

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

USA

Plaintiff(s)

v.

6:97-cv-06161

Cargill, Inc.

Defendant(s)

PLEASE take notice of the entry of a JUDGMENT filed on
7/22/97, of which the within is a copy, and entered 7/22/97
upon the official docket in this case.

Dated: Rochester, New York
July 22, 1997

RODNEY C. EARLY, Clerk
U.S. District Court
Western District of New York
2120 U.S. Courthouse
100 State Street
Rochester, New York 14614

Enclosure

TO:

Anthony E. Harris, Esq.
Joel I. Klein, Esq.
Lawrence R. Fullerton, Esq.
Constance K. Robinson, Esq.
Charles E. Biggio, Esq.
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Mitchell L. Gentile, Esq.
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John W. Behan, Esq.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK
ROCHESTER DIVISION

UNITED STATES OF AMERICA,)
STATE OF NEW YORK,)
COMMONWEALTH OF PENNSYLVANIA and)
STATE OF OHIO,)
)
Plaintiffs,)
)
v.)
)
CARGILL INC.,)
AKZO NOBEL, N.V.,)
AKZO NOBEL, INC. and)
AKZO NOBEL SALT, INC.,)
)
Defendants.)

Civil Action No.:

Filed: 97-00-6161

U.S. DISTRICT COURT
MONDAY - ROCHESTER
JUN 12 11 21

FILED

FINAL JUDGMENT

WHEREAS, plaintiffs, the United States of America, the states of New York and Ohio, and the Commonwealth of Pennsylvania, having filed their Complaint herein on April 18, 1997, and plaintiffs and defendants and American by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein;

AND WHEREAS, defendants and American have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

AND WHEREAS, the purpose of this Final Judgment is prompt and certain divestiture of certain rights and assets to assure that competition is not substantially lessened;

AND WHEREAS, plaintiffs require defendants make certain divestitures for the purpose of remedying the loss of competition as alleged in the Complaint;

AND WHEREAS, defendants and American have represented to plaintiffs that the divestitures ordered herein can and will be made and that defendants and American will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

NOW, THEREFORE, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

I. JURISDICTION

This Court has jurisdiction over each of the parties hereto and over the subject matter of this action. The Complaint states a claim upon which relief may be granted against defendants, as hereinafter defined, under Section 7 of the Clayton Act, as amended (15 U.S.C. § 18).

II. DEFINITIONS

As used in this Final Judgment:

A. "Cargill" means defendant Cargill Inc., a Delaware corporation with its headquarters in Wayzata, Minnesota, and includes its successors and assigns, its subsidiaries, and directors, officers, managers, agents, and employees.

B. "Akzo" means defendant Akzo Nobel, N.V., based in Arnhem, The Netherlands, and includes its successors and assigns.

its subsidiaries and divisions (including Akzo Nobel, Inc. and Akzo Nobel Salt, Inc.), and directors, officers, managers, agents, and employees.

C. "American" means American Rock Salt Company LLC, a New York limited liability company with its headquarters in Rochester, New York, and includes its successors and assigns, its directors, officers, managers, agents, partners and employees.

D. "Relevant Evaporated Salt Assets" means:

(1) all of the tangible assets used in the operation of the Akzo evaporated salt plant in Watkins Glen, New York, including but not limited to: all real property (owned or leased) in Watkins Glen, New York and used in the operation of that plant, or storage of plant inventory; all manufacturing, packaging equipment, personal property, inventory, office furniture, fixed assets and fixtures, materials, supplies, on-site warehouses or storage facilities, and other tangible property or improvements used in the operation of that plant (but excluding Akzo's industrial service centers located outside New York and salt mining or manufacturing locations outside Watkins Glen, New York); all licenses, permits and authorizations issued by any governmental organization relating to that plant; all contracts, agreements, leases, commitments and understandings pertaining to that plant and its operations; all customer lists and credit records, and other records maintained by Akzo or Cargill in connection with the business of the Watkins Glen plant;

(2) at the acquirer's option, a nonexclusive license, for a term designated by the acquirer, to make, have made, use or sell under the label of any water conditioning salt product produced by Akzo at the Watkins Glen, New York plant, and any improvement to or line extension of that label, but excluding the Diamond Crystal label; and

(3) all intangible assets, wherever located, that relate in any way to the tangible assets and labels described above (including, but not limited to, production, packaging and distribution know-how); exclusive, assignable rights to make, have made, use or sell under any and all patents or proprietary technology that relate to the Watkins Glen plant exclusively; contracts to supply goods or services to the Watkins Glen plant exclusively and the prorated portion of any other contract to supply goods or services to the Watkins Glen plant; business information solely dedicated to the tangible assets or the labels described above; and nonexclusive, assignable rights to make, have made, use or sell under all related patents, proprietary technology and business information used in connection with, but not solely dedicated to the tangible assets or the labels described above.

E. "Relevant Bulk Deicing Salt Assets" means:

(1) a four-year bulk deicing salt supply agreement that includes the following terms:

(a) for the first three years, the salt supply agreement shall be renewable annually, at American's (or its assignee's) option; the fourth year and final

year of the agreement shall take effect only if American (or its assignee) elects, and the United States, New York and Pennsylvania conclude, in their sole discretion, that substantial progress has not been made toward construction of a rock salt mine at Hampton Corners, New York, or that a continuation of the salt supply contract is necessary for other competitive reasons;

(b) for each of the first three years of the agreement, Cargill shall supply a maximum of 400,000 tons of specification-grade bulk deicing salt annually, at \$10/ton f.o.b. mine, as follows: 200,000 tons from its S. Lansing, New York mine, and 200,000 tons (with no force majeure clause) from Akzo's Cleveland, Ohio mine; in the fourth and final year of the supply contract, Cargill shall supply a maximum of 300,000 tons of specification-grade bulk deicing salt, at \$10/ton f.o.b. mine, as follows: 150,000 tons from its S. Lansing, New York mine and 150,000 tons (with no force majeure clause) from Akzo's Cleveland, Ohio mine; and

(2) all the right, title and interest conveyed by Akzo to Cargill in each of the following eleven bulk deicing salt terminals currently owned or leased by Akzo: University Heights, Schenectady, Whitehall, and Hudson, New York; Buttonwood, Falls Creek, Reading, and Cresson, Pennsylvania; Hartford, Connecticut; Middlesex, Vermont; and Columbus, Ohio.

F. "Additional Rock Salt Terminals" means all the right, title and interest conveyed by Akzo to Cargill in the following bulk deicing terminals currently owned or leased by Akzo: Bow, West Lebanon, Claremont and Littleton, New Hampshire; Taunton, Readville and N. Billerica, Massachusetts; Norwich and Waterbury, Connecticut; Staunton and Roanoke, Virginia; Brewer and Oakland, Maine; Long Island City, New York; and Baltimore, Maryland.

G. "Hampton Corners Mine Rights" means all right, title and interest in any land, equipment, mining rights, or other assets, tangible or intangible, to be conveyed by Akzo to American pursuant to the Asset Purchase Agreement, dated January 31, 1997.

H. "Default" means (a) with respect to the Hampton Corners Mine Rights, the failure by American to close, due to its failure to fulfill all conditions precedent to closing, on its purchase of the Hampton Corners Mine Rights from Akzo within 60 days after September 1, 1997, or such other closing date later agreed upon by Akzo and American, provided that in no event shall the closing date for that purchase take place after September 1, 1998; and (b) with respect to the Retsof Stockpile, the failure by American to close, due to its failure to fulfill all conditions precedent to closing, on its purchase of the Retsof Stockpile within 60 days after September 1, 1997, or such other closing date later agreed upon by American and Cargill, provided that in no event shall the closing date for that purchase take place after September 1, 1998.

I. "Retsof Stockpile" means all right, title and interest in the rock salt inventory outside Akzo's Retsof, New York rock salt mine in Livingston County, New York, which currently consists of approximately 870,000 tons of bulk deicing salt.

J. "Label" means all legal rights associated with a brand's trademarks, trade names, copyrights, designs, and trade dress (and any improvements, extensions or modifications); the brand's trade secrets; know-how or other proprietary information for making, having made, using and selling the brand, including, but not limited to, packaging, sales, marketing and distribution know-how and documentation, such as customer lists.

K. "Northeast United States" means any of the following areas: Vermont, western portions of Pennsylvania and Massachusetts, upstate New York, and eastern Ohio.

L. "Relevant Assets" means the Retsof Stockpile, Relevant Bulk Deicing Salt Assets, Relevant Evaporated Salt Assets, Hampton Corners Mine Rights, and Additional Rock Salt Terminals, as the context requires.

III. APPLICABILITY

A. The provisions of this Final Judgment apply to the defendants and American, their successors and assigns, their subsidiaries, directors, officers, managers, agents, and employees, and all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Defendants Akzo and Cargill shall require, as a condition of the sale or other disposition of all or

substantially all of each of their respective salt assets that the acquirer or acquirers agree to be bound by the provisions of this Final Judgment; provided, however, that defendants need not obtain such an agreement from an acquirer of the assets to be divested pursuant to the Final Judgment.

IV. DIVESTITURES AND ASSIGNMENTS

A. Defendant Cargill is ordered and directed to divest the Retsof Stockpile to American, at a cost of \$10/ton for specification-grade bulk deicing salt, loaded f.o.b. at the Retsof Stockpile. Cargill is ordered and directed, within 120 days after filing of the Complaint in this action, to execute a contract to divest the Retsof Stockpile and to ensure the availability of salt from the Retsof Stockpile to American for the winter of 1997-1998.

B. Cargill is ordered and directed, within 150 days after filing of the Complaint in this action, or within five (5) days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest the Relevant Evaporated Salt Assets to an acquirer acceptable to plaintiff United States, in its sole discretion.

C. Defendant Cargill is ordered and directed, within 30 days after the filing of the Complaint in this action, to divest the Relevant Bulk Deicing Assets to American. Cargill is further ordered and directed, within 12 months after filing of the Complaint in this action, or five (5) days after the entry of this Final Judgment by the Court, whichever is later, to grant American an irrevocable option to acquire, at book value or cost

(whichever is lowest), the Additional Rock Salt Terminals, or where Cargill does not own an Additional Rock Salt Terminal, Cargill must offer to assign to American its rights in that terminal. American must exercise its option to acquire or accept assignment of such rights and obligations in any or all of the Additional Rock Salt Terminals within seven (7) months after it has received such option or assignment offer from defendant Cargill.

D. Defendant Akzo is ordered and directed to divest the Hampton Corners Mine Rights to American. In the event that American defaults on its purchase of the Hampton Corners Mine Rights, Akzo is ordered and directed to divest the Hampton Corners Mine Rights, within 120 days after default, to an acquirer acceptable to the United States, New York and Pennsylvania, in their sole discretion.

E. In the event that American defaults on its purchase of the Retsof Stockpile, Cargill is ordered and directed to divest the Retsof Stockpile, within 120 days after default, to an acquirer acceptable to the United States, New York and Pennsylvania, in their sole discretion.

F. In the event that American decides to sell or otherwise assign its rights to the Relevant Bulk Deicing Assets or the Retsof Stockpile, American shall provide plaintiffs United States, New York and Pennsylvania with thirty days' written notice of the proposed sale or assignment. Any such a sale or assignment shall be made to an acquirer acceptable to the United States, New York and Pennsylvania, in their sole discretion.

G. Unless plaintiffs United States, New York and Pennsylvania otherwise consent in writing (or in the case of the Relevant Evaporated Salt Assets, the United States alone consents in writing), the divestitures pursuant to Section IV (B), (D) and (E) of this Final Judgment, or by the trustee appointed pursuant to Section V, shall include all of the Relevant Assets, and shall be accomplished in such a way as to satisfy: (a) the United States, New York and Pennsylvania, in their sole discretion, that the Retsof Stockpile and Hampton Corners Mine Rights can and will be used by an acquirer (or acquirers) as part of a viable, ongoing business engaged in the sale and distribution of bulk deicing salt in the Northeast United States; and (b) in the case of the Relevant Evaporated Salt Assets, the United States alone, in its sole discretion, that the Relevant Evaporated Salt Assets will be used as part of a viable, ongoing business engaged in the sale of food grade evaporated salt. The divestitures, whether pursuant to Section IV (B), (D) and (E) or V of the Final Judgment, shall be made (1) to an acquirer that, in the sole judgment of plaintiffs United States, New York and Pennsylvania (or in the case of the Relevant Evaporated Salt Assets, plaintiff United States's sole judgment), has the capability and intent of competing effectively, and has the managerial, operational and financial capability to compete effectively as a seller of bulk deicing or food grade salt; and (2) pursuant to agreements the terms of which shall not, in the sole judgment of plaintiffs United States, New York and Pennsylvania (or in the case of the Relevant Evaporated Salt Assets, plaintiff United States's sole

judgment), interfere with the ability of any acquirer to compete effectively.

H. Defendants Akzo (in the case of the Hampton Corners Mine Rights) and Cargill (in the case of the Retsof Stockpile, and Relevant Evaporated Salt Assets) are ordered and directed to use their best efforts to divest said assets or assign said rights, and to use their best efforts to obtain all regulatory approvals necessary for such divestitures, as expeditiously as possible. Plaintiffs United States, New York and Pennsylvania, in their sole discretion (or in the case of the Relevant Evaporated Salt Assets, the United States alone) may extend the time period for each such divestiture for two (2) additional thirty-day periods of time, not to exceed 60 calendar days in total.

I. In accomplishing the divestiture ordered by this Final Judgment, defendant Cargill promptly shall make known, by usual and customary means, the availability of the Relevant Evaporated Salt Assets. In the event of default on the Hampton Corners Mine Rights, Akzo promptly shall make known, by usual and customary means, the availability of the Hampton Corners Mine Rights. In the event of default on the Retsof Stockpile, Cargill promptly shall make known, by usual and customary means, the availability of the Retsof Stockpile.

Akzo and Cargill shall inform any person making a bona fide inquiry regarding a possible purchase that the sale is being made pursuant to the Final Judgment and provide such person with a copy of the Final Judgment. Akzo and Cargill shall make known to

any person making an inquiry which Relevant Assets are available for sale. Akzo and Cargill also shall offer to furnish to all bona fide prospective acquirers, subject to customary confidentiality assurances, all information regarding the Relevant Assets customarily provided in a due diligence process, except such information that is subject to attorney-client privilege or attorney work-product privilege. Akzo and Cargill shall make available such information to plaintiffs at the same time that such information is made available to any other person.

J. Akzo and Cargill shall permit bona fide prospective acquirers of the Relevant Evaporated Salt Assets to have access to personnel and to make such inspection of all Relevant Evaporated Salt Assets, and any and all financial, operational or other documents and information, as is customary in a due diligence process.

K. Defendants Akzo and Cargill shall not interfere with any efforts by any acquirer to interview or employ the general manager or any other employee of Akzo's Watkins Glen, New York evaporated salt plant.

L. Akzo and Cargill shall not take any action, direct or indirect (not including otherwise lawful competitive price action, expansion of capacity or similar competitive conduct), that will impede in any way the development of the Hampton Corners Mine Rights.

V. APPOINTMENT OF TRUSTEE

A. In the event that Cargill has not divested the Retsof Stockpile or the Relevant Evaporated Salt Assets, or Akzo has not

divested the Hampton Corners Mine Rights, within the applicable time period specified in Section IV above, the Court shall appoint, on application of plaintiff United States, a trustee selected by the United States to effect the divestiture of the assets.

B. After the trustee's appointment has become effective, only the trustee shall have the right to sell the assets that have not been timely divested. The trustee shall have the power and authority to accomplish the divestiture at the best price then obtainable upon a reasonable effort by the trustee, subject to the provisions of Section IV and VI of this Final Judgment, and shall have such other powers as the Court shall deem appropriate. Subject to Section VI of this Final Judgment, the trustee shall have the power and authority to hire at the cost and expense of the party that has not made the pertinent divestiture any investment bankers, attorneys or other agents reasonably necessary in the judgment of the trustee to assist in the divestiture, and such professionals or agents shall be solely accountable to the trustee. The trustee shall have the power and authority to accomplish the divestiture at the earliest possible time to a purchaser acceptable to plaintiffs United States, New York and Pennsylvania, in their sole judgment (or in the case of the Relevant Evaporated Salt Assets, the United States alone), and shall have such other powers as this Court shall deem appropriate. Defendants shall not object to the sale of any of the Relevant Assets by the trustee on any grounds other than the trustee's malfeasance. Any such objection by defendants must be conveyed in writing to plaintiffs and the trustee no later than

15 calendar days after the trustee has provided the notice required under Section VII of this Final Judgment.

C. The trustee shall serve at the cost and expense of Cargill (in the case of the Retsof Stockpile or Relevant Evaporated Salt Assets) and Akzo (in the case of the Hampton Corners Mine Rights) on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining monies shall be paid to Cargill (in the case of the Retsof Stockpile or the Relevant Evaporated Salt Assets) and Akzo (in the case of the Hampton Corners Mine Rights), and the trustee's services shall then be terminated. The compensation of such trustee and of any professionals and agents retained by the trustee shall be reasonable in light of the value of the divestiture and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished.

D. Defendants shall take no action to interfere with or impede the trustee's accomplishment of the divestiture of any assets, and shall use their best efforts to assist the trustee in accomplishing the required divestiture, including best efforts to effect all necessary regulatory approvals. Subject to a customary confidentiality agreement, the trustee shall have full and complete access to the personnel, books, records and

facilities related to the Relevant Evaporated Salt Assets, Retsof Stockpile, or Hampton Corners Mine Rights, and defendants shall develop such financial or other information as may be necessary for the divestiture of these assets. Defendants shall permit prospective acquirers of the assets to have access to personnel and to make such inspection of physical facilities and any and all financial, operational or other documents and information as may be relevant to the divestiture required by this Final Judgment.

E. After its appointment becomes effective, the trustee shall file monthly reports with Cargill (in the case of the Retsof Stockpile or the Relevant Evaporated Salt Assets), Akzo (in the case of the Hampton Corners Mine Rights), plaintiffs, and the Court, setting forth the trustee's efforts to accomplish divestiture of the assets as contemplated under this Final Judgment; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the court. Such reports shall include the name, address and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Relevant Assets, and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all efforts made to divest the Relevant Assets.

F. Within six (6) months after its appointment has become effective, if the trustee has not accomplished the divestiture required by Section IV of this Final Judgment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations, provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such reports to plaintiffs and Cargill and Akzo, which shall each have the right to be heard and to make additional recommendations. The Court shall thereafter enter such orders as it shall deem appropriate to accomplish the purpose of this Final Judgment, which shall, if necessary, include extending the term of the trustee's appointment.

VI. PRESERVATION OF ASSETS/HOLD SEPARATE

Until the divestiture of the Relevant Evaporated Salt Assets required by Section IV of the Final Judgment has been accomplished:

A. Defendants Cargill and Akzo shall take all steps necessary to operate Akzo's Watkins Glen, New York evaporated salt plant as a separate, independent, ongoing, economically viable and active competitor to defendant Cargill's other evaporated salt plants and solar salt operations in the United States, and shall take all steps necessary to ensure that, except as necessary to comply with Section IV and paragraphs B and C of

this Section of the Final Judgment, management of the Watkins Glen, New York evaporated salt plant, including the performance of decision-making functions regarding marketing and pricing, will be kept separate and apart from, and not influenced by, defendant Cargill.

B. Defendant Cargill shall use all reasonable efforts to maintain and increase sales of evaporated salt products by Akzo's Watkins Glen, New York evaporated salt plant and shall maintain at 1996 or previously approved levels for 1997, whichever are higher, promotional advertising, sales, marketing and merchandising support for salt products produced by Akzo's Watkins Glen, New York evaporated salt plant.

C. Defendants Cargill and Akzo shall take all steps necessary to ensure that the assets used in the operation of Akzo's Watkins Glen, New York plant, and managers, technical and operating and employees of that plant shall not be transferred or reassigned to any other facility, except for transfer bids initiated by employees pursuant to a defendant's regular, established job posting policies, provided that the defendant gives plaintiff United States and the acquirer ten (10) days' notice of such transfer.

D. Defendants Cargill and Akzo shall not, except as part of a divestiture approved by plaintiffs United States, New York and Pennsylvania, sell any salt from the Retsof Stockpile.

E. Defendants Cargill and Akzo shall take no action, other than lawful competitive price action, expansion of capacity, or similar competitive conduct, that may jeopardize sale or assignment of the Retsof Stockpile, Relevant Evaporated Salt

Assets, Additional Rock Salt Terminals, or Hampton Corners Mine Rights.

F. Defendants Cargill and Akzo shall appoint a person or persons to oversee the assets to be held separate and who will be responsible for each defendant's compliance with Section VI of the Final Judgment.

VII. NOTIFICATION

Within two (2) business days following execution of a binding agreement to divest, including all contemplated ancillary agreements (e.g., financing), to effect any proposed divestiture pursuant to Section IV or V of the Final Judgment, Cargill or Akzo or the trustee, whichever is then responsible for effecting the divestiture, shall notify plaintiffs of the proposed divestiture. If the trustee is responsible for effecting the divestiture, it shall similarly notify Cargill and Akzo. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered to, or expressed an interest in or a desire to, acquire any ownership interest in the Relevant Evaporated Salt Assets, together with full details of same. Within fifteen (15) calendar days of receipt by plaintiffs of such notice, plaintiffs may request from defendants, the proposed acquirer or acquirers, any other third party, or the trustee, if applicable, additional information concerning the proposed divestiture, the proposed acquirer, and any other potential acquirer. Defendants and the trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request. Within thirty (30) calendar

days after receipt of the notice or within twenty (20) calendar days after plaintiffs have been provided the additional information, whichever is later, plaintiffs United States, New York and Pennsylvania shall provide written notice to defendants and the trustee, if there is one, stating whether or not they object to the proposed divestiture. If plaintiffs United States, New York and Pennsylvania fail to object within the period specified, or if they provide written notice to defendants and the trustee, if there is one, that they do not object, then the divestiture may be consummated, subject only to a defendant's limited right to object to the sale under Section V(B) of this Final Judgment. A divestiture proposed under Section IV (A), (C) or (D) shall not be consummated if plaintiffs United States, New York or Pennsylvania object to it. A divestiture proposed under Section IV (B) shall not be consummated if plaintiff United States objects to it. Upon objection by the United States, or by Cargill or Akzo under the proviso in Section V(B), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VIII. FINANCING

Defendants are ordered and directed not to finance all or any part of any purchase by an acquirer made pursuant to Sections IV or V of this Final Judgment without the prior written consent of plaintiffs United States, New York and Pennsylvania.

IX. AFFIDAVITS

A. Within twenty (20) calendar days of the filing of this Final Judgment and every thirty (30) calendar days thereafter until the divestiture has been completed, whether pursuant to

Section IV or Section V of this Final Judgment, defendants shall deliver to plaintiffs an affidavit as to the fact and manner of defendants' compliance with Section IV or V of this Final Judgment. Each such affidavit shall include, inter alia, the name, address and telephone number of each person who, at any time after the period covered by the last such report, was contacted by defendants, or their representatives, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or made an inquiry about acquiring, any interest in the Relevant Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts that defendants have taken to solicit a buyer for the Relevant Assets.

B. Within twenty (20) calendar days of the filing of this Final Judgment, Cargill shall deliver to the United States an affidavit which describes in reasonable detail all actions defendants have taken and all steps defendants have implemented on an on-going basis to preserve the Relevant Assets pursuant to Section VI of this Final Judgment. Cargill shall deliver to plaintiffs an affidavit describing any changes to the efforts and actions outlined in their earlier affidavit(s) filed pursuant to the Section within fifteen (15) calendar days after such change is implemented.

C. Cargill and Akzo shall preserve all records of all efforts made to preserve and to divest the Relevant Assets.

X. COMPLIANCE INSPECTION

For the purpose of determining or securing compliance with the Final Judgment and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of plaintiff United States, including consultants and other persons retained by the United States, shall, upon written request of the United States Attorney General, or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants or American made to their principal offices, be permitted:

(1) Access during office hours of defendants to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of defendants, who may have counsel present, relating to any matters contained in the Final Judgment; and

(2) Subject to the reasonable convenience of defendants, and without restraint or interference from defendants, to interview directors, officers, employees and agents of defendants, who may have counsel present, regarding any such matters.

B. Upon the written request of the United States Attorney General, or of the Assistant Attorney General in charge of the Antitrust Division, made to defendants' principal offices, defendants shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in Section IX or this Section X shall be divulged by any representative of the United States to any person other than a duly authorized representative of the Executive Branch of the

United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by a defendant to plaintiffs, and such defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and such defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) calendar days' notice shall be given by plaintiffs to such defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which such defendant is not a party.

XI. RETENTION OF JURISDICTION

Jurisdiction is retained by this Court at any time for such further orders and directions as may be necessary or appropriate for the construction, implementation or modification of any provisions of this Final Judgment, for the enforcement of compliance herewith, and for the punishment of any violation hereof.

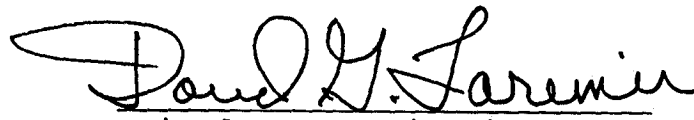
XII. TERMINATION

Unless this Court grants an extension, this Final Judgment will expire upon the tenth anniversary of the date of its entry.

XIII. PUBLIC INTEREST

Entry of this Final Judgment is in the public interest.

Dated July 22, 1997.


United States District Judge
DAVID G. LARIMER

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK
ROCHESTER DIVISION

UNITED STATES OF AMERICA,
STATE OF NEW YORK,
COMMONWEALTH OF PENNSYLVANIA and
STATE OF OHIO,

Plaintiffs,

v.

CARGILL INC.,
AKZO NOBEL, N.V.,
AKZO NOBEL, INC. and
AKZO NOBEL SALT, INC.,

Defendants.

Civil No. 97-CV-06161 L

Filed:

UNITED STATES'S CERTIFICATE OF COMPLIANCE WITH
PROVISIONS OF THE ANTITRUST PROCEDURES AND PENALTIES ACT

The United States of America hereby certifies that it has complied with provisions of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. §§ 16(b)-(h), and states:

1. The Complaint, proposed Final Judgment ("Judgment"), and Competitive Impact Statement were filed on April 21, 1997. A Revised Competitive Impact Statement was filed on May 5, 1997.

2. Pursuant to 15 U.S.C. § 16(b), the proposed Judgment and Revised Competitive Impact Statement were published in the Federal Register on May 14, 1997 (62 Fed. Reg. 26,559). A copy of the Federal Register notice is attached as Exhibit A.

3. Pursuant to 15 U.S.C. §16 (D), the United States furnished copies of the Revised Competitive Impact Statement to anyone requesting them.

4. Pursuant to 15 U.S.C. § 16(c), a summary of the terms of the proposed Judgment and revised Competitive Impact Statement were published in The Rochester Democrat & Chronicle, a newspaper of general circulation in Rochester, NY, and in The Washington Post, a newspaper of general circulation in the District of Columbia. Copies of the certificates of publication from The Rochester Chronicle & Democrat and The Washington Post are attached as Exhibit B.

5. On May 29, 1997, the defendants -- Cargill Inc., Akzo Nobel, N.V., Akzo Nobel, Inc., and Akzo Nobel Salt, Inc. -- filed with the Court a joint statement indicating that none of them had had any communications concerning the proposed Judgment reportable under 15 U.S.C. § 16(g).

6. During the 60-day comment period since publication of notice in the Federal Register, The Rochester Chronicle & Democrat and The Washington Post, the United States received a single written comment on the proposed settlement. The comment, attached as Exhibit C, was a unanimous resolution of the Schuyler County Legislature, which simply asked the United States to be aware that the Watkins Glen, NY evaporated salt plant that Cargill acquired from Akzo Nobel, and that must be divested under the decree, is a major employer in Schuyler County. Any reduction in the workforce of the evaporated salt plant, Schuyler County indicated, may have an adverse economic effect on that community.

7. The United States evaluated the comment and prepared and filed its response (Exhibit D). The response points out that the United States and Schuyler County share similar concerns. It is important to the United States that the divested plant remain economically viable. To that end, the plant will need a skilled workforce. Although a new purchaser should be free, as Akzo has been, to adjust the level of employment at the plant, the United States will not approve the sale of that facility to any person who intends to shut it down or take any other action that would render the plant an ineffective competitor. Thus, the County's concerns about continued employment do not conflict with the Court's goal that the divestiture mandated by the Judgment establish the plant as a strong, viable competitor in the production and sale of food grade evaporated salt.

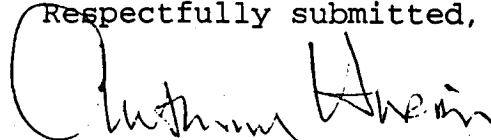
8. Pursuant to 15 U.S.C. §§ 16(b)-(h), the United States has arranged to publish in the Federal Register by July 28, 1997 a copy of Schuyler County's comment and the United States's response.

9. With these steps having been taken, the parties have satisfied their obligations under the APPA. Pursuant to the Stipulation filed on April 21, 1997, the Court may now enter the proposed Judgment, if it determines that the entry of the Judgment is in the public interest. For the reasons set forth in the Competitive Impact Statement, and in its response to the

public comment, the United States believes that the Judgment is in the public interest and that the Court therefore should enter it.

Dated: July 17, 1997.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Anthony Harris". The signature is written in dark ink and is positioned above a horizontal line.

Anthony Harris, Attorney
Department of Justice,
Antitrust Division
Suite 3000
1401 H Street, NW
Washington, DC 20530
(202) 307-6583

information requested within fifteen (15) calendar days of the receipt of the request. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after plaintiffs have been provided the additional information, whichever is later, plaintiffs United States, New York and Pennsylvania shall provide written notice to defendants and the trustee, if there is one, stating whether or not they object to the proposed divestiture. If plaintiffs United States, New York and Pennsylvania fail to object within the period specified, or if they provide written notice to defendants and the trustee, if there is one, that they do not object, then the divestiture may be consummated, subject only to a defendant's limited right to object to the sale under Section V(B) of this Final Judgment. A divestiture proposed under Section IV (A), (C) or (D) shall not be consummated if plaintiffs United States, New York or Pennsylvania object to it. A divestiture proposed under Section IV(B) shall not be consummated if plaintiff United States objects to it. Upon objection by the United States, or by Cargill or Akzo under the proviso in Section V(B), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VIII. Financing

Defendants are ordered and directed not to finance all or any part of any purchase by an acquirer made pursuant to Sections IV or V of this Final Judgment without the prior written consent of plaintiffs United States, New York and Pennsylvania.

IX. Affidavits

A. Within twenty (20) calendar days of the filing of this Final Judgment and every thirty (30) calendar days thereafter until the divestiture has been completed, whether pursuant to Section IV or Section V of this Final Judgment, defendants shall deliver to plaintiffs an affidavit as to the fact and manner of defendants' compliance with Section IV or V of this Final Judgment. Each such affidavit shall include, *inter alia*, the name, address and telephone number of each person who, at any time after the period covered by the last such report, was contacted by defendants, or their representatives, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or made an inquiry about acquiring, any interest in the Relevant Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts

that defendants have taken to solicit a buyer for the Relevant Assets.

B. Within twenty (20) calendar days of the filing of this Final Judgment Cargill shall deliver to the United States an affidavit which describes in reasonable detail all actions defendants have taken and all steps defendants have implemented on an on-going basis to preserve the Relevant Assets pursuant to Section VI of this Final Judgment. Cargill shall deliver to plaintiffs an affidavit describing any changes to the efforts and actions outlined in their earlier affidavit(s) filed pursuant to the Section within fifteen (15) calendar days after such change is implemented.

C. Cargill and Akzo shall preserve all records of all efforts made to preserve and to divest the Relevant Assets.

X. Compliance Inspection

For the purpose of determining or securing compliance with the Final Judgment and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of plaintiff United States, including consultants and other persons retained by the United States, shall, upon written request of the United States Attorney General, or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants or American made to their principal offices, be permitted:

(1) Access during office hours of defendants to inspect and copy all books, ledgers, accounts, correspondences, memoranda and other records and documents in the possession or under the control of defendants, who may have counsel present, relating to any matters contained in the Final Judgment; and

(2) Subject to the reasonable convenience of defendants, and without restraint or interference from defendants, to interview directors, officers, employees and agents of defendants, who may have counsel present, regarding any such matters.

B. Upon the written request of the United States Attorney General, or of the Assistant Attorney General in charge of the Antitrust Division, made to defendants' principal offices, defendants shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in Section IX or this Section X shall be divulged by any representative of the United States to any person other than a duly authorized representative of the Executive Branch of the United States,

except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by a defendant to plaintiffs, and such defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and such defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) calendar days' notice shall be given by plaintiffs to such defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which such defendant is not a party.

XI. Retention of Jurisdiction

Jurisdiction is retained by this Court at any time for such further orders and directions as may be necessary or appropriate for the construction, implementation or modification of any provisions of this Final Judgment, for the enforcement of compliance herewith, and for the punishment of any violation hereof.

XII. Termination

Unless this Court grants an extension, this Final Judgment will expire upon the tenth anniversary of the date of its entry.

XIII. Public Interest

Entry of this Final Judgment is in the public interest.

Dated: _____, 1997.

United States District Judge.

United States District Court Western District of New York Rochester Division

United States of America, State of New York, Commonwealth of Pennsylvania and State of Ohio, Plaintiffs, v. Cargill, Inc., Akzo Nobel, N.V., Akzo Nobel, Inc., and Akzo Nobel Salt, Inc., Defendants. Civil No. 97-CV-06161 L.

Revised Competitive Impact Statement

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. § 16(b)-(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

On April 21, 1997, the United States, the states of New York and Ohio, and

the Commonwealth of Pennsylvania filed a civil antitrust complaint, which alleges that Cargill Inc.'s acquisition of the Western Hemisphere salt assets of Akzo Nobel, N.V. ("Akzo") would violate Section 7 of the Clayton Act, 15 U.S.C. § 18. Cargill and Akzo are two of only four competitors engaged in the production and sale of rock salt for bulk deicing purposes ("rock deicing salt") in the Northeast Interior Market, an area of the United States centered around the eastern portion of Lake Erie, and which comprises the western portions of Pennsylvania and Massachusetts, upstate New York, eastern Ohio, all of Vermont, and major cities such as Buffalo and Rochester, New York, Erie, Pennsylvania, and Burlington, Vermont. Cargill and Akzo are also the second and third largest firms engaged in the production and sale of food grade evaporated salt in that part of the United States east of the Rocky Mountains.

The Complaint alleges that a combination of Cargill and Akzo would substantially lessen competition in the production and sale of rock deicing salt and food grade evaporated salt in two relevant geographic markets. The prayer for relief in the Complaint seeks: (1) A judgment that the proposed acquisition would violate Section 7 of the Clayton Act; and (2) permanent injunctions that would prevent Cargill from acquiring control of Akzo's bulk deicing and food grade evaporated salt business, or otherwise combining them with its own business in the United States.

At the same time the suit was filed, the United States, the states of New York and Ohio, and the Commonwealth of Pennsylvania also filed a proposed settlement that would permit Cargill to complete its acquisition of Akzo's Western Hemisphere salt operations, and require it to divest certain bulk deicing and evaporated salt assets in such a way as to preserve competition in these markets. This settlement consists of a Stipulation and Order and a proposed Final Judgment. Both impose obligations on American Rock Salt Company LLC ("American"), a third party that voluntarily submitted to the jurisdiction of the Court for purposes of ensuring effective relief in the rock deicing salt market.

The proposed Final Judgment orders Cargill to divest Akzo's Watkins Glen, New York evaporated salt plant and certain tangible and intangible assets that relate to that plant. It also orders Cargill and Akzo to divest a number of bulk deicing salt assets to American, a prospective new entrant in the sale of bulk deicing salt in the Northeast Interior Market. The deicing salt assets to be sold by Akzo to American include

options to develop a new rock salt mine site in Hampton Corners, New York.¹ The deicing salt assets to be sold by Cargill to American include a mammoth 872,000 ton stockpile of bulk deicing salt located in Retsof, New York; a three-year contract (with an optional fourth year) for the supply of rock deicing salt to be sold at \$10 a ton; and a number of terminals throughout the Northeast that have been used by Akzo for storage and transshipment of deicing salt. With these assets, American can immediately begin competing in the sale of rock deicing salt, while constructing its own rock salt mine in Hampton Corners, New York, now scheduled to begin full scale operations in 1999.

Cargill must complete its divestiture of the Watkins Glen evaporated salt plant and related assets within 150 days, or five days after entry of the Final Judgment, whichever is later. Cargill must complete its divestiture of the supply contract and salt terminals to American within thirty (30) days and must contract to sell the Retsof Stockpile within one hundred and twenty (120) days after filing of the Complaint. Akzo's sale of the Hampton Corners rights to American must be consummated no later than September 1, 1998.

The Stipulation and Order and proposed Final Judgment require Cargill and Akzo to ensure that, until the divestitures mandated by the proposed Final Judgment are accomplished, Akzo's Watkins Glen evaporated salt plant and related assets will be maintained and operated as a saleable and economically viable, ongoing concern, with competitively-sensitive business information and decision-making divorced from Cargill's own salt business. Cargill and Akzo will each appoint a person or persons to monitor and ensure their compliance with these requirements of the proposed Final Judgment.

The parties have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

¹ The final agreement reached between Cargill and Akzo did not include the sale of the Hampton Corners rights to Cargill; thus, Akzo is responsible for divesting these rights.

II. Description of the Events Giving Rise to the Violations Alleged in the Complaint

A. The Defendants and the Proposed Transaction

Cargill is a large, privately-held concern that, *inter alia*, mines, produces and sells bulk deicing and food grade evaporated salt throughout the United States. Cargill owns and operates a rock salt mine in South Lansing, New York that produces bulk deicing salt sold throughout the Northeast. Cargill also operates evaporated salt plants in Beaux Bridge, Louisiana; Hutchinson, Kansas; and Watkins Glen, New York that compete in the production and sale of food grade evaporated salt in states east of the Rocky Mountains. In 1996, Cargill's total sales of all types of salt exceeded \$250 million.

Akzo also mines, produces and sells bulk deicing and food grade evaporated salt throughout the United States. Akzo owns rock salt mines in Cleveland, Ohio and on Avery Island, Louisiana. It also operated a rock salt mine in Retsof, New York, until the mine flooded and was closed in 1995. Before the mine closed, however, Akzo salvaged as much rock salt as it could, creating a huge stockpile of salt on the Retsof site, from which Akzo continued to sell rock salt deicing salt to customers in the Northeast Interior Market. Akzo had plans to increase production out of its Cleveland mine and ship significantly greater quantities of rock deicing salt from there into the Northeast Interior Market, directly in competition against Cargill's South Lansing, New York mine.

Akzo owns and runs evaporated salt plants in St. Clair, Michigan; Akron, Ohio; and Watkins Glen, New York, that directly compete against Cargill in the sale of food grade evaporated salt in the area of the country east of the Rocky Mountains. In 1996, Akzo had total sales of all kinds of salt of about \$370 million.

In August 1996, Cargill agreed to acquire the Western Hemisphere salt operations of Akzo for about \$160 million. This transaction, which would combine the nation's second and third largest salt producers in already highly concentrated markets for salt, precipitated the governments' antitrust suit.

B. The Effects of the Transaction on Competition in the Sale of Bulk Rock Deicing Salt in the Northeast Interior Market

Bulk deicing salt is a medium or coarse grade of rock or solar salt purchased primarily by state and municipal government agencies for use

in deicing roads and sidewalks. Because of its unique combination of highly desirable features—low cost, general availability and superior ice and snow melting capabilities—there are no good substitutes for bulk deicing salt.

Either rock or solar salt may be used for bulk deicing purposes. As a practical matter, however, in the Northeast Interior Market, only rock salt can be economically used for bulk deicing purposes. Sources of solar salt are too far away from the Northeast Interior Market to be effective competitive factors, and solar salt itself, because of its high moisture content, will not perform well in the low winter temperatures prevalent in the Northeast. For these reasons, for bulk deicing purposes, solar salt is not a good substitute for rock salt in the Northeast Interior Market.

The Complaint alleges that, for purposes of antitrust analysis, the production and sale of rock salt for bulk deicing purposes constitutes a line of commerce, or relevant product market; and that the Northeast Interior Market, because of its distance and relative isolation from other areas, constitutes a section of the country, or relevant geographic market.

Only four firms produce and sell rock deicing salt in the Northeast Interior Market—Cargill, Akzo, Morton, and North American Salt ("NAMSCO")—and each bids on contracts to supply state and municipal governments with this critical winter safety product. Entry is time-consuming and difficult. Absent the acquisition, and despite the closure of Akzo's Retsof mine, Akzo and Cargill would have actively bid against each other for customers in the relevant market. The evidence developed in this investigation indicates that the combination of Cargill and Akzo likely would result in an increase in the amount of the price of winning bids for state salt contracts, to the detriment of consumers, even if the three remaining bidders do not actively collude or cooperatively interact.

While the proposed acquisition was pending, Akzo contracted to sell its rights to develop the Hampton Corners salt mine site to American, a prospective new entrant. The opening of a new mine by American, or any other new firm, would eliminate any anticompetitive effect in the Northeast Interior Market from Cargill's acquisition of Akzo. An analysis of this "fix", however, must recognize that American has not yet closed on its purchase of the mine development rights, and even when it does, it will not complete its development of the Hampton Corners mine until at least

1999. Until the mine is completed and opened, the effect of Cargill's acquisition of Akzo's huge Retsof Stockpile, Cleveland, Ohio rock salt mine, and Northeast rock salt terminals may be to substantially lessen competition in the production and sale of bulk deicing salt in the Northeast Interior Market.

C. The Effects of the Transaction on Competition in the Market for the Production and Sale of Food Grade Evaporated Salt East of the Rocky Mountains

Food grade evaporated salt, unlike rock or solar salt, is a highly refined product (at least 99.7% purity) that contains few contaminants such as bacteria, silica or dirt and meets high purity standards established by the Food and Drug Administration for salt intended for human consumption. One of the purest forms of salt available, food grade evaporated salt is primarily used by food makers as a spice to help preserve, or to enhance the flavor of, a very wide variety of baked, packaged, canned and frozen foods and snacks, everything from apple pie to canned zucchini.

Because of its high purity, food makers strongly prefer to use food grade evaporated salt and they will pay a significant premium for that salt before switching to any other products. There is not good substitute for food grade evaporated salt.

The Complaint alleges that, for antitrust purposes, the manufacture and sale of food grade evaporated salt constitutes a line of commerce, or relevant product market, and that the area east of the Rocky Mountains constitutes a section of the country, or relevant geographic market. The Complaint alleges that in this market, the effect of Cargill's acquisition of Akzo may be to lessen competition substantially in the manufacture and sale of food grade evaporated salt.

There are three major producers of food grade evaporated salt in the East of the Rocky Mountains Market: Cargill, Akzo and Morton. NAMSCO and United, which also produce food grade evaporated salt, do not have significant shares of the East of the Rocky Mountain Market. IMC Global, a new entrant into the production of evaporated salt, has not opened its plant, much less made significant sales of food grade salt. Moreover, it would take any new entrant, including IMC, years to build a reputation for consistent production of high purity salt, a critical requirement for successfully marketing this product to the nation's food processors.

In this highly concentrated market, a combination of Cargill and Akzo, the Complaint alleges, would likely lead to an increase in prices for food grade evaporated salt east of the Rocky Mountains, a \$200 million market. Cargill's acquisition of Akzo is likely to diminish competition by enabling the remaining competitors to engage more easily, frequently, and effectively in coordinating pricing interaction that harms customers. With the elimination of Akzo, market incumbents will no longer compete for business as aggressively since they will not have to worry about losing business to Akzo.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment would preserve competition in the sale of bulk deicing salt in the Northeast Interior Market and in the sale of food grade evaporated salt in the East of the Rockies Market. The Judgment requires that within one hundred fifty (150) days after the Complaint in this action is filed (or five days after it receives notice that the Judgment has been entered), Cargill must divest Akzo's Watkins Glen, New York evaporated salt plant and related assets to a acquirer acceptable to the United States. The Watkins Glen, New York plant has sufficient production capacity for food grade evaporated salt and, due to the high margins for food grade evaporated salt, the incentive to increase output and discipline any attempt to increase prices by Cargill and Morton, the major players in food grade evaporated salt. A Watkins Glen plant not owned by the current major food grade evaporated salt competitors would alleviate the anticompetitive concerns raised by Cargill's acquisition of Akzo's St. Clair, Michigan and Akron, Ohio plants. To ensure that the plant remains independent and viable before sold, the Judgment mandates that Cargill keep operations, pricing, and marketing for that plant separate from those of its other operations.

To preserve competition in the sale of rock salt for bulk deicing purposes in the Northeast Interior Market, the Judgment affirmatively requires that Akzo divest the Hampton Corners mine rights to American, or if American, or if American fails to secure financing and defaults, that it divest to an acquirer willing to compete by building a new mine at the Hampton Corners mine site. To preserve market competition in the interim period preceding the construction of a new mine by American or any other firm, the Judgment requires that Cargill must divest to American the Retsof, New York rock salt stockpile; a three-year

contract (with an optional fourth year) for the supply of bulk deicing salt, at \$10 a ton, from Cargill's South Lansing, New York and Akzo's Cleveland, Ohio rock salt mines; and a number of terminals or depots currently used by Akzo to store or transship bulk deicing salt to customers. If American defaults on its contract to purchase the Retsof Stockpile, Cargill must divest the Retsof Stockpile.

In the event that American defaulters on the Hampton Corners mine rights purchase, or on its Retsof Stockpile purchase, the divestiture of these assets must be made to an acquirer acceptable in the United States, New York and Pennsylvania, in their sole discretion. Until the ordered divestitures take place, defendants must take all reasonable steps necessary to accomplish the divestitures, and cooperate with any prospective acquirer. If defendants do not accomplish the ordered divestitures within the specified time periods, the proposed judgment provides procedures by which the Court shall appoint a trustee to complete the divestitures. The defendants must cooperate fully with the trustee.

If a trustee is appointed, the proposed Final Judgment provides that party initially responsible for making the divestiture will pay all costs and expenses of the trustee. The trustee's compensation will be structured so as to provide an incentive for the trustee to obtain the highest price then available for the assets to be divested, and to accomplish the divestiture as quickly as possible.

After the effective date of his or her appointment, the trustee shall serve under such other conditions as the Court may prescribe: After his or her appointment becomes effective, the trustee will file monthly reports with the parties and the Court, setting forth the trustee's efforts to accomplish the divestiture. At the end of six (6) months, if the mandated divestiture has not been accomplished, the trustee shall file promptly with the Court a report that sets forth the trustee's efforts to accomplish the divestiture, explain why the divestiture has not been accomplished, and make any recommendations. The trustee's report will be furnished to the parties and shall be filed in the public docket, except to the extent the report contains information the trustee deems confidential. To each affected party will be given the right to make additional recommendations to the Court. The Court shall enter such orders as it deems appropriate to carry out the purpose of the trust.

The relief sought in the various markets alleged in the Complaint has been tailored to ensure that purchasers of food grade evaporated salt and bulk deicing salt will not experience anticompetitive prices or other contract terms as a consequence of the proposed acquisition.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act (15 U.S.C. § 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorney's fees. Entry of the proposed Final Judgment neither will impair nor assist the bringing of any private antitrust damage action. Under the provision of Section 5(a) of the Clayton Act (15 U.S.C. § 16(a)), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against Cargill and Akzo.

V. Procedures Available for Modification of the Proposed Final Judgment

The parties have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions the entry of the decree on the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person should comment within sixty (60) days of the date of publication of this Competitive Impact Statement in the Federal Register. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. The comments and the response of the United States will be filed with the Court and published in the Federal Register.

Written comments should be submitted to: J. Robert Kramer II, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 1401 H Street, NW., Suite 3000, Washington, D.C. 20530.

The proposed Final Judgment provides that the Court retains

jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits of its Complaint against the defendants. The United States is satisfied, however, that the divestiture of the assets and other relief contained in the proposed Final Judgment will preserve viable competition in the manufacture and sale of food grade evaporated salt and bulk deicing salt in the relevant geographic markets that otherwise would be affected adversely by the acquisition. Thus, the proposed Final Judgment would achieve the relief the federal and state governments would have obtained through litigation, but avoids the time, expense and uncertainty a full trial on the merits of the governments' Complaint.

VII. Standard of Review Under the APPA for Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty (60) day comment period, after which the court shall determine whether entry of the proposed Final Judgment "is in the public interest." In making that determination, the court may consider—

(1) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16 (e) (emphasis added). As the Court of Appeals for the District of Columbia Circuit recently held, the APPA permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. See *United States v. Microsoft*, 56 F.3d 1448 (D.C. Cir 1995).

In conducting this inquiry, "the Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process." 119 Cong. Rec. 24598 (1973). Rather,

absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its response to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. Mid-America Dairymen, Inc., 1977-1 Trade Cas. (CCH) ¶61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States v. BNS, Inc.*, 858 F.2d 458, 462 (9th Cir. 1988), quoting *United States v. Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir.) cert. denied, 454 U.S. 1083 (1981); see also *Microsoft*, 56 F.3d 1448 (D.C. Cir. 1995). Precedent requires that:

the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "within the reaches of the public interest." More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree. *United States v. Bechtel*, 648 F.2d 660, 666 (9th Cir. 1981) (emphasis added)

the proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range acceptability or is 'within the reaches of public interest.'" (citations omitted). *United States v. American Tel. and Tel. Co.*, 552 F. Supp. 131, 150 (D.D.C. 1982), (aff'd sub nom., *Maryland v. United States*, 460 U.S. 1001 (1983)).

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: May 2, 1997.

Respectfully submitted,

Anthony Harris,

Attorney, Department of Justice, Antitrust Division.

Certificate of Service

I, Anthony E. Harris, hereby certify that on May 2, 1997, I caused copies of the foregoing Revised Competitive Impact Statement to be served on plaintiffs states of New York and Ohio and Commonwealth of Pennsylvania, and on defendants Cargill Inc., Akzo Nobel, N.V., Akzo Nobel, Inc., and Akzo Nobel Salt Inc., and on American Rock Salt Company, LLC, by mailing the pleading first-class, postage prepaid, to those parties as follows:

John A. Ioannou, Assistant Attorney General, Antitrust Bureau, Attorney General's Office, 120 Broadway, Suite 28-01, New York, New York 10271

Counsel for State of New York

Denise Covert Zeve, Deputy Attorney General, Antitrust Section, Office of the Attorney General, 14th Floor, Strawberry Square, Harrisburg, PA 17120

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Counsel for American Rock Salt Company, LLC

Anthony E. Harris, Esquire,

Trial Attorney.

(FR Doc. 97-12568 Filed 5-13-97; 8:45 am)

BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 C.F.R. § 50.7, please be advised that a proposed Consent Decree was lodged on March 12, 1997, in *United States v. Camden Iron & Metal, Inc., and S.P.C. Corporation*, C.A. No. 96-2972, with the United States District Court for the Eastern District of Pennsylvania ("District Court"). The proposed consent decree addresses alleged violations of the National Recycling and Emission Reduction Program, which is found in Section 608 of the Clean Air Act, 42 U.S.C. § 7671g, and the regulations promulgated thereunder at 40 C.F.R. part 82, subpart F. The alleged violations took place at the defendants' scrap metal recycling facility in Philadelphia, Pennsylvania.

A complaint filed in May of 1996 alleged that the defendants violated the Clean Air Act's National Recycling and Emission Reduction Program by failing to either (a) Evacuate all chlorofluorocarbon (CFC)-containing refrigerants from appliances prior to disposal, or (b) verify that the suppliers of the appliances had properly evacuated the CFC refrigerant prior to sending the appliances to the facility. The Complaint also alleged that the defendants violated Section 114 of the Clean Air Act by failing to provide timely and complete responses to information requests made by EPA.

Under the terms of the Consent Decree, the defendants will pay a penalty of \$125,000, and will spend \$375,000 on a supplemental environmental project (SEP). The SEP requires the defendants to work with municipalities in the Philadelphia metropolitan area to establish programs to recover CFC refrigerant from discarded and abandoned appliances, such as refrigerators and air conditioning units.

Comments regarding this settlement should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States v. Camden Iron & Metal, Inc. and S.P.C. Corp.*, DOJ Ref. # 90-5-2-1-2028. The proposed consent decree may be examined at the Office of the United States Attorney, 615 Chestnut Street, 13th Floor, Suite 1300, Philadelphia, Pennsylvania 19106 and the Region III Office of the Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. A copy of the proposed consent decree

information requested within fifteen (15) calendar days of the receipt of the request. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after plaintiffs have been provided the additional information, whichever is later, plaintiffs United States, New York and Pennsylvania shall provide written notice to defendants and the trustee, if there is one, stating whether or not they object to the proposed divestiture. If plaintiffs United States, New York and Pennsylvania fail to object within the period specified, or if they provide written notice to defendants and the trustee, if there is one, that they do not object, then the divestiture may be consummated, subject only to a defendant's limited right to object to the sale under Section V(B) of this Final Judgment. A divestiture proposed under Section IV (A), (C) or (D) shall not be consummated if plaintiffs United States, New York or Pennsylvania object to it. A divestiture proposed under Section IV(B) shall not be consummated if plaintiff United States objects to it. Upon objection by the United States, or by Cargill or Akzo under the proviso in Section V(B), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VIII. Financing

Defendants are ordered and directed not to finance all or any part of any purchase by an acquirer made pursuant to Sections IV or V of this Final Judgment without the prior written consent of plaintiffs United States, New York and Pennsylvania.

IX. Affidavits

A. Within twenty (20) calendar days of the filing of this Final Judgment and every thirty (30) calendar days thereafter until the divestiture has been completed, whether pursuant to Section IV or Section V of this Final Judgment, defendants shall deliver to plaintiffs an affidavit as to the fact and manner of defendants' compliance with Section IV or V of this Final Judgment. Each such affidavit shall include, *inter alia*, the name, address and telephone number of each person who, at any time after the period covered by the last such report, was contacted by defendants, or their representatives, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or made an inquiry about acquiring, any interest in the Relevant Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts

that defendants have taken to solicit a buyer for the Relevant Assets.

B. Within twenty (20) calendar days of the filing of this Final Judgment Cargill shall deliver to the United States an affidavit which describes in reasonable detail all actions defendants have taken and all steps defendants have implemented on an on-going basis to preserve the Relevant Assets pursuant to Section VI of this Final Judgment. Cargill shall deliver to plaintiffs an affidavit describing any changes to the efforts and actions outlined in their earlier affidavit(s) filed pursuant to the Section within fifteen (15) calendar days after such change is implemented.

C. Cargill and Akzo shall preserve all records of all efforts made to preserve and to divest the Relevant Assets.

X. Compliance Inspection

For the purpose of determining or securing compliance with the Final Judgment and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of plaintiff United States, including consultants and other persons retained by the United States, shall, upon written request of the United States Attorney General, or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants or American made to their principal offices, be permitted:

(1) Access during office hours of defendants to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of defendants, who may have counsel present, relating to any matters contained in the Final Judgment; and

(2) Subject to the reasonable convenience of defendants, and without restraint or interference from defendants, to interview directors, officers, employees and agents of defendants, who may have counsel present, regarding any such matters.

B. Upon the written request of the United States Attorney General, or of the Assistant Attorney General in charge of the Antitrust Division, made to defendants' principal offices, defendants shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in Section IX or this Section X shall be divulged by any representative of the United States to any person other than a duly authorized representative of the Executive Branch of the United States,

except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by a defendant to plaintiffs, and such defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and such defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) calendar days' notice shall be given by plaintiffs to such defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which such defendant is not a party.

XI. Retention of Jurisdiction

Jurisdiction is retained by this Court at any time for such further orders and directions as may be necessary or appropriate for the construction, implementation or modification of any provisions of this Final Judgment, for the enforcement of compliance herewith, and for the punishment of any violation hereof.

XII. Termination

Unless this Court grants an extension, this Final Judgment will expire upon the tenth anniversary of the date of its entry.

XIII. Public Interest

Entry of this Final Judgment is in the public interest.

Dated: _____, 1997.

United States District Judge.

United States District Court Western District of New York Rochester Division

United States of America, State of New York, Commonwealth of Pennsylvania and State of Ohio, Plaintiffs, v. Cargill, Inc., Akzo Nobel, N.V., Akzo Nobel, Inc., and Akzo Nobel Salt, Inc., Defendants. Civil No. 97-CV-06161 L.

Revised Competitive Impact Statement

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. § 16(b)-(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

On April 21, 1997, the United States, the states of New York and Ohio, and

EXHIBIT B

— (Newspaper Certificates of Publication)

DEPT OF JUSTICE ANTI-TRUST DIV
MS. CYNTHIA C. MORGAN
RM. 3214, 10TH & PENN. AVE. NW
WASHINGTON DC 20530

State of New York
County of Monroe
City of Rochester

LORETA PRACHEL----- being duly sworn, deposes and says
that this person is the principal clerk in the office of

Democrat & Chronicle

A daily newspaper published in the City of Rochester,
County and State aforesaid, and that a notice of which
is annexed is a printed copy, was published in the said
paper on the following dates:

TO RUN 5/9-15 (7times-dc)

Signed

Loreta Prachel

Sworn before me on 5/15/97

Eileen J. Barber
Notary Public or Commissioner of Deeds
EILEEN J. BARBER
COMMISSIONER OF DEEDS
City of Rochester, NY
Commission Expires Aug 2, 1998

This advertisement is invoiced under

P.O.
INVOICE # 649197
AD # 36207
ACCOUNT 5143544DEP
KEY CODE JTZ
And published on each of 7
insertion in class 29
and in 91 lines
for charges due and payable to
The Gannett Rochester Newspapers
in the amount of \$556.89

Copies: 1

States, and the states of New York and Ohio, and the Commonwealth of Pennsylvania filed a complaint seeking an injunction enjoining Cargill from acquiring the Western Hemisphere salt operations of Akzo Nobel ("Akzo"), or from entering into or carrying out any agreement, understanding or plan, the effect of which would be to combine the rock deicing and food grade evaporated salt businesses or assets of Cargill and Akzo. The Complaint alleges that Cargill's acquisition of the salt operations of Akzo would lessen competition substantially and tend to create a monopoly in the production and sale of rock deicing salt in the Northeast Interior Market and food grade evaporated salt in the East of the Rocky Mountains market in violation of Section 7 of the Clayton Act, 15 U.S.C. section 18. The proposed Final Judgment, filed the same day as the Complaint, requires Cargill and Akzo to divest rights to develop a rock salt mine site in Hampton Corners, New York; a huge stockpile of deicing salt; a four-year deicing salt supply contract and terminals; Akzo's Watkins Glen, New York evaporated salt plant, and certain other tangible and intangible assets.

A Revised Competitive Impact Statement filed by the United States describes the Complaint, the proposed Final Judgment, and the remedies available to private litigants.

The public is invited to comment to the Department of Justice and to the Court. Comments should be addressed to: J. Robert Kramer, II, Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW, Suite 3000, Washington, D.C. 20530 (telephone: 202/307-0924). Copies of the Complaint, the proposed Final Judgment and Revised Competitive Impact Statement are available for inspection at the U.S. Department of Justice, Antitrust Division, Suite 215 North, 325 7th Street, NW, Washington, D.C. 20004 (telephone: 202/514-2481), and at the Clerk's Office of the U.S. Court for the Western District of New York, Rochester Division, 100 State Street, Room 2120, Rochester, New York 14614. Copies of these materials may be obtained upon request and payment of a copying fee. JTZ 7x dc

Newspaper Notice

Please take notice that a proposed Final Judgment has been filed with the United States District Court for the Western District of New York, Rochester Division, in a civil antitrust case, United States and States of New York and Ohio and Commonwealth of Pennsylvania v. Cargill Inc., Akzo Nobel, N.V., Akzo Nobel Inc., and Akzo Nobel Salt, Inc., Civ. No. 97 CV 6181 L.
On April 21, 1997, the United

CERTIFICATE OF PUBLICATION

The Washington Post

The Washington Post Company hereby certifies that it is the publisher of The Washington Post; that The Washington Post is a newspaper of general circulation, published daily in the City of Washington, District of Columbia; that The Washington Post has been so published continuously for more than one year prior to the date of first publication of the notice mentioned below; that the undersigned person is the duly authorized agent of The Washington Post Company to execute this certificate on its behalf; and that a notice of which the annexed is a true copy was printed and published in said newspaper on the following dates at a cost of \$3,950.40.

Published 7 times. Dates 5/08/97 through 5/14/97
Account C0000431

THE WASHINGTON POST


By

W. David Washington
Manager, Billing and Verification

PLEASE TAKE NOTICE that a proposed Final Judgment has been filed with the United States District Court for the Western District of New York, Rochester Division, in a civil antitrust case, United States and States of New York and Ohio and Commonwealth of Pennsylvania v. Cargill Inc., Akzo Nobel, N.V., Akzo Nobel Inc. and Akzo Nobel Salt, Inc., Civ. No. 97 CV 6161 L.

On April 21, 1997, the United States, and the states of New York and Ohio, and te Commonwealth of Pennsylvania filed a complaint seeking an injunction enjoining Cargill from acquiring the Western Hemisphere salt operations of Akzo Nobel ("Akzo"), or from entering into or carrying out any agreement, understanding or plan, the effect of which would be to combine the rock deicing and food grade evaporated salt businesses or assets of Cargill and Akzo. The Complaint alleges that Cargill's acquisition of the salt operations of Akzo would lessen competition substantially and tend to create a monopoly in the production and sale of rock deicing salt in the Northeast Interior Market and food grade evaporated salt in the East of the Rocky Mountains market in violation of Section 7 of the Clayton Act, 15 U.S.C. Section 18. The proposed Final Judgment, filed the same day as the Complaint, requires Cargill and Akzo to divest rights to develop a rock salt mine site in Hampton Corners, New York; a huge stockpile of deicing salt; a four-year deicing salt supply contract and terminals; Akzo's Watkins Glen, New York evaporated salt plant, a nd certain other tangible and intangible assets.

A Revised Competitive Impact Statement filed by the United States describes the Complaint, the proposed Final Judgment, and the remedies available to private litigants.

The public is invited to comment to the Department of Justice and to the Court. Comments should be addressed to: J. Robert Kramer, II, Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, N.W., Suite 3000, Washington, D.C. 20530 (telephone: (202) 307-0924). Copies of the Complaint, the proposed Final Judgment and Revised Competitive Impact Statement are available for at the U.S. Department of Justice, Antitrust Division, Suite 215 North, 325 7th Street, N.W., Washington, D.C. 20004 (telephone: (202) 514-2481), and at the Clerk's Office of the U.S. Court for the Western District of New York, Rochester Division, 100 State Street, Room 2120, Rochester, New York 14614. Copies of these materials may be obtained upon request and payment of a copying fee.

EXHIBIT C

(Comment: May 12, 1997 Resolution of Schuyler County Legislature)

SCHUYLER COUNTY LEGISLATURE

Barbara J. Halpin
Chairman

County Office Building, Box 6
105 Ninth Street
Watkins Glen, NY 14891

Phone: (607) 535-8100

Fax: (607) 535-8109

Gail M. Willis, Clerk/Co. Auditor
Stacy B. Husted, Deputy Clerk
Robin D. Thoman, Personal Secretary



*"An Equal Opportunity -
Affirmative Action Employer"*

DISTRICT I
Angeline B. Franzese
Charles E. Young

DISTRICT II
Patricia L. Hastings
Robert E. Burnside
Ernest E. Thurston

DISTRICT III
Robert J. Fitzsimmons
Barbara J. Halpin
Sidney B. Compton

May 19, 1997

J. Robert Kramer II, Chief-Litigation II Section
Antitrust Division
United States Department of Justice
1401 H Street, NW, Suite 3000
Washington, DC 20530

RE: AUTHORIZE LETTER OF SUPPORT TO J. ROBERT KRAMER, II

Dear Mr. Kramer:

Enclosed is a certified copy of the above referenced resolution which was duly adopted by the County Legislature on the 12th day of May, 1997.

Very truly yours,

SCHUYLER COUNTY LEGISLATURE

Stacy B. Husted, Deputy Clerk

Enclosure

sbh

Resolution No. 180
SCHUYLER COUNTY LEGISLATURE

Regular Meeting
May 12, 1997

Intro. No. 13
Approved by Committee RJF
Approved by Co. Atty. [Signature]

Motion by Fitzsimmons
Seconded by Young
Vote: 6 Ayes to 0 Noes
Name of Noes _____

RE: AUTHORIZE LETTER OF SUPPORT TO J. ROBERT KRAMER, II

WHEREAS, April 21, 1997, the United States, the states of New York, Ohio, and Pennsylvania filed a Civil Antitrust complaint, a proposed Final Judgment and a Stipulation and Order between the parties of AKZO Nobel and Cargill, Inc., and

WHEREAS, the Stipulation and Order and proposed Final Judgment requires Cargill and AKZO to ensure that, until the divestitures mandated by the proposed Final Judgment are accomplished, AKZO's Watkins Glen evaporated salt plant and related assets will be maintained and operated as a saleable and economically viable ongoing concern, and

WHEREAS, both facilities are an extremely important and a vital part of our community, and,

WHEREAS, written comments may be submitted to the United States Department of Justice within 60 days of the date of publication of the Competitive Impact Statement in the Federal Register.

NOW, THEREFORE, BE IT RESOLVED that a letter be prepared to J. Robert Kramer II, Chief-Litigation II Section, Antitrust Division, United States Department of Justice, 1401 H Street, NW, Suite 3000, Washington, D.C., 20530, on behalf of our Schuyler County community simply to make the United States Department of Justice aware of the importance of the jobs provided by both of these facilities and the economic impact that any downsizing or plant closings would have on our small Schuyler County community.

STATE OF NEW YORK)
) SS:
COUNTY OF SCHUYLER)

I, Stacy Husted, Deputy Clerk to the Schuyler County Legislature, do hereby certify that the foregoing is a true and exact copy of resolution duly adopted by the County Legislature on May 12, 1997.

IN TESTIMONY WHEREOF, I have hereunto set my hand and the seal of said County Legislature at Watkins Glen, NY.

[Signature]
Deputy Clerk

5/19/97
Date

EXHIBIT D

(United States's Response to Public Comment)



U. S. Department of Justice

Antitrust Division

1401 H Street
City Center Building
Washington, DC 20530

July 17, 1997

Honorable Stacy B. Husted
Deputy Clerk
Schuyler County Legislature
County Office Building, Box 6
105 Ninth Street
Watkins Glen, New York 14891

Re: Proposed Judgment in United States, et al. v. Cargill Inc. and Akzo Nobel, NV, et al.

Dear Ms. Husted:

Thank you for your May 19 letter to Mr. Kramer, in which you enclosed a copy of the May 12, 1997 resolution adopted by the Schuyler County Legislature concerning the proposed Final Judgment in this case. The proposed Judgment, if entered by the Court, would alleviate the competitive concerns raised by Cargill's acquisition of the salt operations of Akzo Nobel. The Judgment requires Cargill and Akzo to divest certain assets related to the production and sale of bulk deicing salt. It also requires Cargill to divest the evaporated salt plant in Watkins Glen acquired from Akzo Nobel.

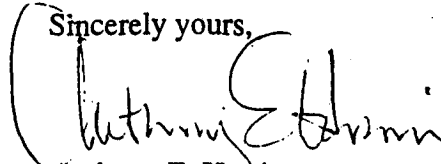
The Akzo and Cargill salt plants are the major employers in Watkins Glen, the seat of Schuyler County. In its resolution, the Schuyler County Legislature wanted to make "the Department of Justice aware of the importance of the jobs provided by both of these facilities and the economic impact that any downsizing or plant closings would have on our small Schuyler County community."

I would first note that the proposed Final Judgment does not affect the Watkins Glen salt plant owned by Cargill prior to Cargill's acquisition of Akzo Nobel. As to the Akzo plant, the Department of Justice and the Schuyler County Legislature have similar concerns. The Judgment requires Cargill to divest the former Akzo plant in such a way as to satisfy the Department of Justice that it will be used as part of a viable, ongoing business engaged in the production and sale of food grade salt (Judgment, §§ IV(B) and (G)). As such, the Akzo plant will continue to need a skilled work force. Although the purchaser of the facility will have the same right that Akzo has historically had to determine the appropriate size of its workforce, the Department of Justice would not approve the plant's purchase by a person who intends to shut the plant down or take other actions that would render the plant an ineffective competitor in the market.

Thank you for bringing your concerns to our attention. We hope that this information will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, a copy of your

letter and the Schuyler County resolution and this response will be published in the Federal Register and filed with the Court.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Anthony E. Harris". The signature is written in a cursive style with a large initial "A" and "H".

Anthony E. Harris

Attorney

Litigation II Section

CERTIFICATE OF SERVICE

I, Anthony E. Harris, hereby certify that on July 17, 1997, I caused copies of the foregoing United States's Certificate of Compliance with provisions of the Antitrust Procedures and Penalties Act on plaintiffs -- the states of New York and Ohio and the Commonwealth of Pennsylvania -- and on defendants -- Cargill Inc., Akzo Nobel, N.V., Akzo Nobel, Inc., and Akzo Nobel Salt Inc., and on American Rock Salt Company, LLC -- by mailing this pleading first-class, postage prepaid, to those parties as follows:

John A. Ioannou
Assistant Attorney General
Antitrust Bureau
Attorney General's Office
120 Broadway, Suite 26-01
New York, New York 10271

Counsel for State of New York

Deneice Covert Zeve
Deputy Attorney General
Antitrust Section
Office of the Attorney General
14th Floor, Strawberry Square
Harrisburg, PA 17120

Counsel for Commonwealth of Pennsylvania

Mitchell Gentile
Assistant Attorney General
Ohio Attorney General's Office
30 East Broad Street
16th Floor
Columbus, OH 43215

Counsel for State of Ohio

Marc G. Schildkraut, Esquire
Howrey & Simon
1299 Pennsylvania Avenue, NW
Washington, DC 20004-2402

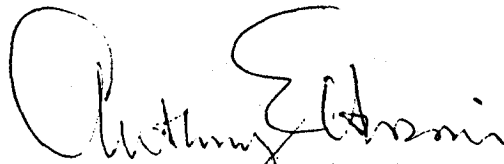
Counsel for Cargill Inc.

John W. Behan
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Dobbs Ferry, NY 10522-2222

Counsel for Akzo Nobel, N.V., Akzo Nobel Inc. and
Akzo Nobel Salt Inc.

Gunther K. Buerman, Esquire
Harris, Beach & Wilcox
130 E. Main Street
Rochester, NY 14604

Counsel for American Rock Salt Company, LLC



Anthony E. Harris, Esquire
Trial Attorney
Department of Justice
Antitrust Division
1401 H Street, NW, Suite 3000
Washington, DC 20530
(202) 307-0924