

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF OKLAHOMA**

	)	
<b>1. UNITED STATES OF AMERICA,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	<b>Case No.</b> CIV-16-0170-HE
<b>vs.</b>	)	
	)	
<b>1. LAND O’LAKES, INC. and</b>	)	
<b>2. CUSHING, OKLAHOMA</b>	)	
<b>BROWNFIELDS, LLC,</b>	)	
	)	
<b>Defendants.</b>	)	

**COMPLAINT**

1. The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), files this Complaint and avers as follows:

**NATURE OF ACTION**

2. This is a civil action brought pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended, 42 U.S.C. §§ 9601 – 9675, against Land O’Lakes, Inc. (hereinafter “Land O’Lakes”) and Cushing, Oklahoma Brownfields, LLC (“COB”) for the recovery of response costs that have been, or will be incurred, by EPA in connection with the releases or threatened release of hazardous substances into the environment at or from a

facility known as the Hudson Refinery Superfund Site (“Site”) located in the City of Cushing, Payne County, Oklahoma.

### **JURISDICTION AND VENUE**

3. This Court has jurisdiction over the subject matter of this action pursuant to Sections 107 and 113(b) of CERCLA, 42 U.S.C. §§ 9607 and 9613(b), and 28 U.S.C. §§ 1331 and 1345.

4. Venue is proper within this district pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. §§ 1391(b), 1391(c), and 1391(c) because the claims arose, and the threatened or actual releases of hazardous substances occurred, in this district.

### **DEFENDANTS**

5. Land O’Lakes is a Minnesota corporation with its principal office located in St. Paul, Minnesota.

6. Land O’Lakes is the successor in interest to Midland Cooperatives, Inc., a Minnesota company (“Midland”), through a merger that occurred in or about 1981.

7. Land O’Lakes, through its predecessor Midland, owned and operated a petroleum refinery at the Site from approximately 1944 through early 1977.

8. COB is a Delaware limited liability company and is a current owner of the Site.

9. On or about February 17, 2009, Land O’Lakes formed COB as a real estate holding affiliate to purchase and hold any Site real estate that could be purchased.

### **STATUTORY BACKGROUND**

10. CERCLA was enacted in 1980 to provide a comprehensive mechanism for abating releases and threatened releases of hazardous substances and other pollutants and contaminants and for funding the costs of such abatement and related enforcement activities, which are known as “response” actions. 42 U.S.C. §§ 9604(a), 9601(25).

11. Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), defines the term “release” to include among other things, “spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment.” Section 101(14), 42 U.S.C. § 9601(14).

12. Under Section 104(a) of CERCLA, as amended:

(1) Whenever (A) any hazardous substance is released or there is a substantial threat of such a release into the environment, or (B) there is a release or substantial threat of release into the environment of any pollutant or contaminant which may present an imminent and substantial danger to public health or welfare, the President is authorized to act, consistent with the national contingency plan, to remove or arrange for the removal of, and provide for remedial action relating to such hazardous substance, pollutant, or contaminant at any time (including its removal from any contaminated natural resource), or take any other response measure consistent with the national contingency plan which the President deems necessary to protect the public health or welfare of the environment. ....

42 U.S.C. § 9604(a)(1).

13. Under Section 104(b) of CERCLA, 42 U.S.C. § 9604(b), the President, may undertake investigations, monitoring, surveys, testing or other information gathering deemed necessary or appropriate to identify the existence and extent of the release or threat of release, the source and nature of the hazardous substances involved and the

danger to public health, welfare or the environment. The President may also undertake such planning, legal, fiscal, economic, engineering, architectural, and other studies necessary or appropriate to plan and direct response actions, to recover costs, and to enforce the provisions of CERCLA.

14. The President's authority under Sections 104(a) and (b) of CERCLA, 42 U.S.C. §§ 9604(a) and (b) relevant to this action has been delegated to the Administrator of EPA, and within certain limits, re-delegated to the Regional Administrators of EPA to arrange for the cleanup of hazardous waste or to conduct investigations and studies necessary to determine the need for, and extent of response activities.

15. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides in pertinent part:

Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section [*i.e.*, 42 U.S.C. § 9607(b)] –

(1) the owner and operator of a . . . facility,

(2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,

. . .

shall be liable for—

(A) all costs of removal or remedial action incurred by the United States Government . . . not inconsistent with the national contingency plan;

. . .

(D) the costs of any health assessment or health effects study carried out under section 9604(i) of this title.

16. The National Contingency Plan ("NCP") provides the "procedures and standards for responding to releases of hazardous substances, pollutants, and contaminants . . . ." 42 U.S.C. § 9605. The NCP is codified at 40 C.F.R. Part 300.

17. Section 107(a) of CERCLA, 42 U.S.C. § 9607, also provides that "[t]he amounts recoverable in an action under this Section shall include interest on the amounts recoverable under subparagraphs (A) through (D)."

18. Liability under Section 107(a) of CERCLA, 42 U.S.C. § 9607, is strict, and joint and several.

19. Section 113(g)(2)(B) of CERCLA, 42 U.S.C. § 9613(g)(2)(B), entitles the United States to obtain a declaratory judgment on liability for future response costs: "[T]he court shall enter a declaratory judgment on liability for response costs or damages that will be binding on any subsequent action or actions to recover further response costs or damages."

20. The President's authority under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), relevant to this action has been delegated to the Administrator of EPA to take enforcement actions necessary to recover response costs incurred by the United States Government not inconsistent with the National Contingency Plan.

## **SITE DESCRIPTION AND FACTUAL BACKGROUND**

### **The Site**

21. The Site is a former refinery located on the west side of the City of Cushing, Payne County, Oklahoma at the intersection of State Highway 33 and North Depot Street. The Site is divided into two portions: a "North Refinery" and "South

Refinery,” divided by State Highway (“SH”) 33. The North Refinery is approximately 165 acres and the South Refinery is approximately 35 acres.

22. Skull Creek originates on the east side of the North Refinery, and flows in a northeastern direction from the eastern boundary, receiving run-off and discharge from the Site via drainage ditches/channels located along SH 33 and North Depot Street.

23. Historically, discharges from the facility's storm-water pond emptied into Skull Creek.

24. Skull Creek drains into the Cimarron River at a point located approximately six miles northeast of the site.

25. In addition, an unnamed creek flows northwest from the Hudson Site into the Cimarron River.

### **Site Operations and Conditions**

26. The Site is a former petroleum refinery that, over the course of its history from approximately 1915 to 1982 produced liquid propane gas, gasoline, aviation fuel, diesel fuel, and other fuel oils.

27. In 1943 Midland, then called Midland Cooperative Wholesale acquired the southern portion of the Site (approximately 35 acres). In 1952, Midland acquired the northern portion of the Site – approximately 165 acres of vacant farmland north of SH 33. Midland owned and operated part or all of the Site from 1943 to 1977.

28. During its operation of the refinery, Midland generated slop emulsion solids, heat exchanger bundle cleaning sludge, American Petroleum Institute (“API”)

separator sludge, leaded tank bottoms, process waste water, petroleum coke, and waste hydrocarbon by-products.

29. Midland also operated unlined waste ponds and pits, oil skimming ponds, a coke pond, sumps, settling ponds, cooling ponds, holding ponds, drainage channels, buildings, and ditches/berms related to waste disposal.

30. During Midland's operation of the Site, product and chemical spills and leaks occurred from tanks, channels, ditches/berms, process units, waste areas, and other locations.

31. Between 1948 and 1960, Midland upgraded the refinery, increasing production from less than 10,000 barrels per day to 19,000 barrels per day, the level at which the refinery functioned until its sale in 1977.

32. In 1960, Midland initiated the construction and operation of the six unlined wastewater lagoons on the North Refinery to treat process wastewater prior to discharging it into local streams.

33. In 1971, Midland reported to the Oklahoma Corporation Commission that its effluent wastewater discharges "may have some undesirable qualities" and that Midland's treatment of effluent discharge consisted of three primary traps for removal of hydrocarbons, followed by a lagoon system of the six unlined ponds with a total capacity of approximately 45 million gallons. That effluent discharge ultimately flowed to Skull Creek.

34. During Midland's operation of the Site there were discharges of untreated process waste water from stormwater holding ponds to Skull Creek.

35. During Midland's operation of the Site, releases of "hazardous substances" within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), occurred on the Site including, but not limited to, releases of chromium, copper, phenolic compounds, benzo(a)pyrene, benzo(a)anthracene, polycyclic aromatic hydrocarbons ("PAHs"), benzene, xylenes, and bis(2-ethylhexyl)phthalate in refinery wastewater.

36. In February 1977, Midland sold the Site to the Hudson Refining Co., Inc. ("Hudson").

37. At the time Midland sold the Site in 1977, the refinery was producing 19,000 barrels of product per day.

38. On or about December 24, 1981, Midland entered into a merger agreement with Land O'Lakes. Article VIII of the Articles of Merger "Merger of Rights, Obligations and Liabilities" stated that "the separate existence of Midland shall cease and the corporate existence and identity of the LOL [Land O'Lakes], as the surviving corporation, shall continue under the name of LOL. All of the property, assets, rights, privileges, powers, franchises and immunities of each of the Constituent Cooperative Associations [Midland and Land O'Lakes] shall vest in LOL. All debts, liabilities and obligations of the Constituent Cooperative Associations shall become the debts, liabilities and obligations of LOL."

39. Hudson ceased operations in 1982. The Site has not been operated as a refinery since.

### **Response Actions**

40. Dozens of contaminants have been detected at the Site, including but not limited to the following: acetone, asbestos, cadmium, chromium, copper, lead, mercury, arsenic, phenolic compounds, benzo(a)pyrene, benzo(a)anthracene, polycyclic aromatic hydrocarbons (“PAHs”), polychlorinated biphenyls (“PCBs”), benzene, thallium, vanadium, xylenes, and bis(2-ethylhexyl)phthalate.

41. The substances referred to in paragraph 40 are “hazardous substances” within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

42. As a result of the release or threatened release of hazardous substances, EPA has undertaken response actions at or in connection with the Site under Section 104 of CERCLA, 42 U.S.C. § 9604.

43. A 1995 EPA Site Inspection Prioritization Report documented that soil samples from the Site contained inorganic constituents including lead and arsenic, and organic constituents including PAHs. That report also documented 28,000 pounds of chemicals, including hydrofluoric acid and tetraethyl lead (“TEL”), stored on-site. Additionally, a 1997 sampling effort documented 23,000 square feet of asbestos-containing material (“ACM”) on the Site.

44. In September 1998, EPA initiated an emergency removal action at the Site. Removal activities included removal of product from above-ground storage tanks (“ASTs”), separators, and sumps, partial dismantling of the hydrofluoric acid alkylation unit to remove hydrofluoric acid liquid, vapors, and scale, and removal of two ASTs containing TEL sludge and scale.

45. In 1999, pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on July 22, 1999, 64 Fed. Reg. 39878.

46. EPA performed a qualified risk evaluation in July 2001, which showed that friable ACM, TEL, benzene, hydrochloric acid, hydrosulfuric acid, mercury, arsenic, chromium, ammonia, and calcium hypochlorite were either released or constituted a threatened release at the Site. All of the chemicals mentioned in this paragraph are “hazardous substances” within the meaning of Section 101(14) of CERCLA, 28 U.S.C. § 9601(14).

47. During 2002 and 2003, EPA conducted a non-time-critical removal action at the Site to address imminent and substantial endangerments to public health and the environment present at the Site. The non-time-critical removal action addressed the Site's North Refinery superstructures, refinery process units, collection basins, a sump, and structurally unsafe buildings.

48. The North Refinery superstructures, process units/vessels, collection ponds, above-ground piping, cooling towers, TEL buildings and sump operated at the Site were all constructed and operated by Midland as predecessor in interest to Land O'Lakes.

49. Land O'Lakes was afforded the opportunity to conduct the Remedial Investigation and Feasibility Study ("RI/FS") by special notice letter from EPA dated January 18, 2001, but declined.

50. In 2004, in response to a release or a substantial threat of a release of a hazardous substance(s) at or from the Site, the Oklahoma Department of Environmental

Quality (“ODEQ”), as the lead agency through a State Cooperative Agreement with EPA, as the support agency, commenced the RI/FS process for the Site pursuant to 40 C.F.R. § 300.430. From 2004 through 2007, ODEQ conducted the RI/FS with technical support from EPA.

51. The RI/FS documented releases and threatened releases at or from the Site containing hazardous substances including acetone, asbestos, cadmium, chromium, copper, lead, mercury, arsenic, phenolic compounds, benzo(a)pyrene, benzo(a)anthracene, PAHs, PCBs, benzene, thallium, vanadium, xylenes, and bis(2-ethylhexyl)phthalate. All of the chemicals mentioned in this paragraph are “hazardous substances” within the meaning of Section 101(14) of CERCLA, § 9601(14).

52. The EPA decision for the remedial action implemented at the Site is embodied in a final CERCLA Record of Decision (“ROD”), executed on November 30, 2007.

53. By special notice letter dated February 19, 2008, EPA invited Land O’Lakes to undertake the Remedial Design/Remedial Action (“RD/RA”) work described in the ROD. Land O’ Lakes declined.

54. EPA issued a Unilateral Administrative Order (“UAO”), signed on January 6, 2009, to Land O’Lakes requiring it to implement the Site remedy outlined in the ROD. EPA met with Land O’Lakes on February 3, 2009 to discuss issues involved with the implementation of the ROD.

55. The UAO became effective 30 days after it was signed by EPA (February 5, 2009).

56. On February 10, 2009, EPA received from Land O'Lakes a written notice of intent to comply with the UAO.

57. On or about February 17, 2009, Land O'Lakes formed COB as a real estate holding affiliate to purchase and hold any Site real estate that could be purchased. COB began to acquire Site real estate in 2009 and currently holds title to the majority of the Site.

58. From 2009 to 2015, Land O'Lakes performed the RD/RA under the UAO.

59. Land O'Lakes and COB are liable for more than \$23.4 million in unrecovered past costs associated with response actions performed at the Site, and any other costs EPA either has incurred, or may incur with respect to response actions at the Site.

### **CLAIMS FOR RELIEF**

60. The allegations of Paragraphs 1 through 59 are re-alleged and incorporated herein.

61. Each Defendant is a "person" within the meaning of Sections 101(21) and 107 of CERCLA, 42 U.S.C. §§ 9601(21) and 9607.

62. The Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

63. Land O'Lakes, through its predecessor in interest Midland, is a person who previously owned and operated a facility within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

64. During Midland's ownership and operation of the Site, there were disposals and releases and threatened releases of hazardous substances at or from the Site within the meaning of Sections 101(22), 101(29) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(22), 9601(29), and 9607(a).

65. COB is a current owner of the Site and therefore is an owner of a facility within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

66. The United States has undertaken, and may undertake in the future, response actions at the Site in response to releases or threatened releases of hazardous substances within the meaning of Sections 104 and 107 of CERCLA, 42 U.S.C. §§ 9604 and 9607.

67. The United States has incurred response costs within the meaning of CERCLA Section 101(25), 42 U.S.C. § 9601(25), to respond to the releases or threatened releases of hazardous substances at the Site.

68. The response actions taken and response costs incurred by the United States at the Site were not inconsistent with National Oil and Hazardous Substance Pollution Contingency Plan ("NCP"), which was promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, and is codified at 40 C.F.R. Part 300.

69. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), Land O'Lakes and COB are jointly and severally liable to the United States for all response costs incurred and to be incurred in connection with the Site.

**PRAYER FOR RELIEF**

WHEREFORE, the United States of America prays that this Court:

A. Order the Defendants to reimburse the United States for all response costs incurred by the United States in connection with the Site, including interest, in an exact amount to be proven at trial;

B. Enter a declaratory judgment in favor of the United States holding the Defendants liable, jointly and severally, for all additional response costs incurred or to be incurred by the United States in connection with the site;

C. Award the United States its enforcement costs, including attorney fees, costs and disbursements in this action; and

D. Grant such other and further relief as may be just and proper and as the public interest and the equities of the case may require.

Respectfully submitted,

/s/ John C. Cruden

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