

BEFORE THE 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)	
)	

JOINT STATUS REPORT

Pursuant to the Environmental Appeals Board's ("Board") April 6, 2017 Third Order Continuing the Stay of Proceedings and Requiring Additional Status Reports in this matter, the parties, by and through their counsel, respectfully provide this status report.

I. THE STATUS OF DOJ'S COST RECOVERY ACTION (THE "COST RECOVERY CASE")

On February 22, 2016, the United States filed an action in the United States District Court for the Western District of Oklahoma, entitled *United States of America v. Land O'Lakes, Inc., and Cushing, Oklahoma Brownfields, LLC*, Case No. CIV-16-0170-R (Judge David L. Russell). Paragraph 2 of the Complaint states that it is a civil cost recovery action brought under CERCLA.

Since the last Joint Status Report, the Court in the Cost Recovery Case has transferred the case to a new judge, the Honorable Scott L. Palk. Specifically, on November 27, 2017, the Court issued its Order transferring the case to Judge Palk and modifying the case number for future filings to: CIV-16-170-SLP. A copy of the November 27, 2017 Order is attached as Exhibit 1.

II. THE STATUS OF SETTLEMENT NEGOTIATIONS

Since the last status report to the Board, counsel for the parties have had no additional discussions about the potential structure and scope of settlement discussions.

III. ANY OTHER RELEVANT INFORMATION

The following represents Land O'Lakes' position regarding its intent to seek leave to amend its CERCLA 106(b) petition. As explained in the previous five status reports to the Board, Land O'Lakes intends to file a motion for leave to file a First Amended Petition. Land O' Lakes is evaluating its planned motion for leave to file a First Amended Petition in light of the Court's February 22, 2017 Order striking and dismissing its affirmative defenses and counterclaims alleging that certain Bankruptcy Court Orders bar the issuance of the UAO, and any claims by the EPA related to or arising out of the issuance of the UAO, but also in light of documents and things produced by the United States in the Cost Recovery Case, but perhaps previously withheld from Land O'Lakes under FOIA.

The following represents EPA's Position on this matter. The CERCLA 106(b) proceeding was stayed in its entirety by the Board's Second Order Extending the Stay and Proceedings on March 15, 2016, and Third Order Continuing Stay of Proceedings on April 6, 2017. The Region believes there is no basis for the EAB to take an unusual step of ordering a substantial filing during the stay. Despite the above, the Region reserves the right to contest any such motion filed by Land O'Lakes, and any actions taken to enlarge or amend the original CERCLA 106(b) petition claims and arguments. In addition, EPA Region 6 reserves the right to contest all matters in this action including any factual and legal arguments that concern satisfaction of CERCLA 106(b) prerequisites (e.g., timeliness of advancing claims and supporting evidence) consistent with the EAB's February 3, 2016, Stay Order. Land O' Lakes previously requested and was granted access by EPA Region 6 counsel to the EPA Region 6 document depository in 2008 and 2010. On those occasions, Land O' Lakes requested and received copies of a more limited set of documents than those requested after the 2017 document inspection at the EPA Region 6 depository.

Land O' Lakes' position is that EPA has waived and forfeited any challenges to CERCLA 106(b) prerequisites in this matter, and that the EAB order of February 3, 2016 reserved determination of: (1) whether Land O' Lakes established the prerequisites for its Section 106 claim; and (2) whether EPA had waived any challenges to the prerequisites.

With regard to the status of Land O' Lakes' pending FOIA Appeal Number HQ-APP-00098-10, the previous status report is updated as follows: The United States believes and states it: 1) has produced all of the documents initially withheld under 5 U.S.C. §§ 552(b) (4) and (6); and 2) has produced, or withheld as privileged/protected, all of the documents initially withheld under 5 U.S.C. §§ 552(b) (5) and (7). The United States provided Land O'Lakes with privilege logs on May 5, 2017 (55 Entries) and on September 7, 2017 (249 Entries) in accordance with the Cost Recovery Case discovery order. Land O' Lakes has not completed its review of the document productions and privilege logs of the United States to identify the previously withheld FOIA documents that were either produced or listed on the United States' privilege logs. Land O' Lakes reserves all rights with regard to the completeness of the production and any privilege claims. Land O' Lakes' FOIA appeal is currently assigned to an attorney in the Office of General Counsel, and Land O' Lakes intends to continue to pursue that appeal.

Fact discovery in the Cost Recovery Case is ongoing and currently is scheduled to conclude on April 30, 2018.

Respectfully submitted,

/s/ George Malone

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on December 28, 2017, service of the Joint Status

Report was made by electronic mail and U.S. Mail upon the following:

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