



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

In re Bryan K. Clark ) CERCLA Appeal No. 23-01

ORDER DISMISSING FILING FOR LACK OF JURISDICTION

On September 19, 2023, the Environmental Appeals Board ("Board") received a twenty-nine page document from Mr. Bryan K. Clark styled as a "Notice Motion on Appeal Disposition of a Motion for CERCLA 42 U.S.C. 9604(e)(5)(B), 9606(b)(1) 9607(c)(3) Consent Decree for Recovery of Past Response Costs" and a "Motion on Appeal Disposition of a Motion for CERCLA 42 U.S.C. 9604(e)(5)(B), 9606(b)(1) 9607(c)(3) Consent Decree for Recovery of Past Response Costs" ("Filing"). As an attachment, Mr. Clark submitted a copy of a Reinsurance Agreement for a Bonds Statute Payment Bond.

The Filing appears to concern a dispute between Mr. Clark and a contractor for whom he states he worked as a project inspector. Among the allegations in the document are references to "Theft or Embezzlement from employee benefit Plan," "violations and withholding of amounts for unpaid wages and liquidated damages," "Breach of Fiduciary Duty," and "misrepresentations and false statements on Prevailing Wage Statements [and] Retirement/Pension fund statements." Filing at 1, 6, 9 & 13. Mr. Clark cites to numerous statutory and regulatory authorities, many of them pertaining to governmental authorities other than the U.S. Environmental Protection Agency. The document does not identify any permitting decision, or other decision or action,

over which the Board has jurisdiction. For the reasons set forth more fully below, the Board dismisses Mr. Clark's filing for lack of jurisdiction.

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). The Board was established by regulation in 1992 and has jurisdiction to adjudicate matters that are consistent with the authority delegated to it by the EPA Administrator. *See* 57 Fed. Reg. 5320, 5320-21 (Feb. 13, 1992) (detailing the Board's authority). Where a filing does not fall within the scope of the Board's jurisdiction, the Board will dismiss for lack of jurisdiction. *See, e.g., In re Susan Shultz*, CERCLA Appeal No. 22-01, RCRA Appeal No. 22-01, CAA Appeal No. 22-04, at 4 (EAB Dec. 9, 2022) (Order Dismissing Filing for Lack of Jurisdiction); *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 Filing includes a seemingly random recitation of various state and federal departments and agencies' regulations and statutes. It is unclear what claims Mr. Clark is making, but to the extent he is seeking payment of disputed wages and liquidated damages, the Board lacks jurisdiction to adjudicate those claims. To the extent he is seeking reimbursement of response costs allegedly incurred pursuant to an administrative order under section 106(b) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9606(b) ("CERCLA"), he has not supported that claim and, in any event, has failed to satisfy the statutory prerequisites for review.

CERCLA section 106(b) provides that “[a]ny person who receives and complies with the terms of any order issued under [42 U.S.C. § 9606(a)] may, within 60 days after completion of the required action, petition the President for reimbursement \* \* \* for the reasonable costs of such action, plus interest.” 42 U.S.C. § 9606(b)(2)(A). The Board has the authority to authorize payments of such claims as appropriate and has issued a standing order that sets forth procedures for filing section 106(b) petitions for reimbursement. 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) (EAB July 7, 2020) (available at [www.epa.gov/eab](http://www.epa.gov/eab) under “Standing Orders & Procedures” tab).

The Filing neither identifies a facility at which a CERCLA response action was implemented nor indicates that a section 106(b) administrative order requiring action was issued to Mr. Clark. CERCLA expressly requires a showing that a party petitioning for reimbursement received and complied with a section 106(b) order. *See In re Am. Home Mortg. Serv., Inc.*, 15 E.A.D. 342, 345 (EAB 2011) (denying reimbursement where petitioner did not receive an order issued under CERCLA § 106(b)). Further, the Filing does not demonstrate that the four statutory prerequisites for obtaining Board review of a CERCLA section 106(b) reimbursement petition have been satisfied.<sup>1</sup> *See* 42 U.S.C. § 9606(b). The Board will not address the merits of a CERCLA reimbursement petition unless the petitioner has demonstrated that the prerequisites

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<sup>1</sup> CERCLA section 106(b) establishes four prerequisites for obtaining review of a reimbursement petition on the merits: (1) compliance with a section 106(a) administrative order; (2) completion of the action required by the administrative order; (3) timeliness of the petition; and (4) demonstration that response costs were incurred and an estimate of the total costs for which petitioner claims reimbursement. 42 U.S.C. § 9606(b).

have been satisfied. *See In re Glidden Co. & Sherwin-Williams Co.*, 10 E.A.D. 738, 739 (EAB 2002) (dismissing petitions for review as premature where petitioners failed to satisfy statutory requirement that actions required by section 106(b) had been completed at time of petition).

There is nothing in the Filing to support a CERCLA section 106(b) reimbursement claim, or any other claim over which the Board has jurisdiction, and the Board does not have the authority to grant any of the relief requested. *See Susan Shultz*, CERCLA Appeal No. 22-01, at 3-4; *Coastal Energy*, NPDES Appeal No. 17-04, at 3-4.

For the reasons stated above, the Board dismisses this matter.

So ordered.<sup>2</sup>

**ENVIRONMENTAL APPEALS BOARD**

Dated: September 29, 2023

By:   
Mary Kay Lynch  
Environmental Appeals Judge

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<sup>2</sup> The three-member panel deciding this matter is composed of Environmental Appeals Judges Wendy L. Blake, Mary Kay Lynch, and Kathie A. Stein.

**CERTIFICATE OF SERVICE**

I certify that copies of the foregoing **Order Dismissing Filing for Lack of Jurisdiction**, CERCLA Appeal No. 23-01, were sent to the following persons in the manner indicated:

**By Email:**

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Dated:     Sep 29, 2023    

*Emilio Cortes*

Emilio Cortes  
Clerk of the Board