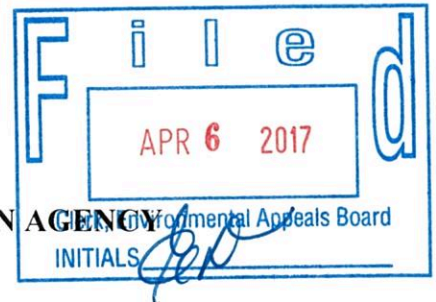


**ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**



In re:)

Land O'Lakes, Inc. (Hudson Oil Refinery)
Superfund Site))

Docket No. 06-16-08)
_____)

CERCLA § 106(b) Petition No. 15-01

**THIRD ORDER CONTINUING STAY OF PROCEEDINGS AND
REQUIRING ADDITIONAL STATUS REPORTS**

On August 18, 2015, Land O'Lakes, Inc. ("Land O'Lakes") filed the above-captioned 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. During the pendency of this proceeding, the United States filed a civil complaint in the District Court for the Western District of Oklahoma ("District Court") claiming that Land O'Lakes and Cushing, Oklahoma Brownfields, LLC,¹ are liable for over \$23.4 million in response costs performed at the site under CERCLA § 107(a). *United States v. Land O'Lakes and Cushing, Oklahoma Brownfields LLC*, No. 5:16-cv-170-HE (W.D. Okla. Feb. 22, 2016). As noted in the Board's previous order staying this action, "With the filing of the (U.S.) Cost Recovery Case in District Court, the posture of this Petition is now

¹ Cushing, Oklahoma Brownfields, LLC is an entity created by Land O'Lakes to hold title to the site in order to provide access for clean-up in response to the Region's Unilateral Administrative Order.

similar to others the Board has stayed pending the outcome of the federal District Court proceedings involving competing liability claims.” *See* Second Order Extending the Stay of Proceedings (Mar. 15, 2016) (“March 15, 2016 Stay Order”). The parties’ March 31, 2017 status report indicates that, while the District Court recently dismissed Land O’Lakes counterclaims and eight of its’ affirmative defenses in the cost recovery action, the competing liability claims remain active in the federal District Court cost recovery litigation.

Therefore, the Board 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 in the cost recovery case, or liability is determined in other related litigation. Within two weeks after any liability decision, 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 instant Petition. The parties also shall apprise the Board within two weeks of any settlement involving issues presented in the Petition pending before the Board.

The Board’s March 15, 2016 Stay Order requires the parties to file quarterly status reports “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.” *Id.* at 3. This includes information about other relevant litigation involving the parties. The Order further requires the parties to list any significant pleadings, motions, or orders filed in the District Court. *Id.* at 4. Per the Board’s order, the parties submitted status reports on June 30, 2016, December 30, 2016, and March 31, 2017. These reports have assisted the Board in its consideration of this Petition. Because this matter, in particular the competing liability issue, is still pending before the District Court, the Board hereby continues the stay and requires


that the parties continue to submit quarterly status reports on the following dates: June 30, 2017, September 29, 2017, December 29, 2017, and March 30, 2018, including apprising the Board of the status of any settlement negotiations. 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 related litigation, or at any other time in accordance with the Board's responsibility to manage its docket.

So ordered.

ENVIRONMENTAL APPEALS BOARD

Dated: April 4, 2017

By: 
Mary Kay Lynch
Environmental Appeals Judge

CERTIFICATE OF SERVICE

I certify that copies of the forgoing *Third Order Continuing Stay of Proceedings and Requiring Additional Status Reports* 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:

By First Class Mail and Fax:

Byron E. Starns
Stinson Leonard Street LLP
150 South Fifth Street, Suite 2300
Minneapolis, MN 55402
Facsimile: (612) 335-1657

Mark E. Johnson, Esq.
Stinson Leonard Street LLP
1201 Walnut Street, Suite 2900
Kansas City, MO 64106-2150
Facsimile: (816) 412-1208

Mark D. Coldiron, Esq.
Stephen L. Jantzen, Esq.
Ryan Whaley Coldiron Jantzen
Peters & Webber PLLC
119 North Robinson, Suite 900
Oklahoma City, OK 73102
Facsimile: (405) 239-6766

By EPA Pouch Mail and Fax:

George Malone
Assistant Regional Counsel
U.S. EPA, (6RC-S)
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733
Facsimile: (214) 665-6460

By Interoffice Mail:

Clarence Featherson
Enforcement and Compliance Assurance
Mail Code 2272A

Lee R. Tyner
Office of General Counsel
Mail Code 2366A

Dated: APR - 6 2017



Annette Duncan
Administrative Specialist