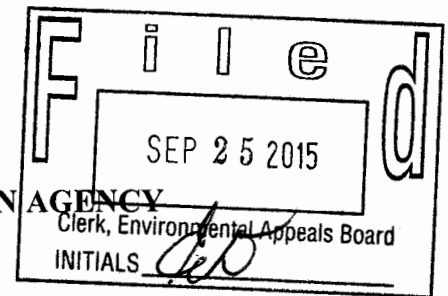


**ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**



In re:

Land O'Lakes, Inc. (Hudson Oil Refinery
Superfund Site)

Docket No. 06-16-08

CERCLA § 106(b) Petition No. 15-01

**ORDER GRANTING RESPONDENT'S MOTION TO EXTEND TIME TO FILE
RESPONSE**

On August 18, 2015, Land O'Lakes, Inc. filed the instant Petition seeking reimbursement under CERCLA § 106(b) for cost incurred in responding to EPA Region 6's Unilateral Administrative Order ("UAO") for clean-up of the Hudson Oil Refinery Superfund Site. As noted in its Petition, Land O'Lakes has also filed a Complaint in federal district court, challenging its CERCLA liability for contamination at the Site. *See Land O'Lakes v. United States*, No. 5:15-cv-0683-R (W.D. Okla. June 23, 2015) ("District Court Case").

On August 20, 2015 the Board advised the parties by letter of due dates for responsive filings and motions in this case, directing that the Region file a response addressing the prerequisites for review no later than Monday, September 21, 2015. Instead, however, the parties waited until September 15, 2015, to file a motion for an indefinite stay of all proceedings. Beyond referencing the District Court Case, the parties provided little explanation to justify an open-ended stay. In response to this late-filed motion for stay, on September 18, 2015, the Board ordered the Region to file a limited non-merits response on September 21, 2015, as originally scheduled, if it wished to claim that the Petitioner had not met the prerequisites for Board review of the instant Petition.

On September 21, 2015, with only hours left before the response was due, the Region filed an additional Motion to Extend Time (“Motion”). In support of the Motion, the Region stated that both “the Respondent and the Petitioner agreed that the CERCLA 106(b) Petition should be stayed in its entirety * * *. As such, the Respondent asserts that an extension of time is warranted here.” Motion at 2. Additionally, the Region notes that ongoing discussions with the Department of Justice and the need to preserve its right to contest noncompliance with the Region’s UAO justify an extension of time to file a non-merits response through October 20, 2015. *Id.* Due to the lateness of the filing, time did not permit adequate consultation with the Petitioner on the motion. *Id.*

As an initial matter, the Board is dismayed by the timing of the Region’s Motion. In its Revised Guidance on Procedures for Submission and Review of CERCLA Section 106(b) Reimbursement Petitions (Feb. 23, 2012) (“Guidance”), the Board makes explicit that while extensions of time may be granted, the Region should make this request “as far in advance of the filing deadline as possible” to allow for consultation with the Petitioner and time for the Board to act. *See* Guidance at 7 n.6. Despite this language, the Region filed its Motion late on the date its non-merits response was due. The Region was therefore unable to fully consult with Petitioner. Further, the timing of the Motion did not provide the Board sufficient time to act prior to the deadline. The Region apparently assumed that the Board would grant its Agreed Motion for Stay and did not continue work on a non-merits response. Simply filing a motion for a stay, however, does not excuse a lack of continued preparation by the Region prior to a ruling by the Board, particularly as the Board made clear in its Order that it wanted to hear the Region’s timely response.

Despite the disregard for the Board's guidance and direction, the Board wants to provide the parties with an opportunity to address the prerequisites for obtaining review. Proceeding in this fashion advances the efficient handling of this matter and does not appear to conflict or overlap with the issues pending in the District Court case.

CERCLA section 106(b)(2) states, in part:

Any person who receives and complies with the terms of any order issued under subsection (a) of this section may, within 60 days *after completion of the required action*, petition the President for reimbursement from the Fund for the reasonable costs of such action, plus interest.

CERCLA § 106(b)(2)(A), 42 U.S.C. § 9606(b)(2)(A) (emphasis added). As this section and the Board's Guidance make plain, compliance with a UAO issued under CERCLA Section 106(a) and completion of the required action are prerequisites to review by the Board of any reimbursement petition. Where a petition has been filed before completion of the remedial action, the Board has dismissed the petition without prejudice. *See, e.g. In re CoZinco, Inc.*, CERCLA § 106(b) Petition No. 94-2 (EAB Sept. 11, 1995) (Order Dismissing Petition); *see also* Guidance at 7 ("The EAB's dismissal of a petition as premature on the ground that the petitioner has not completed the response action is without prejudice to the petitioner's refiling a petition for reimbursement at a subsequent time."). It is not clear from the face of the Petition and attached exhibits whether the required action has been completed.¹ Further, the question of whether the Petitioner has satisfied the prerequisites for review by the Board appear largely

¹ In fact, the last paragraph of Exhibit 118 raises questions about the Petitioner's assertion of compliance with the CERCLA Section 106(a) Order. Ex. 118 at 3 ("Land O'Lakes has not fully complied with UAO and SOW requirements. Land O'Lakes has failed to comply with document submission requirements, failed to follow approved plans, and failed to comply with the UAO work requirements. Land O'Lakes has failed to fully comply with UAO paragraphs 51, 60, 61, 62, 64, 65, 66, 67, 68, 75, 86, 88, and 90.").

unrelated to the liability issues pending in the District Court Case. In the interest of efficiency and the effective administration of its docket, the Board will consider whether Petitioner has satisfied the prerequisites to Board review prior to ruling on an indefinite stay.

Therefore, the Region's Motion filed on September 21 is granted. The Region is ordered to file a response to the Petition addressing the prerequisites for obtaining review no later than October 20, 2015.

The Petitioner will then have until November 9, 2015 to file a reply. The deadline for the Region's response on the merits of the petition is now November 20, 2015.

So ordered.

ENVIRONMENTAL APPEALS BOARD

Dated: 9/25/2015

By: Mary Beth Ward
for Mary Kay Lynch
Environmental Appeals Judge

CERTIFICATE OF SERVICE

I certify that copies of the forgoing *Order Granting Respondent's Motion to Extend Time to File Response* in the matter of Land O'Lakes, Inc. (Hudson Oil Refinery Superfund Site), CERCLA § 106(b) Petition No. 15-01 were sent to the following persons in the manner indicated:

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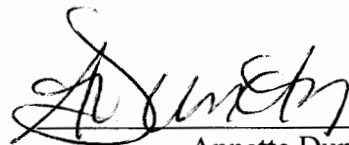
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Dated: SEP 25 2015



Annette Duncan
Secretary