

COURT FILE NUMBER **QB 174 of 2018**
COURT OF QUEEN'S BENCH FOR SASKATCHEWAN
JUDICIAL CENTRE **YORKTON**
PLAINTIFF **L. & V. ENTERPRISES LTD. and DONNA BROWN**
DEFENDANT **IMPERIAL OIL LIMITED**
THIRD PARTY **AGRIUM INC. and NUTRIEN LTD.**
DEFENDANTS

THIRD PARTY STATEMENT OF DEFENCE

1. The Third Party Defendants, Agrium Inc. ("**Agrium**") and Nutrien Ltd. ("**Nutrien**") (collectively, the "**Third Party Defendants**") deny each and every allegation set out in the Third Party Claim filed by the Defendant Imperial Oil Limited ("**Imperial**") dated February 5, 2019 ("**Third Party Claim**"), as if each and every allegation of fact was set out herein and denied specifically, except those specifically admitted.
2. Effective January 1, 2018, the businesses of Potash Corporation of Saskatchewan Inc. and Agrium were combined under Nutrien Ltd.
3. The Third Party Defendants admit paragraph 5 of the Third Party Claim.
4. With respect to paragraph 6 of the Third Party Claim, the Third Party Defendants admit that Agrium entered into an Asset Purchase and Settlement Agreement dated October 12, 2005 ("**Asset Purchase Agreement**") with Imperial but that Agrium purchased only specified assets from Imperial related to Imperial's retail and distribution fertilizer business in Canada, which included a fertilizer facility ("**Fertilizer Facility**") located on lands owned by Imperial described as Block D, Plan 82Y08710 Yorkton, Saskatchewan ("**Imperial Lands**"), subject to the conditions of the Asset Purchase Agreement. Imperial retained and continues have ownership of the Imperial Lands.
5. The Third Party Defendants deny paragraph 7 of the Third Party Claim and state that Imperial agreed in the Asset Purchase Agreement:
 - (a) to indemnify and save Agrium harmless for claims attributable to the Fertilizer Facility that accrued or arise from any condition or circumstance existing or accruing prior to October 6, 2005 ("**Closing Date**") (Article 8.1(a), Asset Purchase Agreement).

- (b) to indemnify and save Agrium harmless from claims attributable to a breach by Imperial of a representation or warranty, including such representations and warranties contained in Article 3.1(q) of the Asset Purchase Agreement with respect to the environmental condition of the Imperial Lands and the compliance by Imperial with applicable environmental laws (Articles 4.1, 8.1(a), Asset Purchase Agreement);
 - (c) to indemnify and save Agrium harmless from any claims with respect to or arising out of any environmental contamination of specified lands, including the Imperial Lands, associated with the release of or further continuing migration of, any hazardous substance which exists or relates to the period prior to or after the Closing Date (Article 9.2(a)), Asset Purchase Agreement; and
 - (d) without limiting the generality of paragraph 5(a) to (c) of this defence, with respect to certain enumerated sites, including the Imperial Lands on which the Fertilizer Facility is located, Imperial agreed to indemnify and save harmless Agrium from any claim with respect to or arising out of the release of or the further continuing migration of any hazardous substance, including any fertilizer related contamination, which exists or relates to the period prior to the Closing Date (Article 9.2(b)), Asset Purchase Agreement)
6. In particular response to paragraphs 8 and 9 of the Third Party Claim, the Third Party Defendants admit that Agrium entered into a lease agreement, dated October 12, 2005 with Imperial ("**Lease Agreement**"), but deny the characterization of Articles 1.07 and 1.08 of the Lease Agreement set out in that paragraph. The Third Party Defendants state that the Lease Agreement provided that Article 9 of the Asset Purchase Agreement shall continue to apply to the Imperial Lands and that the Asset Purchase Agreement shall govern in the event of any conflict between it and the Lease Agreement (Article 3.13, Lease Agreement). Further in Article 2.02 of the Lease Agreement, Imperial agreed to indemnify and save harmless Agrium from any claims whatsoever arising out of Imperial's or its agent's possession or use of the Imperial Lands.
7. Pursuant to the Asset Purchase Agreement, Imperial agreed to remediate the Imperial Lands with respect to all environmental contamination on the Imperial Lands and remove related waste located on the Imperial Lands in accordance with environmental laws, existing prior to the Closing Date. (Article 9.5(d), (g), (h), and (n), Asset Purchase Agreement)
8. In particular response to paragraphs 10 and 11 of the Third Party Claim, the Third Party Defendants state they operated the Fertilizer Facility in accordance with applicable laws, including environmental laws after the Closing Date, and state that any contamination of the Plaintiff's land was not caused by the Third Party Defendant's management, control, or operation of the Fertilizer Facility.

9. The Third Party Defendants specifically deny paragraph 12 of the Third Party Claim and state that they were not negligent as alleged, and that the remediation, responsibility and related liability for the Imperial Lands rests with Imperial.
10. The Third Party Defendants specifically deny paragraphs 13 and 14 of the Third Party Claim and state that no duty of care was owed to Imperial and, if any such duty was owed, which is denied, the Third Party Defendants did not breach any such duty.
11. The Third Party Defendants specifically deny paragraph 15 of the Third Party Claim and state that they are not strictly liable under the doctrine in *Rylands v. Fletcher*, as alleged, and state that Imperial had, at all material times, control of any hazardous substances within the Imperial Lands and an obligation to remediate the same under the Asset Purchase Agreement and applicable law and not the Third Party Defendants.
12. The Third Party Defendants specifically deny paragraph 16 of the Third Party Claim, and state that they did not breach the Asset Purchase Agreement or Lease Agreement, in any manner.
13. The Third Party Defendants deny that Imperial is entitled to contribution and indemnity from them for the losses alleged by the Plaintiff.
14. In the alternative, if the Third Party Defendants have breached any duties owed to Imperial, contractual or otherwise, which is denied, then any claim arising from this alleged breach is within the exclusive jurisdiction of the grievance and arbitration procedure set out in the Asset Purchase Agreement. This Honourable Court is respectfully without jurisdiction to consider or decide any such claims.
15. The Third Party Defendants therefore request that the claims against it be dismissed with costs.

NOTICE

If you intend to make a reply to this Statement of Defence, you must serve and file the reply within 8 days after service of the Statement of Defence

DATED at the City of Saskatoon, in the Province of Saskatchewan, this 29th day of April, 2019.

MLT Aikins LLP

Per: 

Solicitors for the Third Party Defendants,
Agrium Inc. and Nutrien Ltd.

CONTACT INFORMATION AND ADDRESS FOR SERVICE:

Name of firm: MLT Aikins LLP
Lawyer in charge of file: G. Rangi Jeerakathil
Address of firm: 1500, 410 22nd Street E, Saskatoon SK S7K 5T6
Telephone number: 306.975.7100
Email address: RJeerakathil@mltaikins.com
File No: 37667.50