

Completion of the required action is a prerequisite for review under Section 106(b)(2)(A) of CERCLA, 42 U.S.C. § 9606(b)(2)(A). However, EPA has not yet made a determination, pursuant to the procedure established in the UAO, that the actions required under the UAO have been completed. It is EPA's position that until EPA completes its review of the Final Report remitted by Safe on December 15, 2011, in conjunction with subsequent revisions that Safe submitted to EPA, and notifies Safe that the response actions have been fully performed, the matter is not ripe for review by the EAB.

The UAO was issued on June 21, 2010, and required a number of Potentially Responsible Parties ("PRPs") to conduct a removal action to address asbestos contamination and drums of hazardous waste at the Site. Safe was added to the UAO on July 27, 2010, under a modification titled "First Amendment of Administrative Order Issued on June 21, 2010" ("UAO Amendment"). The UAO and UAO Amendment are provided in the Petition as Petitioner's Exhibits 1 and 40. Safe conducted the asbestos cleanup, while another PRP¹ addressed the drums of hazardous waste. Safe then submitted to EPA a Final Report on December 15, 2011, summarizing Safe's action, as required by Section V, Paragraph 3.5 of the UAO.² A Final Report must meet certain requirements enumerated in Section V, Paragraph 3.5 of the UAO, and in 40 C.F.R. Section 300.165. On or about January 9, 2012, EPA informed Safe that there were certain deficiencies in its Final Report and requested Safe to submit a revised report. Safe supplied EPA with the revised report on March 2, 2012. Safe supplied EPA with further revisions on March 12, 2012, after receiving EPA comments. As of the date of this motion, EPA has not yet given notice that the asbestos response action has been fully performed.³

¹ Namely, the Joseph J. Piscazzi Revocable Living Trust U/A Dated January 7, 1997 (the "Trust").

² The Trust submitted a separate Final Report for the drums on January 25, 2012.

³ EPA has also not yet given notice that the response action for the drums has been completed.

Section XII (Notice of Completion) of the UAO provides the mechanism for notifying Safe that its work has been completed. Generally, EPA's Notice of Completion constitutes "completion of the required action" for purposes of a petition for reimbursement under CERCLA § 106(b)(2)(A). See In re Glidden Co. and Sherwin-Williams Co., 10 E.A.D. 738, 747 n.7 (EAB 2002) (citing In re Solutia, Inc., 10 E.A.D. 193 (EAB 2001); In re A&W Smelters and Refiners, Inc., 6 E.A.D. 302 (EAB 1996), affirmed 962 F.Supp. 1232(N.D. Cal 1997), affirmed in part and reversed in part on other grounds, 146 F.3d 1107 (9th Cir. 1998); In re ASARCO, Inc., 6 E.A.D. 410, 419 (EAB 1996)). Under Section XII, EPA will provide written notice to the PRPs if EPA determines, after review of the Final Report, that all work has been fully performed in accordance with the UAO (except for certain continuing obligations). Section XII further states that if EPA determines that any removal activities have not been completed in accordance with the UAO, EPA will so notify the PRPs, provide a list of deficiencies, and require a modified Work Plan, implementation of such Work Plan, and a modified Final Report.

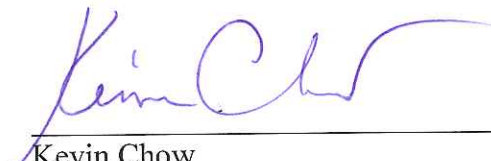
The Final Report is itself a UAO requirement, and as such is a "required action" for purposes of CERCLA § 106(b)(2)(A). See Employers Insurance of Wausau v. Browner, 52 F.3d 656, 663 (7th Cir. 1995) (construing "completion of the required action" to mean "required by the order" and "whatever action is required by the terms of any order."); Glidden, 10 E.A.D. at 746 (construing "required action" to mean "actions required by the UAO"). Completion of the required action must include, but is not limited to, completion of on-site activities as well as submission and review of a complete and sufficient Final Report. It is through its review of the Final Report that EPA determines whether or not all actions have been completed in accordance with the UAO.

In the present case, EPA reviewed the Final Report submitted December 15, 2011, and requested revisions. EPA received the revised Final Report on March 2, 2012, a few days after the Board's February 28, 2012, letter to EPA, scheduling EPA's motion. EPA e-mailed comments to Safe on March 9, 2012, and requested further corrections and re-submission of the report by March 19, 2012. Safe re-submitted it on March 12, 2012. However, as of the date of this motion, EPA has not completed its review, and consequently has not issued a Notice of Completion. If EPA determines that any work has not been completed, EPA will notify Safe, and require any necessary modifications to the Work Plan and implementation of such. Until EPA issues a Notice of Completion on the basis of the revised Final Report, a possibility exists that additional response actions will have to be implemented at the Site. EPA expects that it will issue a Notice of Completion or notice that more work is necessary by April 6, 2012.

EPA respectfully requests the dismissal of Safe's Petition, without prejudice, on the ground that it has been prematurely filed, because EPA has not yet issued a Notice of Completion for the removal action or for any portion of such.

Dated this 28th day of March, 2012,

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Motion to Dismiss the Petition of Safe Environmental Corporation of Indiana in the matter of In re Safe Environmental Corporation of Indiana, Petition No. CERCLA 106(b) 12-01, was filed by electronic submission to the Environmental Appeals Board ("EAB") through the Central Data Exchange this 28th day of March, 2012.

I hereby certify that copies of the foregoing Motion to Dismiss the Petition of Safe Environmental Corporation of Indiana in the matter of In re Safe Environmental Corporation of Indiana, Petition No. CERCLA 106(b) 12-01, were served by United States First Class Mail on the following persons, this 28th day of March, 2012:

Attorney for Petitioner

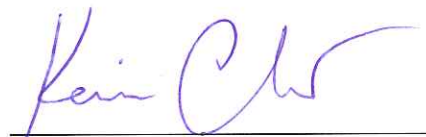
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