

**BEFORE THE 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

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 23, 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.

On May 2, 2016, Defendants Land O'Lakes, Inc. and Cushing, Oklahoma Brownfields, LLC filed an Answer and Counterclaims.

On July 1, 2016, the United States filed, pursuant to Rules 12(f) and 12(b)(6) of the Federal Rules of Civil Procedure, motions (1) to strike four affirmative defenses from Defendants' Answer and (2) to Dismiss both of Defendants' Counterclaims.

On February 22, 2017, the Court issued its Order granting the motions of United States to strike eight of Defendants' affirmative defenses and to dismiss Defendants' two Counterclaims.

No significant pleadings, motions or orders have been filed in the Cost Recovery Case since the last Joint Status Report to the Board, filed March 31, 2017.

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 four 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.

The following represents EPA Region 6's position regarding 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. As such, 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.

With regard to the status of its pending FOIA Appeal Number HQ-APP-00098-10, since the last status report to the Board, Land O'Lakes has been informed that non-privileged documents subject to the FOIA appeal are being produced to Land O'Lakes in discovery in the Cost Recovery Case. The United States believes 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 will be providing

Land O'Lakes with privilege logs in accordance with the Cost Recovery Case discovery order. Land O' Lakes will review the document productions of the United States to locate the previously withheld FOIA documents that are being produced and 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 wants to continue to pursue that appeal.

Land O' Lakes reviewed 133 boxes of documents/information located in the EPA Region 6 Office from March 28– 29, 2017.

Counsel for both parties are continuing to produce documents, review documents produced by the other side, and prepare privilege logs. The document production phase of discovery is not completed.

Respectfully submitted,

/s/ George Malone

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on June 29, 2017, service of the Joint Status Report was made by electronic mail and U.S. Mail upon the following:

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