

**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

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)  
) CERCLA § 106(b) Petition No. 15-01  
)  
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)

**JOINT STATUS REPORT**

Pursuant to the Environmental Appeals Board's ("Board") October 30, 2015 Order Granting in Part and Denying in Part Unopposed Motion for Stay in this matter, the parties, by and through their counsel, respectfully provide this status report.

**I. THE STATUS OF THE WESTERN DISTRICT OF OKLAHOMA CASE ENTITLED *LAND O' LAKES, INC. v. UNITED STATES OF AMERICA*, CASE NO. 5:15-CV-0683-R (JUDGE DAVID L. RUSSELL)**

The United States' Motion to Dismiss the Complaint without prejudice will be fully briefed, with the filing of any reply by the United States, by January 22, 2016, (unless Land O' Lakes should request and be granted leave to file a Surreply), and under advisement thereafter. Pursuant to Local Court Rules for the United States District Court for the Western District of Oklahoma, oral arguments or hearings on motions are not conducted unless ordered by the Court. See LCvR 78.1.

**II. THE STATUS OF SETTLEMENT NEGOTIATIONS**

Counsel for the parties have discussed their willingness to engage in settlement discussions and, on December 16, 2015, discussed the potential structure and scope of settlement discussions. On December 16, 2015, counsel agreed that any settlement discussions should be "global" in scope and address the claims in the Petition in this matter, as well as all other claims regarding the

Hudson Refinery. Thereafter, counsel have exchanged suggestions regarding the structure of settlement discussions. Those discussions continue.

### **III. WHETHER THE PARTIES EXPECT TO SEEK AN EXTENSION OF THE STAY**

#### **A. Land O' Lakes Position on Extension of the Stay**

It is Land O' Lakes' position that (1) EPA has waived any challenge to the prerequisites for the EAB's review of the Petition; (2) any additional stay order should include a due date for the filing of EPA's opposition on the merits to the Petition; (3) the EAB proceedings on the merits of the Petition should be stayed until final resolution of the Western District of Oklahoma case; and (4) the parties should be required to continue to file with the EAB all pleadings and orders filed in the Western District of Oklahoma case, as well as to file quarterly status reports on the case and to participate in status conferences on a frequency desired by the EAB, until that case is resolved.

Land O' Lakes' position is based on these grounds: (1) the EAB's September 25, 2015 Order stated "The Region is ordered to file a response to the Petition addressing the prerequisites for review no later than October 20, 2015" and "will then have until November 9, 2015 to file a reply" to the merits of the Petition; (2) the Region's October 15, 2015 Response addressing Prerequisites for Review was: "EPA is not filing a response addressing prerequisites for Environmental Appeals Board (the Board) review; (3) the Region has no grounds for challenging the prerequisites for review of the Petition; (4) Land O' Lakes agrees with the statement in the Board's September 25 Order that it is "in the interest of efficiency and the effective administration of its docket" that the Board consider and determine "whether Petitioner has satisfied the prerequisites to Board review prior to ruling on an indefinite stay;" and (5) it is also in the interest of efficiency and the effective administration of this docket for the Region to be required to file its response on the merits to the Petition at this time, rather than being indefinitely delayed.

In its letter to Ms. Durr dated October 20, 2015, Land O' Lakes notified the Board of its intent to file a reply to the EPA's Response Addressing Prerequisites for Review by November 9, 2015. The Board's Order Granting in Part and Denying in Part Unopposed Motion for Stay directed Land O' Lakes not to file the Reply and held previous deadlines in abeyance. Land O' Lakes respectfully requests leave to file the Reply should the Board conclude that the EPA has not waived any claim that the Petition does not meet the prerequisites for review.

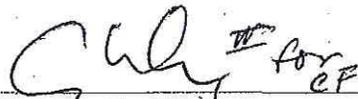
Land O' Lakes' proposed Order for an extension of the Stay is attached. Land O'Lakes reserves the right to respond to and/or oppose Respondent's Motion to Extend Time and Stay Proceedings as discussed below.

**B. EPA's Position on the Stay and Other Matters**

The Respondent agrees with the Petitioner that an extension of the stay should be granted. The Respondent differs with the Petitioner regarding the relief sought concerning this matter. As such, the Respondent's position regarding the extension of the stay and other matters relevant to this proceeding are addressed in the Respondent's Motion to Extend Time and Stay Proceedings. The Respondent will submit the above motion on January 15, 2016, for the EAB's consideration.

The Respondent also agrees with the Petitioner concerning the described status of the District Court case and settlement negotiations.

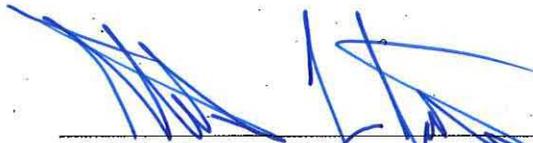
Respectfully submitted,



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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that, on January 14<sup>th</sup>, 2016, service of the Joint Status

Report was made by electronic mail and U.S. Mail upon the following:

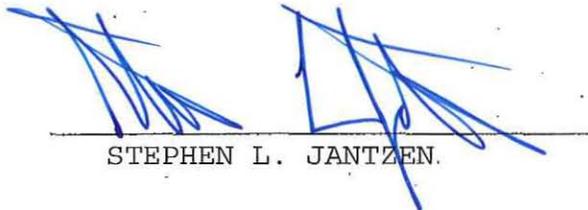
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In addition, on this same date, the Joint Status Report was filed electronically with the EAB's electronic filing system.

  
STEPHEN L. JANTZEN.

**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	)	

**[PROPOSED] ORDER GRANTING EXTENSION OF STAY**

Upon consideration of the parties' Joint Status Report, it is hereby ORDERED:

1. EPA has waived any challenge to the prerequisites for the Petition;
2. EPA shall file its opposition on the merits to the Petition by \_\_\_\_\_;
3. The EAB proceedings on the merits of the Petition are stayed until final resolution of the Western District of Oklahoma case; and
4. The parties are required to continue to file with the EAB all pleadings and orders filed in the Western District of Oklahoma case, as well as to file quarterly status reports on the case and to participate in status conferences on a frequency as ordered by the EAB, until that case is resolved.

So ordered.

Dated: \_\_\_\_\_, 2016

**ENVIRONMENTAL APPEALS BOARD**

By: \_\_\_\_\_  
Environmental Appeals Judge