

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

_____)	
In re:)	
Land O'Lakes, Inc. (Hudson Oil Refinery)	CERCLA § 106(b) Petition No. 15-01
Superfund Site))	
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 a Status/Scheduling Conference for the Cost Recovery case. 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 scheduling order for briefing the United States' 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. On October 4, 2016, the Court issued an agreed Case Management Scheduling Order, which is attached as Exhibit A to this Joint Status Report. The Case Management Scheduling Order provides for a fact discovery period from October 31, 2016 to October 31, 2017, closing of all discovery on August 31, 2018, and a deadline for final submissions for dispositive motions of November 15, 2018, after which the Court will determine the schedule for pre-trial filings and trial.

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

The following represents Land O'Lakes' position regarding its intent to seek leave to amend its CERCLA 106(b) petition. As explained in the previous two status reports to the Board, Land O'Lakes intends to file a motion for leave to file a First Amended Petition. Given the pre-trial schedule for the Cost Recovery Case and a likely trial date in early 2019 thereunder, the obligation to timely move for amendments to pleadings, and the uncertainty regarding the duration of the stay of this proceeding, Land O' Lakes plans to file its motion for leave to file a First Amended Petition in January.

As noted in prior Joint Status Reports, this First Amended Petition will primarily add the claim that certain Bankruptcy Court Orders bar the issuance of the UAO, and any claims by the EPA related to or arising out of the issuance of 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.

The following represents EPA Region 6's position regarding this matter. The CERCLA 106(b) proceeding was stayed in its entirety by the Board's Second Order Extending the Stay and Proceedings on March 15, 2016. As such, the Region reserves the right to contest any such motion filed by Land O'Lakes, and any actions taken to enlarge or amend the original CERCLA 106(b) petition claims and arguments.

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. EPA anticipates that non-privileged documents subject to the FOIA appeal will be produced to Land O'Lakes in discovery in the Cost Recovery Case.

Respectfully submitted,

/s/ George Malone

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on December 30, 2016, service of the Joint Status

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

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/s/ Byron E. Starns

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**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

LAND O’LAKES, INC., and
CUSHING, OKLAHOMA
BROWNFIELDS, LLC,

Defendants.

Case No. 5:16-CV-00170-R

**ORDER GRANTING JOINT MOTION TO ENTER CASE MANAGEMENT
SCHEDULING ORDER**

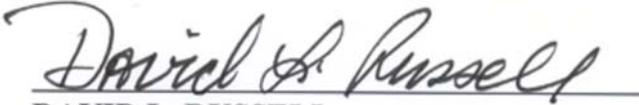
Before the Court is the Parties’ Joint Motion to Enter Case Management Scheduling Order [Doc. 55]. For good cause shown, the Court GRANTS the Joint Motion to Enter Case Management Scheduling Order.

It is hereby ORDERED that the following Case Management Scheduling Order shall apply in this matter:

Item	Stipulated Schedule
Discovery Begins (initial RFPs served)	October 31, 2016
Motions to Join Additional Parties	November 30, 2016
Motion to Amend Pleadings	January 31, 2017
Close of Fact Discovery	October 31, 2017
Deadline for Plaintiff’s initial expert reports on Liability and Costs	November 30, 2017
Deadline for Defendants’ (1) rebuttal expert reports that respond to Plaintiff’s initial expert reports; and (2) initial expert reports on affirmative defenses and counterclaims	January 31, 2018

Item	Stipulated Schedule
Deadline for Plaintiff's rebuttal expert reports limited to Defendants' initial expert reports	March 31, 2018
Expert depositions commence	April 30, 2018
Expert depositions concluded	August 31, 2018
All discovery closed	August 31, 2018
Dispositive/Daubert Motions filed	September 30, 2018
Dispositive/Daubert Oppositions filed	October 31, 2018
Dispositive/Daubert Replies filed	November 15, 2018
Pretrial filings	As the Court schedules
Trial	As the Court schedules

IT IS SO ORDERED this 4th day of October, 2016.


 DAVID L. RUSSELL
 UNITED STATES DISTRICT JUDGE