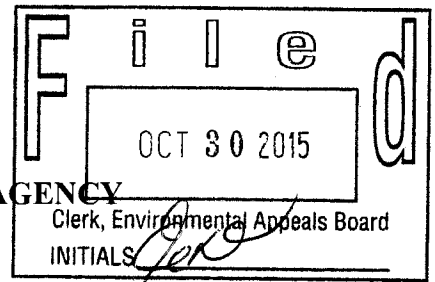


ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.



_____))
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 UNOPPOSED MOTION FOR STAY

On August 18, 2015, Land O'Lakes, Inc. ("Land O' Lakes") filed the instant Petition seeking reimbursement under 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. As noted in its Petition, Land O'Lakes also filed a complaint in Federal district court, challenging its CERCLA liability for contamination at the Site. *See Land O'Lakes v. United States*, No. 5:15-cv-0683-R (W.D. Okla. June 23, 2015) ("District Court Case"). On September 15, 2015, the Region filed an Agreed Motion to Stay Proceedings and to Extend Time for the Petitioner to Retain an Expert and File a Supplemental Affidavit ("Motion for Stay"),¹ requesting a stay during the pendency of the District Court Case "until liability issues are resolved either by settlement or litigation in federal district court, whichever comes first." Motion for Stay at 2.

On October 22, 2015, the Department of Justice ("DOJ"), acting on behalf of EPA, filed a motion to dismiss the District Court Case for lack of subject matter jurisdiction. In its motion,

¹ The Board is addressing the request for an extension of time to file a supplemental expert affidavit in a separate Order issued this same date.

DOJ notes that on June 23, 2015, EPA sent Land O'Lakes a demand letter to recover EPA's past costs in responding to environmental contamination at the Site and that Land O' Lakes, in turn, sued EPA seeking a declaratory judgment of non-liability under CERCLA. DOJ argues that CERCLA Section 113(h), 42 U.S.C. § 9613(h), bars an action during EPA's response actions and enforcement activities, unless and until the agency brings a cost recovery action against Land O'Lakes. *See Memorandum in Support of Defendant United States' Motion to Dismiss at 1-2, Land O'Lakes v. United States*, No. 5:15-cv-0683-R (W.D. Okla. Oct. 22, 2015). The court subsequently set a December 21, 2015 deadline for Land O'Lakes' reply to the motion to dismiss.

In EPA's Motion for Stay of these proceedings, it identified the District Court Case as the basis for an indefinite stay. Motion for Stay at 2. And yet now, DOJ on EPA's behalf has moved to dismiss that case without any indication of when a cost recovery action may be brought or that the parties are engaged in settlement negotiations. In light of DOJ's filing and in the absence of additional information, the parties have not demonstrated that an indefinite stay of this Petition is warranted. Instead, the Board will grant a three-month stay of this Petition to allow further briefing in the District Court Case and to entertain any settlement negotiations as the parties deem appropriate. Therefore, the Region's unopposed Motion for Stay is granted in part and denied in part, and this matter is STAYED until January 27, 2016.

The parties are ordered to jointly file a status report with the Board no later than January 15, 2016, clearly and precisely articulating where the District Court Case stands; the status of settlement negotiations, if they are occurring; and whether they expect to seek an extension of the stay past January 27. The Board will hold a status conference by phone on January 21, 2016, at 3:00 PM EDT, to further discuss these issues and to address any questions the Board may

have. A further stay in this matter past January 27, 2016, will only be granted for good cause shown.

In the meantime, any previously ordered deadlines are held in abeyance until further Order of the Board. Land O'Lakes is also directed not to file a reply to the Region's "Response Addressing Prerequisites for Review" until further Order. 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: Oct. 30, 2015

By: Mary Beth Ward
for Mary Kay Lynch
Environmental Appeals Judge

CERTIFICATE OF SERVICE

I certify that copies of the forgoing *Order Granting in Part and Denying in Part Unopposed Motion for Stay* 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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Dated: October 30, 2015


Annette Duncan
Secretary