

**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") March 15, 2016 Second Order Extending the Stay of Proceedings in this matter, the parties, by and through their counsel, respectfully provide this status report.

I. THE STATUS OF THE WESTERN DISTRICT OF OKLAHOMA CASE ENTITLED *LAND O'LAKES, INC. v. UNITED STATES OF AMERICA*, CASE NO. 5:15-CV-0683-R (JUDGE DAVID L. RUSSELL) (THE "DISMISSED CASE")

On February 10, 2016, the Court (Russell, J.) entered an order and judgment dismissing the case for lack of subject matter jurisdiction. By letter dated April 8, 2016, Land O'Lakes reported to the Board and opposing counsel that it had decided not to appeal from that judgment. As such, this will be the final report to the Board regarding the status of the Dismissed Case.

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

On February 23, 2016, the United States filed a CERCLA cost recovery civil 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).

On May 2, 2016, Defendants Land O'Lakes, Inc. and Cushing, Oklahoma Brownfields, LLC filed an Answer and Counterclaims. The Defendants' Counterclaims reasserted all claims made in the Dismissed Case, including the claims for declaratory and citizen-suit judgment that the Western District of Oklahoma's *Final Consent Decree* and *Closure Order* bar the issuance of the UAO. An additional declaratory judgment and citizen-suit claim, asserting that the UAO was barred, was included in the Counterclaim. The new claim is that the following Orders of the United States Bankruptcy Court for the District of Kansas in Case Nos. 84-20002, 84-20003, 84-20004, 84-20005, 84-20006, 84-20007, 84-20008 and 84-2009 (in which cases the Refinery was part of the bankruptcy estate; and in which EPA and Land O'Lakes made and resolved creditor claims regarding environmental conditions at the Refinery) also bar the issuance of the UAO: 1989 Order Approving Trustee's Application to Sell the Cushing Refinery to U.S. Refining and Marketing, Inc., 1990 Order Confirming Plan, and 1996 Final Decree (collectively "Bankruptcy Orders"). As noted below, Land O'Lakes will be filing a motion with the Board at an appropriate time to file its First Amended Petition to incorporate the claim that the Bankruptcy Orders bar the issuance of the UAO. As provided below, EPA Region 6 reserves the right to respond to any such motion submitted by Land O' Lakes. The United States' response to Defendants' Counterclaims is due on or before July 1, 2016.

Judge Russell has scheduled a Status/Scheduling Conference for the Cost Recovery Case to occur on July 5, 2016. In addition, Judge Russell ordered the parties to file a Joint Status/Scheduling Report and Discovery Plan on June 27, 2016. In that Joint Status/Scheduling Report, the parties agreed to exchange Rule 26(a) Initial Disclosures by July 15, 2016, among other things, but could not reach agreement on all aspects of the case

schedule. It is expected that Judge Russell will issue his case management order promptly after July 5, 2016.

III. THE STATUS OF SETTLEMENT NEGOTIATIONS

Since the last status report to the Board, and as part of the meet and confer process for the Joint Status Scheduling Report in the Cost Recovery Case, counsel for the parties have had additional discussions about the potential structure and scope of settlement discussions.

IV. ANY OTHER RELEVANT INFORMATION

Pursuant to a Fed. R. Civ. P. 26(d)(1) Stipulation of the Parties and Mr. Fuqua's counsel, and by mutual agreement, the planned deposition of former Refinery Superintendent Forrest Fuqua originally scheduled for March 14-16, 2016, took place on June 21-23, 2016.

Land O'Lakes will be filing a motion, at an appropriate time, to file the First Amended Petition, which will be attached to the motion. EPA Region 6 reserves the right to contest any such motion filed by Land O' Lakes. This matter was stayed in its entirety by the Board's Second Order Extending the Stay of Proceedings on March 15, 2016.

Finally, and in reference to Section IV.E.8 and Section 1.a of the Conclusion section of Land O'Lakes Petition, on May 17, 2016, EPA's office of General Counsel requested notification of whether Land O'Lakes is interested in pursuing FOIA Appeal Number HQ-APP-00098-10. By correspondence dated May 24, 2016, counsel for Land O'Lakes responded stating that Land O'Lakes will proceed with its appeal.

Respectfully submitted,

/s/ George Malone

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on June 29, 2016, service of the Joint Status

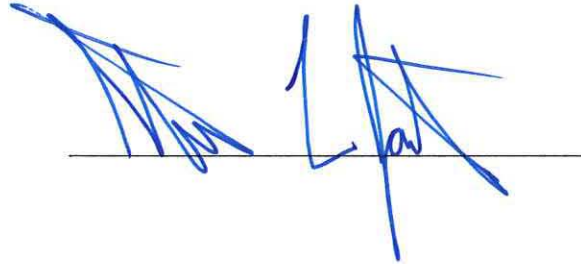
Report was made by electronic mail and U.S. Mail upon the following:

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Two handwritten signatures in blue ink are positioned above a horizontal line. The signature on the left is more stylized and appears to be 'E. Durr'. The signature on the right is more legible and appears to be 'L. R. Tyner'.