

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

_____	)	
IN RE:	)	
	)	
Southern Iowa Mechanical	)	Petition No.
Superfund Site	)	CERCLA 106(b) 09-01
Ottumwa, Iowa	)	
	)	
Titan Tire Corporation	)	
	)	
and	)	
	)	
Dico., Inc.,	)	
	)	
Petitioners	)	
	)	
Petition for Reimbursement Under	)	
Section 106(b)(2) of the Comprehensive	)	
Environmental Response, Compensation,	)	
and Liability Act of 1980, as amended	)	
42 U.S.C § 9606(b)(2)	)	
_____	)	

**MOTION TO DISMISS THE PETITION OF TITAN TIRE  
CORPORATION AND DICO, INC.**

The Respondent, the U.S. Environmental Protection Agency, Region 7, (“EPA”), by and through its Office of Regional Counsel, hereby moves this Environmental Appeals Board (“EAB” or Board”) pursuant to Sections II.I.1 and V.B of the Board's Practice Manual dated June 2, 2004, (“EAB Manual”) and Section IV.A.1 of the Board's Revised Guidance on Procedures for Submission and Review of CERCLA Section 106(b) Reimbursement Petitions dated November 10, 2004 (“EAB Guidance”), to dismiss the Titan Tire Corporation (“Titan Tire”) and Dico, Inc. (“Dico”) Petition for Reimbursement (“Petition”) dated October 23, 2009, on the basis of ripeness in that said required action has not been completed. For convenience in this Motion, Titan Tire and Dico will be referred to jointly as “Petitioners.”

Petitioners seek to recover the costs they allegedly incurred in complying with the terms of the Order for Removal Response Activities, Docket No. CERCLA-07-2009-0006, ("Order") transmitted by the EPA to Petitioners by letter dated December 30, 2008, which became effective on January 23, 2009, in connection with the Southern Iowa Mechanical Site ("Site"). See Petitioner's Exhibit 1 ("Pet. Ex. 1"). EPA issued the Order under Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended, 42 U.S.C. § 9606(a). Completion of the required actions is a statutory prerequisite of obtaining reimbursement under Section 106(b) of CERCLA, 42 U.S.C § 9606(b). However, EPA has not yet made a determination pursuant to the procedure established in the Order that Petitioners have completed the required response actions. It is EPA's position that until EPA approves the Final Report required pursuant to Paragraph 46 of the Order and thereafter notifies Petitioners that the response actions have been fully performed, the matter is not ripe for review by the EAB. (Pet. Ex. 1 at 11) See Findley Adhesives Inc., 5 E.A.D. 710 (EAB 1995), and In the Matter of Cyprus Amax Mineral Co., CERCLA 106(b) Petition No. 95-4, Order Dismissing Petition, June 24, 1996 (copy attached).

On October 21, 2009, Petitioners submitted a report entitled Final Project Report PCB Decontamination Activities Southern Iowa Mechanical Site ("Final Project Report") dated October 12, 2009, to EPA. (Pet. Ex. 25). On November 6, 2009, Petitioners submitted by electronic mail what was described as "additional documentation for the Final Report." A copy of this email, with the attached documents, is attached as EPA Exhibit 1 (EPA Ex. 1). Section XXV, "Notice of Completion," Paragraph 76 of the Order specifies the mechanism for notifying Petitioners when EPA has determined that all removal actions have been completed in accordance with the Order. (Pet. Ex. 1 at 18). Paragraph 76 provides in relevant part, "[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." (emphasis added). Petitioners are the Respondents referred to in the Order. The requirements of the Final Report are set forth in Section XIII, "Reporting," Paragraph 46, which include that the Final Report is to be submitted to EPA for review and approval by EPA. (Pet. Ex. 1 at 11). As provided in Section XI, "EPA Approval of Plans and Other Submissions," EPA has a variety of options available to it with respect to reports submitted for review and approval, including "(a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that Respondents modify the submission; or (e) any combination of the above." (Pet. Ex 1 at 8).

EPA has not completed its review of the Final Project Report and therefore has not yet provided its approval or disapproval to Petitioners. EPA intends to promptly respond to the Final Project Report. Only if EPA notifies Petitioners that the response actions have been fully performed will a Petition for Reimbursement be ripe for EAB review.

EPA therefore respectfully requests the dismissal of the Petition, without prejudice, on the grounds that it is not yet ripe, and has been prematurely filed. EPA has contacted the attorneys representing Petitioners, who indicated that they plan to oppose this motion.

Dated this 25<sup>th</sup> day of November 2009.

Respectfully submitted:

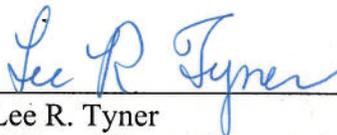
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**CERTIFICATE OF SERVICE**

I hereby certify that on the 25<sup>th</sup> of November, 2009, I served a true and correct copy of the above Motion to Dismiss by mailing a copy via first class United States Mail to Mark Johnson, Stinson Morrison Hecker LLP, 1201 Walnut, Suite 2900, Kansas City, Missouri 64106-2150.

Lee R. Tynan