

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

In re:)	
)	
Land O'Lakes, Inc. (Hudson Oil Refinery Superfund Site))	CERCLA § 106(b) Petition No. 15-01
)	
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 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.

The significant pleadings, motions and orders filed in the Cost Recovery Case since the last Joint Status Report to the Board, filed June 29, 2016, are as follows:

1. On June 27, 2016 the parties filed a Joint Status Report and Discovery Plan with the Court with unresolved scheduling issues.

2. 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.

3. On July 5, 2016, the Court held the Status/Scheduling Conference for the Cost Recovery case pursuant to his May 11, 2016 Notice. Also on July 5, 2016 the Court ordered the United States to file a motion regarding bifurcation and sequencing of filing expert reports and set a briefing schedule concluding August 16, 2016. The United States withdrew its request for bifurcation. On August 17, 2016, the Court issued an order regarding expert reports.

4. On July 11, 2016, the Court entered an agreed order for briefing the Plaintiff's Motions to Strike and Dismiss. The briefing concluded on August 24, 2016.

5. On July 15, 2016, as agreed, the parties exchanged Rule 26 Initial Disclosures.

6. On August 2, 2016, the Court entered the parties' agreed Pretrial Order Protecting Confidentiality.

7. On August 12, 2016, the Court entered the parties' agreed Order and Stipulation regarding Discovery Procedure.

8. The Court has not issued a case management order and the discovery period (other than exchange of Rule 26 Initial Disclosures) has not commenced as of the date of this Report. Local Rule LCvR 26.3 provides that, during the pendency of a Rule 12(b) motion, and until the filing of an Answer by the moving party, discovery may not proceed, absent a stipulation or order. The parties are attempting to negotiate an agreed scheduling order to submit to the Court so that discovery may commence.

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.

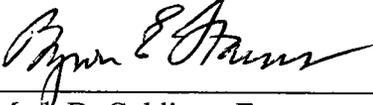
III. ANY OTHER RELEVANT INFORMATION

As explained in the last status report to the Board, Land O'Lakes will be filing a motion, at an appropriate time, to file a First Amended Petition, which will be attached to the motion. This First Amended Petition will primarily add the claim that certain Bankruptcy Court Orders bar the issuance of, and any claims by the EPA in, the UAO. The EPA is already on notice of this claim because it was included in Defendants' Answer and Counterclaims filed on May 2, 2016, in the Cost Recovery Case. 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 and Proceedings on March 15, 2016.

Since the last status report to the Board, Land O'Lakes has received no communications regarding the status of its pending FOIA Appeal Number HQ-APP-00098-10. Land O'Lakes' FOIA appeal is currently assigned to an attorney in the Office of General Counsel.

Respectfully submitted,

/s/ George Malone
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on September 29, 2016, service of the Joint Status Report was made by electronic mail and U.S. Mail upon the following:

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Clerk of the Board
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