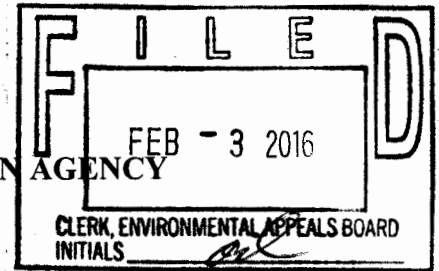


ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.



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

ORDER GRANTING IN PART AND DENYING IN PART MOTION TO EXTEND TIME AND STAY PROCEEDINGS

On October 30, 2015, the Environmental Appeals Board ("Board") granted a three-month stay, with provisions for regular status reports and a status conference, in the above captioned matter to allow further briefing in a case involving this Site before the United States District Court for the Western District of Oklahoma and to allow the parties to engage in any settlement negotiations they deemed appropriate. The Board thus denied the parties' request for an indefinite stay. The Board also ordered previously identified deadlines, other than those related to status updates, held in abeyance and directed Land O'Lakes not to file a Response to the Region's "Response Addressing Prerequisites for Review." On January 14, 2016, the parties filed a joint status report stating that the case before the District Court involving this Site would be fully briefed by January 22 absent a motion to file a Surreply. The parties stated further that they had discussed their willingness to engage in settlement discussions; the potential structure and scope of settlement discussions; and agreed that any settlement discussions should be "global" in scope and address the claims in the Petition in this matter, as well as all other claims regarding Hudson Refinery. On January 15, 2016, Counsel for EPA Region 6 ("Region") filed a motion to extend its time to file a response on the merits of the Petition, and to stay the Board's

review of the Petition “until Federal District Court proceedings and settlement efforts have been exhausted.” Motion of Respondent to Extend Time and Stay Proceedings at 1. On January 22, 2016, Counsel for Land O’Lakes filed a response to the Region’s motion, stating that while it agreed that the Petition should be stayed until final resolution of the District Court case, the Board should rule that the Region waived any objection on the prerequisites for Board review of the Petition (despite the Board’s October 30, 2015 direction not to address this issue until further ordered), and that the Region should file a reply on the merits of the Petition notwithstanding the stay. The Board held a status conference on January 27, 2016, to confer with counsel from both parties. The next day, January 28, 2016, Land O’Lakes provided notice that it had requested leave of the District Court to file a Surreply to the motion to dismiss.

As the Board discussed in its October 30, 2015 Order, the parties had not demonstrated at that time that an indefinite stay was warranted. In fact, in the Board’s view, it is incumbent on all parties to be forthcoming about the issues, their intentions, and any coordination or resource issues that arise in matters before the Board and other tribunals, prior to requesting, and expecting an indefinite stay. The parties did not provide the Board with information supporting their request. Moreover, the Region, in consultation with the EPA Office of General Counsel and Office of Enforcement and Compliance Assurance, filed a document with the Board stating that it “[was] not filing a response addressing prerequisites for Environmental Appeals Board (the Board) review.” Response Addressing Prerequisites for Review at 1. The Region provided no reason for its position. At a minimum, such a filing is immensely unhelpful to the Board’s efficient and effective consideration of this CERCLA § 106(b) reimbursement petition, and the Board cautions the Agency to avoid any such non-responsive filings in the future. At this time, however, the Board will not address the issues of whether the prerequisites for review have been

met in this case or whether by declining to address the prerequisites, the Region waived any objections it may have on this matter. The Board will address the issues of the prerequisites for review and any waiver prior to a full consideration of the merits in this case.

As noted during the status conference, the Board found the most recent filings by the parties more informative about the issues before the District Court, the potential overlap with issues pending before the Board, and the anticipated process and timeline in the District Court proceedings. The Board appreciates this approach and found the discussion during the conference productive. Having said this, the Board remains unconvinced that an indefinite stay is warranted at this time. Instead, the Board will grant a further three-month stay of this Petition to allow time for the District Court to consider the pending motion to dismiss, the Department of Justice ("DOJ") to decide whether to bring a cost-recovery action in federal court, and the parties to entertain settlement negotiations as they deem appropriate. Therefore, the Region's motion to extend the stay is granted in part and denied in part, and this matter is STAYED with conditions until May 5, 2016.

The Board recognizes Land O'Lakes' request for the Region to file its response to the Petition on the merits, particularly on those issues not raised before the District Court. However, due to the time-limited nature of this stay extension, the Board does not believe that taking the unusual step of ordering a substantive filing during the stay is warranted at this time.

The parties will file joint status reports on March 3, April 4, and May 2, 2016, clearly and precisely articulating where the District Court case stands; the status of settlement negotiations;

whether DOJ has filed a cost recovery action;¹ and any other information the parties think relevant to the matter pending before the Board. The Board will hold a status conference by phone on May 3, 2016, to discuss this information (where the District Court case stands; the status of settlement negotiations; any appropriate updates on the status of a potential cost recovery suit by DOJ and any other information relevant to the Petition pending before the Board). The Clerk of the Board will inform the parties of the time and call-in information by April 26, 2016.

In the meantime, any previously ordered deadlines continue to be held in abeyance until further Order of the Board. Notwithstanding the stay, the Board's Order of September 18, 2015, remains in effect as to the contemporaneous filing of notice of any filings made before the District Court, and attaching any pleadings filed.

So ordered.

ENVIRONMENTAL APPEALS BOARD

Dated: 2/3/2016

By: Mary Kay Lynch
Mary Kay Lynch
Environmental Appeals Judge

¹ Should DOJ file a cost recovery action, the Board may consider a further stay of this matter.

CERTIFICATE OF SERVICE

I certify that copies of the forgoing *Order Granting in Part and Denying in Part Motion to Extend Time and Stay 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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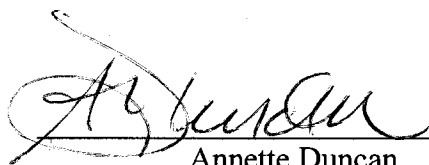
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Dated: FEB - 3 2016



Annette Duncan
Secretary