated: 4/6/05

ENVIRONMENTAL APPEALS BOARD

By:   
Edward E. Reich  
Environmental Appeals Judge

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<sup>2</sup> If the status report indicates that a notice of completion has or soon will be issued, a response from the Region will not be required until GE has had the opportunity to resubmit its petition covering the activities addressed by the Remedial Action UAO and seek consolidation of that petition with the present one covering the Site Maintenance UAO.

## CERTIFICATE OF SERVICE

I hereby certify that copies of the forgoing Order Granting in Part Motion for Extension of Time and Order to Show Cause Why Petition for Reimbursement Should Not Be Dismissed as Premature, in the matter of Grand Street Mercury Site, General Electric Company, Petitioner, CERCLA § 106(b) Petition No. 05-01, were sent to the following persons in the manner indicated:

By First Class Mail  
Postage Prepaid:

Samual I. Gutter  
Samuel B. Boxerman  
Sidley Austin Brown & Wood, LLP  
1501 K Street, N.W.  
Washington, DC 20005

James A. Moss  
Herrick, Feinstein LLP  
Two Park Avenue  
New York, NY 10016

Kirk Macfarlane  
Counsel, GE Corporate Environmental Programs  
640 Freedom Business Center  
King of Prussia, PA 19406

By Pouch Mail:

Sarah P. Flanagan  
Office of Regional Counsel  
U.S. EPA, Region 2  
290 Broadway, 17<sup>th</sup> Floor  
New York, NY 10007-1866

Clarence Featherson  
Office of Site Remediation and Enforcement  
1200 Pennsylvania Ave., N.W.  
Washington, D.C. 20460

Dated: APR 7 2005

  
Annette Duitcan,  
Secretary