

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

IN RE:)	
)	
Hudson Refinery)	Petition No. 15-01
Superfund Site)	CERCLA 106(b)
Cushing, Oklahoma,)	
)	EPA Region 6 Docket No.
)	CERCLA-06-16-08
Land O' Lakes, Inc.,)	
)	
Petitioner)	
)	
Petition for Reimbursement Under)	
Section 106(b)(2) of the Comprehensive)	
Environmental Response, Compensation,)	
and Liability Act of 1980, as amended)	
42 U.S.C § 9606(b)(2))	

RESPONDENT'S MOTION TO EXTEND TIME

I. Introduction

The Respondent, the United States Environmental Protection Agency, Region 6 ("EPA" or the "Region"), by and through its Office of Regional Counsel, hereby moves the Environmental Appeals Board ("Board") to grant an extension of time to file responsive pleadings in the Petition for Reimbursement of Funds ("Petition") filed on August 18, 2015, by Land O' Lakes, Inc. ("Petitioner"). The Petition was filed in connection with the CERCLA Section 106(a) Administrative Order No. CERCLA-06-16-08 ("Administrative Order") issued to the Petitioner by EPA Region 6. The Administrative Order was issued on January 6, 2009, and required the Petitioner to conduct a remedial action to address the release of hazardous substances into the environment, due to the disposal of oil refinery wastes at the Hudson Oil Refinery Superfund Site ("Site"). On September 15, 2015, the Respondent and the Petitioner filed an Agreed Motion to Stay Proceedings and an Extension of Time. On September 18, 2015, the Board issued an Order Directing a Timely Filing of Pleading. Based upon the Board's Order, the Respondent respectfully requests an extension of time based upon the following reasons.

II. Basis for The Extension of Time

The information provided herein support the requested extension of time. On June 23, 2015, Land O' Lakes, Inc. ("Petitioner") filed a complaint, and a notice of intent to sue the United States both, asserting and seeking to absolve itself of any liability for costs under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606, 9607. The complaint filed by the Petitioner in federal district court seeks a declaratory judgment under 28 U.S.C. §§ 2201, 2202, and 42

U.S.C. § 9613(g)(2), and contends that the Petitioner is not liable for response costs incurred under CERCLA. *See Land O' Lakes v. United States*, No. 5:15-cv-0683-R (D. Okla. filed June 23, 2015). On August 17, 2015, the Western District Court of Oklahoma granted an extension of time through and until September 23, 2015, for the United States to respond to the Petitioner's complaint. On September 1, 2015, the Petitioner filed a First Amended Complaint in the Western District of Oklahoma.

Based upon the above facts the Respondent and the Petitioner agreed that the CERCLA 106(b) Petition should be stayed in its entirety, including the filing of responsive pleadings. As such, the Respondent asserts that an extension of time is warranted here. It is appropriate to extend time to allow the Respondent to assert non-compliance issues until October 20, 2015, or when the Board decides the agreed motion for stay.¹ It is imperative that the right to assert non-compliance issues be preserved in this matter, and in any matter proceeding in the Western District Court of Oklahoma. Accordingly, the Respondent also requests an extension of time to file a response on the merits on November 20, 2015. Although the Respondent has performed an extensive amount of work compiling the Administrative Record Index and documenting areas where noncompliance with the CERCLA Section 106(a) Order is at issue, the Respondent needs additional time to complete the above work.

The Respondent also notes that the Petitioner has raised novel and fact-intensive issues in the CERCLA 106(b) Petition, and the Complaint filed in the Western District Court of Oklahoma by claiming that there is no CERCLA liability for costs in light of a 1987 RCRA Consent Decree entered into by the Government and the Hudson Refining Company. *See* Petition at pp. 65-80. The Respondent has been working closely with the Department of Justice in light of such issues, and the response required to such issues raised. As such, the Respondent believes the extension of time is necessary. The extension of time will alleviate the duplication of effort before the Board and the Western District Court, and it will preserve the Respondent's right to assert issues concerning non-compliance with the CERCLA Section 106(a) Order issued to the Petitioner.

III. Conclusion

For the reasons stated above, the Respondent respectfully requests the Board to grant the Respondent additional time to assert non-compliance issues until October 20, 2015, or when the Board decides the agreed motion for stay. The Respondent also requests an extension of time to file a response on the merits on November 20, 2015. The Respondent requests that its right to assert issues concerning non-compliance with the CERCLA Section 106(a) Order be preserved throughout this CERCLA 106(b) Petition proceeding as well.

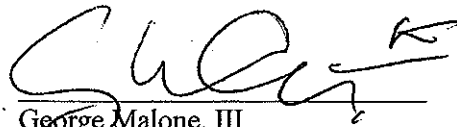
On September 21, 2015, legal counsel for the Respondent consulted with legal counsel for the Petitioner. Based upon the consultation it is not known whether the Petitioner contests this motion. The Petitioner did not agree to the motion during consultation.

¹ The Respondent seeks to preserve its right to contest compliance with the Section 106(a) Order issues, and demonstrate non-compliance and ineligibility for reimbursement of costs at issue under CERCLA Section 106(b)(2)(A). These issues may impact liability for costs, the Western District Court of Oklahoma litigation, and the potential for a future settlement.

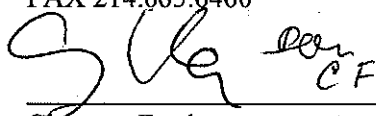
Dated this 21st day of September 2015.

Respectfully submitted:

By:



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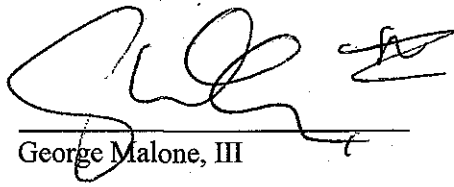


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CERTIFICATE OF SERVICE

I hereby certify that on the 21st of September, 2015, I served a true and correct copy of the above Motion to Extend Time by mailing a copy via first class United States Mail to:

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