



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

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In re: )  
          ) CERCLA No. 22-01; RCRA No. 22-01;  
Susan Shultz ) CAA No. 22-04  
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**ORDER DISMISSING FILING FOR LACK OF JURISDICTION**

On November 29, 2022, the Environmental Appeals Board (“Board”) received a document styled Susan Shultz v. David Doremus. The document states that “APPELLANT REQUESTS IMMEDIATE AND SUBSTANTIAL DANGER ORDER to prevent permanent involuntary displacement due to significant lapse of agency jurisdiction after a hazardous release of mercury over reportable levels.” Filing from Susan Shultz 1 (Nov. 29, 2022) (docketed as *In re Shultz*) (“Shultz Filing”). The document further states: “PETITION TO REVIEW PETITION DENIAL FOR PRELIMINARY SITE ASSESSMENT, INCLUDING RELEVANT INFORMATION OMITTED FROM THE ADMINISTRATIVE RECORD.” *Id.* Ms. Shultz submitted reports from the Kern County Sheriff’s Office and the Kern County Environmental Health Division that detail the events of December 21, 2019, in which a release of mercury occurred at a residence at 4300 Highway 395, Ridgecrest, CA 93555.<sup>1</sup>

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<sup>1</sup> The Board has not posted these and other reports submitted by Ms. Shultz. They appear to contain personally identifiable information.

In her filing, Ms. Shultz raises various concerns with how local, state, and federal agencies (including the U.S. Environmental Protection Agency or “EPA”), and the property owner handled her report of the mercury release. She has not, however, identified any permitting decision, or other decision or action, over which the Board has jurisdiction.<sup>2</sup> For the reasons set forth more fully below, the Board dismisses Ms. Shultz’s filing for lack of jurisdiction.

Ms. Shultz’s filing appears to seek the following:

1. A request for an “IMMINENT AND SUBSTANTIAL DANGER ORDER to prevent permanent involuntary displacement due to significant lapse of agency jurisdiction.”
2. A “PETITION TO REVIEW PETITION DENIAL FOR PRELIMINARY SITE ASSESSMENT.”
3. A “PETITION FOR REMOVAL SITE ASSESSMENT to determine whether a nonfederal party is undertaking proper response.”
4. A “CRIMINAL ENHANCEMENT AGAINST THE OWNER FOR VIOLATIONS CAUSING EMERGENCY EVACUATION FROM AN UNCONTROLLED HAZARDOUS WASTE SITE.”

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<sup>2</sup> On November 1, 2022, Ms. Shultz sent the Clerk of the Board an email, along with attachments, stating that she was trying “to appeal the enclosed denial of a CERCLA preliminary site assessment of 4300 US 395, Ridgecrest, CA 93555 based on error of judgement [sic].” We have attached as Appendix A hereto the EPA Region 9 letter to Ms. Shultz, dated August 4, 2022, which was included with her November 1, 2022 email. Ms. Shultz described that letter as a “denial of a CERCLA preliminary site assessment.” The EPA Region 9 letter explains the actions that the Kern County Environmental Health Division took with respect to the reported mercury release and why EPA Region 9 would not be taking any further action. *See* Letter from Bret Moxley, Federal On Scene Coordinator, U.S. EPA, to Susan Schultz [sic] (Aug. 4, 2022) (Appendix A). On November 3, 2022, the Clerk of the Board responded to Ms. Shultz by email, informing her that the Environmental Appeals Board does not handle these types of appeals.

5. Imposition of “PUNITIVE DAMAGES AGAINST EPA REGION 9 FOR 1) ABUSE OF DISCRETION; 2) REFUSAL TO REPORT; 3) NEGLIGENCE IN RECORDKEEPING; 4) FAILURE TO NOTIFY MINING AND NATURAL RESOURCES AGENCIES; AND 5) FAILURE TO PERFORM HOMELAND SECURITY RISK ASSESSMENT; ALL LEADING TO A YEAR-LONG LAPSE IN AGENCY JURISDICTION FOLLOWING A HAZARDOUS RELEASE OF MERCURY.”

Shultz Filing at 1-2. In support of these claims, the filing refers to the Resource Conservation and Recovery Act (“RCRA”) and the Clean Air Act (“CAA”) and states, “The issue is concealment and knowing endangerment under RCRA and CAA. The response omits that law enforcement ordered for my immediate removal on April 14, 2020 and under threat of arrest.”

Shultz Filing at 1. The filing also cites regulations implementing the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”) concerning removal site evaluations at 40 C.F.R. § 300.410 and CAA statutory provisions about hazardous air pollutants and enforcement at 42 U.S.C. §§ 7412-13. *See* Shultz Filing at 1. Further, Ms. Shultz attached to her filing the Board’s Order on Procedures for Petitions for Reimbursement Submitted under Section 106(B)(2)(A) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9606(b)(2)(A).

The Board is a tribunal of limited jurisdiction, and its authority is “limited by the statutes, regulations, and delegations that authorize and provide standards for such review.” *In re Carlton, Inc.*, 9 E.A.D. 690, 692 (EAB 2001); *accord In re Coastal Energy Corp.*, NPDES Appeal No. 17-04, at 3 (EAB Sept. 25, 2017) (Corrected Order Dismissing Petition for Lack of Jurisdiction and Establishing Deadline). The Board was established by regulation in 1992 and has jurisdiction to adjudicate matters consistent with its authority delegated from the EPA

Administrator. *See* 57 Fed. Reg. 5320, 5320-21 (Feb. 13, 1992) (detailing the Board's authority). Pursuant to the applicable regulations and delegations, the Board reviews certain actions initiated by other EPA programs or offices and does not, on its own, initiate an action. In other words, pursuant to the applicable regulations and delegations, the Board only has authority to review certain, specified actions.

It is not clear what the legal claims are that Ms. Shultz is making, but to the extent she is seeking review of a decision by a regional office not to conduct a preliminary site assessment under CERCLA, the Board lacks authority to review such decisions.<sup>3</sup> Similarly, if Ms. Shultz's filing requests the Board to make an imminent and substantial endangerment finding under CERCLA section 106, 42 U.S.C. § 9606, or under RCRA section 7003, 42 U.S.C. § 6973, the Board does not have authority to make such findings. With regard to Ms. Shultz's other claims, the Board's jurisdiction does not extend to the types of actions apparently sought in her filing.

As stated above, the Board can only decide appeals over which it has been granted authority. Because Ms. Shultz has not shown that the Board has jurisdiction to review any of the concerns she raises, the Board dismisses this matter for lack of jurisdiction.

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<sup>3</sup> As noted above, Ms. Shultz included in her filing the Board's Order on Procedures for Petitions for Reimbursement Submitted under Section 106(b)(2)(A) of the Comprehensive Environmental Response, Compensation, and Liability Act Of 1980, 42 U.S.C. 9606(b)(2)(A). The EPA Administrator delegated the authority to receive, evaluate, and make determinations regarding petitions for reimbursement submitted pursuant to CERCLA section 106(b) to the Board. U.S. EPA Delegation of Authority 14-27, Petitions for Reimbursement §§ 1.a, 2.a (rev. Jan. 18, 2017). Ms. Shultz's filing does not state such a claim under CERCLA section 106(b). Nor could it, as there is no underlying CERCLA section 106 administrative order at issue here and the other prerequisites for such a claim have not been met.

So ordered.<sup>4</sup>

**ENVIRONMENTAL APPEALS BOARD**

Dated: December 9, 2022

By: 

Mary Kay Lynch  
Environmental Appeals Judge

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<sup>4</sup> The three-member panel deciding this matter is composed of Environmental Appeals Judges Wendy L. Blake, Mary Kay Lynch, and Kathie A. Stein.

# APPENDIX A



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
**REGION IX**  
**75 Hawthorne Street**  
**San Francisco, CA 94105-3901**

August 4, 2022

Controlled Correspondence Number: AX-22-000-5703

Susan M. Schultz  
([trailer.tarot@yahoo.com](mailto:trailer.tarot@yahoo.com))

Re: EPA Response to your email dated July 25, 2022 entitled “URGENT PETITION – Kern County Displacement Environmental Crimes.”

Dear Susan M. Schultz:

Thank you for your email on July 25, 2022, Subject: “URGENT PETITION – Kern County Displacement Environmental Crimes.” In that email you requested a Preliminary Site Assessment pursuant to the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) at 4300 US Highway 395, Ridgecrest, California 93555. Your request for a CERCLA Preliminary Site Assessment relates to a reported mercury release on December 21, 2019, in the residential structure on this property where you were a tenant. According to the Kern County Environmental Health Division Hazardous Release / Spill Report, this release of mercury involved a domestic dispute. The Kern County Sheriff, Kern County Fire, and Kern County Environmental Health Division responded to the incident on December 22, 2019, and they found ambient air levels of mercury in the residential structure that were high enough at that time that the Kern County Building Department temporarily red-tagged the structure.

The Kern County Environmental Health Division made a report with California Office of Emergency Services and consulted with California Department of Toxic Substances Control (DTSC). DTSC was unable to assist. The Kern County Environmental Health then contacted EPA Region 9. EPA advised the County that EPA would need a right of access to conduct any further assessment or clean up, and Kern County agreed to follow up with EPA if they were able to contact the owner. Kern County Environmental Health Department made no further contact with EPA, and EPA was never granted access to the property. Kern County Environmental Health Division then provided regulatory agency oversight of the response to this release, and their final mercury air monitoring results were low enough for Kern County to deem the residential structure safe for occupancy. The Kern County Code Compliance then closed the case. Based on these circumstances, EPA has no basis to believe that Kern County’s response was insufficient, and EPA does not plan to conduct its own independent investigation into this incident.

You included a copy of a Lease Termination, submitted by the owner of the structure, dated May 8, 2020, to terminate your lease dated February 13, 2020. The Lease Termination did not cite the

mercury release as a basis for the termination, but instead stated that the owner's family intends to reside at the property.

Thank you for contacting EPA. For further concerns about this matter, we recommend that you contact the Kern County Environmental Health Division, at [eh@kerncounty.com](mailto:eh@kerncounty.com).

Sincerely,

**BRET MOXLEY** Digitally signed by BRET MOXLEY  
Date: 2022.08.04 18:05:20 -07'00'

Bret Moxley  
Federal On Scene Coordinator  
EPA Region 9

**CERTIFICATE OF SERVICE**

I certify that copies of the foregoing *Order Dismissing Filing for Lack of Jurisdiction* in the matter of “In re Susan Shultz,” CERCLA No. 22-01, RCRA No. 22-01, and CAA No. 22-04, were sent to the following person in the manner indicated:

**By Email:**

Susan Shultz  
sshultz1918@protonmail.com

Dated: Dec 09, 2022



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Emilio Cortes  
Clerk of the Board