

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)	
CERCLA Section 106(b) and for Relief)	
for Constitutional Violations)	
)	

**AGREED MOTION TO STAY PROCEEDINGS AND TO EXTEND TIME FOR THE
PETITIONER TO RETAIN AN EXPERT AND FILE A SUPPLEMENTAL AFFIDAVIT**

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 stay all further proceedings related to the Petition for Reimbursement under CERCLA Section 106(b) and for Relief for Constitutional Violations ("Petition") filed on August 18, 2015, by Land O' Lakes, Inc. ("Petitioner"), until liability issues are resolved either by settlement or litigation in federal district court. 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 6.¹ The Administrative Order was issued on January 6, 2009, and required the Petitioner to conduct a remedial design and remedial action at the Hudson Oil Refinery Superfund Site, Cushing, Oklahoma ("Site"). With the filing of the Petition, Petitioner also filed on August 18, 2015, its Motion for Additional Time to Retain Substitute Expert Witness and File Supplemental Expert Witness Affidavit ("Motion for Additional Time").

¹ In accordance with the consultation more fully described below, the Petitioner and the Respondent agree that further proceedings in this matter should be stayed until liability issues are resolved either by settlement or litigation in federal district court, and the Petitioner should be allowed additional time to retain a substitute oil refinery expert witness and file a supplemental affidavit.

II. Litigation in the United States District Court for the Western District of Oklahoma

On June 23, 2015, Land O' Lakes, Inc. ("Petitioner") filed a complaint, and served a notice of intent to sue for citizen-suit claims against the United States, both asserting it has no 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 District Court for the Western District 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 District Court for the Western District of Oklahoma.

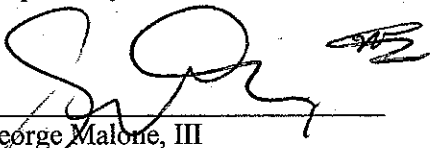
III. The Stay and Extension of Time

Due to the litigation cited above, the Petitioner and the Respondent respectfully agree to stay further consideration, in its entirety, of the Petition before the Board. The Petitioner and the Respondent agree that the stay of all further proceedings related to the Petition remain in effect until liability issues are resolved either by settlement or litigation in federal district court, whichever comes first. The Petitioner and the Respondent also agree that Petitioner's Motion for Additional Time should be granted and that Petitioner should have an extension of time to retain a substitute oil refinery expert witness and submit a supplemental affidavit by the retained substitute oil refinery expert. The Petitioner and the Respondent both agree to extend time up to October 1, 2015, for the Petitioner to retain a substitute oil refinery expert witness, and up to January 18, 2016, to submit a supplemental expert affidavit. The Parties to this action reached the above agreements after consultation from September 8-10, 2015. Legal counsel for the Petitioner consented to this motion by email.

Dated this 15th day of September 2015.

Respectfully submitted:

By:


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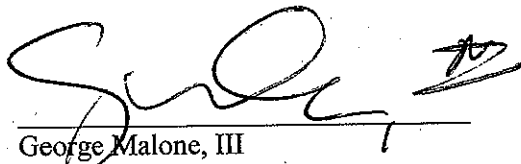
Clarence Featherson

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CERTIFICATE OF SERVICE

I hereby certify that on the 15th of September, 2015, I served a true and correct copy of the above Motion by email and by mailing a copy via first class United States Mail to:

Byron E. Starns, Esq.
Stinson Leonard Street LLP
150 South Fifth Street, Suite 2300
Minneapolis, MN 55402

A handwritten signature in black ink, appearing to read "George Malone, III", written over a horizontal line. The signature is stylized and includes a small mark to the right.

George Malone, III
Attorney for Respondent

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

In the Matter of:

HUDSON OIL REFINERY SUPERFUND SITE

Land O'Lakes, Inc., Petitioner

EPA Region 6
Docket No. 06-16-08

Petition No. 15-01
CERCLA 106(b)

**[PROPOSED] ORDER GRANTING AGREED MOTIONS (a) TO STAY AND (b) TO
EXTEND TIME FOR PETITIONER TO FILE SUPPLEMENTAL EXPERT AFFIDAVIT**

Upon consideration of Respondent United States Environmental Protection Agency's Motion to Stay Proceedings, to which Petitioner's counsel has agreed; and consideration of Petitioner's Motion to Extend Time for the Petitioner to Retain an Expert and File Supplemental Affidavit, to which Respondent's counsel has agreed, it is hereby

ORDERED that Respondent's motion is granted, and all further proceedings related to this Petition are stayed until liability issues are resolved either by settlement or litigation in federal district court, whichever comes first; and it is further

ORDERED that Petitioner's motion is granted, and Petitioner shall have extensions of time: (a) through and until October 1, 2015 to retain a substitute oil refinery expert witness; and (b) through and until January 18, 2016 to submit a supplemental expert affidavit.

Dated: _____, 2015

ENVIRONMENTAL APPEALS BOARD

By: _____
Environmental Appeals Judge