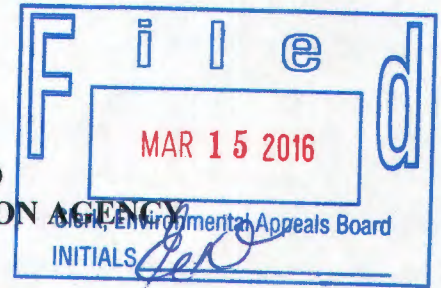


ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.



_____)
In re:)
Land O'Lakes, Inc. (Hudson Oil Refinery) CERCLA § 106(b) Petition No. 15-01
Superfund Site))
Docket No. 06-16-08)
_____)

SECOND ORDER EXTENDING THE STAY OF PROCEEDINGS

On August 18, 2015, Land O'Lakes, Inc. ("Land O' Lakes") filed the instant Petition seeking reimbursement under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") Section 106(b) for costs incurred in responding to EPA Region 6's Unilateral Administrative Order for clean-up of the Hudson Oil Refinery Superfund Site in Cushing, Oklahoma. Land O'Lakes also filed a complaint in the United States District Court for the Western District of Oklahoma ("District Court"), challenging its CERCLA liability for contamination at the Site. On October 22, 2015, the Department of Justice ("DOJ"), on behalf of EPA, filed a motion to dismiss the District Court case for lack of subject matter jurisdiction. On October 30, 2015, on unopposed motion of the parties, the Environmental Appeals Board ("Board") granted a three-month stay in this matter to allow further briefing in the case before the district court and to allow the parties to engage in any settlement negotiations they deemed appropriate. During this time period, the United States had not filed a cost recovery action under CERCLA against Land O'Lakes in Federal Court. On February 3, 2016, the Board continued the stay for an additional three months, stating that the parties had not yet demonstrated that an indefinite stay of the Petition was warranted.

Shortly thereafter, on February 10, 2016, the District Court dismissed Land O'Lakes' complaint for lack of subject matter jurisdiction, ruling that CERCLA § 113(h) barred the suit "unless and until the EPA files a cost recovery claim under § 107 of CERCLA. At that time, Plaintiff could pursue these claims as defenses to liability under CERCLA." Order at 8, *Land O'Lakes v. United States*, No. 5:15-cv-0683-R (W.D. Okla. Feb. 10, 2016) ("Dismissed Case"). On February 22, 2016, the United States filed a civil complaint in the District Court, claiming that Land O'Lakes and Cushing, Oklahoma Brownfields "are liable for more than \$23.4 million in unrecovered past costs associated with response actions performed at the Site" as jointly and severally liable parties under CERCLA § 107(a). Complaint at 12-13, *United States v. Land O'Lakes and Cushing, Oklahoma Brownfields LLC*, No. 5:16-cv-170-HE (W.D. Okla. Feb. 22, 2016) (the "Cost Recovery Case"). In the parties' March 3, 2016 Joint Status Report, Land O'Lakes apprised the Board that it intends to appeal the dismissal of its complaint against the United States in the Dismissed Case, and to assert its defense that it is not liable for the response costs incurred by the United States in the Cost Recovery Case. The parties further advised that they plan to continue settlement discussions that are global in scope.

With the filing of the Cost Recovery Case in District Court, the posture of this Petition is now similar to others the Board has stayed pending the outcome of federal district court proceedings involving competing liability issues. *See, e.g., In re Raytheon Aircraft Co. (Tri-County Public Airport Site)*, CERCLA § 106(b) Pet. No. 06-01 (EAB Feb. 1, 2007) (Order Staying Proceedings) (holding that where the same issues are subject to adjudication by the same parties in the same time frame but in different forums, "principles of judicial economy strongly dictate in favor of a stay"). In the instant case, we are now presented with the situation where the same issues are subject to adjudication by the same parties in the same time frame but in

different forums. In this current situation, the more prudent course for all concerned would be for the Board to step back and allow the Cost Recovery Case to proceed. The Board's guidelines for Section 106(b) cases generally contemplate such an outcome. *See* Environmental Appeals Board, Revised Guidance on Procedures for Submission and Review of CERCLA Section 106(b) Reimbursement Petitions 8 (Feb. 23, 2012) (“The [Board] may exercise its discretion to stay action on a petition at any time, either while settlement discussions or judicial actions are proceeding or for other good cause.”).

Thus, the Board hereby continues the stay of proceedings in CERCLA § 106(b) Petition Number 15-01 until such time as the District Court renders a decision on the question of Land O’Lakes’ liability for contamination at the Site in the Cost Recovery Case or liability is decided in the appeal of the Dismissed Case. Within two weeks after the District Court's liability decision is issued in the Cost Recovery Case, or after the Circuit Court issues a decision on an appeal of the Dismissed Case, whichever occurs sooner, the Region and Land O’Lakes shall submit a status report advising the Board of the substance of the decision and setting forth recommended next steps for orderly resolution of the present Petition. The parties also shall apprise the Board within two weeks of any settlement involving issues presented in the Petition pending before the Board.

In the meantime, the status conference scheduled for May 3, 2016 is cancelled and the status reports ordered by the Board’s February 3, 2016 Order are superseded by the following schedule. The parties will file quarterly joint status reports with the Board beginning on June 30, 2016, clearly and precisely articulating where the action before the District Court stands, the status of settlement negotiations, and any other information relevant to the matter pending before the Board. The schedule for joint status reports for the next year is: June 30, 2016; September

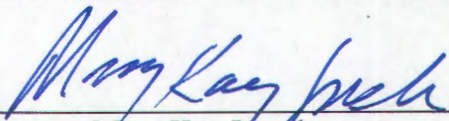
30, 2016; December 30, 2016; and March 31, 2017. Additionally, in lieu of the Board's Order of September 18, 2015, the parties shall list in the quarterly status reports any significant pleadings, motions, or orders filed in the District Court. Finally, any previously ordered deadlines continue to be held in abeyance and no other issues will be addressed until further Order of the Board.

The Board reserves its right to lift the stay or take other appropriate action in the above-captioned Petition prior to conclusion of the Cost Recovery Case or the appeal of the Dismissed Case, or any other time in accordance with the Board's responsibility to manage its docket.

So ordered.

ENVIRONMENTAL APPEALS BOARD

Dated: 15 March 2016

By: 
Mary Kay Lynch
Environmental Appeals Judge

CERTIFICATE OF SERVICE

I certify that copies of the forgoing *Second Order Extending the Stay of Proceedings* in the matter of Land O'Lakes, Inc. (Hudson Oil Refinery Superfund Site), CERCLA § 106(b) Petition No. 15-01 were sent to the following persons in the manner indicated:

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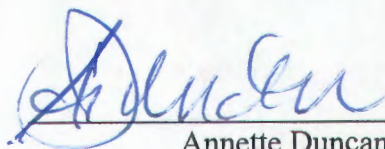
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Dated: MAR 15 2016



Annette Duncan
Secretary