

tion or resale of such products.

It is further ordered, That the effective date of the order to cease and desist be, and it hereby is, postponed until further order of the Commission.

IN THE MATTER OF
LONE STAR CEMENT CORPORATION

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 7
OF THE CLAYTON ACT

Docket 8585. Complaint, July 15, 1963—Decision, Jan. 19, 1965

Consent order requiring one of the Nation's three largest producers of portland cement, an essential ingredient of ready-mixed concrete, to divest itself absolutely within one year of 25 of the 31 ready-mixed concrete plants in the States of Virginia, Florida, and Washington which it acquired as a result of its acquisitions of Pioneer Sand and Gravel Co. in December 1959, and Southern Materials Co., Inc., in August 1962; and requiring respondent for a period of 3 years from the date of divestiture of each of the ready-mixed concrete plants, make available to purchasers of plants a quantity of mineral aggregates for use in the manufacture of ready-mixed concrete equivalent to the quantity consumed by each plant in the calendar year 1963, at prevailing market prices, terms and conditions; and requiring respondent to refrain from acquiring any other ready-mixed concrete plants in the States of Virginia, Florida and Washington for 2 years or until the issuance by the Federal Trade Commission of a trade regulation rule or report concerning mergers or acquisitions in the cement industry.

COMPLAINT

The Federal Trade Commission has reason to believe that the above-named respondent has acquired the assets and stock of other corporations in violation of Section 7 of the Clayton Act (U.S.C., Title 15, Section 18), as amended; and, therefore, pursuant to Sec-

tion 11 of said Act, it issues this complaint, stating its charges in that respect as follows:

PARAGRAPH 1. (A) Lone Star Cement Corporation, respondent herein, is a corporation organized and existing under the laws of the State of Maine, with its principal office located at 100 Park Avenue, New York 17, New York.

(B) Respondent, including its subsidiaries (Lone Star), is and for many years has been engaged in the business of manufacturing and selling portland cement, one of the two lines of commerce relevant herein.

(C) In the course and conduct of its business, Lone Star was engaged in commerce (as commerce is defined in the Clayton Act, as amended), having sold and shipped portland cement, or having caused it to be sold and shipped, from the state in which it was manufactured to purchasers located in other states.

PAR. 2. (A) For many years prior to and until about December 1, 1959, Pioneer Sand and Gravel Company (Pioneer) was a corporation organized and existing under the laws of the State of Washington, with its principal office located at 901 Fairview Avenue North, Seattle 11, Washington.

(B) Pioneer was engaged in the business of manufacturing and selling ready-mixed concrete, the other line of commerce relevant herein. In addition, Pioneer produced sand and gravel for its use in the manufacture of ready-mixed concrete as well as for sale. It was also engaged in the business of selling other building materials.

(C) In the course and conduct of its business, Pioneer was engaged in commerce (as commerce is defined in the Clayton Act, as amended), having sold or shipped some of its products other than ready-mixed concrete, or having caused them to be sold and shipped, from the State of Washington to purchasers located in territories or other states.

(D) On or about December 1, 1959, respondent acquired Pioneer by purchasing all of its outstanding capital stock, paying therefor the sum of approximately \$3,920,000.

PAR. 3. (A) For many years prior to and until about August 15, 1962, Southern Materials Company, Incorporated, was a corporation organized and existing under the laws of the Commonwealth of Virginia, with its principal office located at 2125 Kimball Terrace, Norfolk, Virginia.

(B) Southern Materials Company, Incorporated, including its subsidiaries (Southern Materials), was engaged in the business of manufacturing and selling ready-mixed concrete. It was also engaged in the business of manufacturing and selling concrete products. In

addition, Southern Materials produced sand and gravel for its use in the manufacture of ready-mixed concrete and concrete products as well as for sale.

(C) In the course and conduct of its business, Southern Materials was engaged in commerce (as commerce is defined in the Clayton Act, as amended), having sold or shipped some of its products, or having caused them to be sold or shipped, from the state in which they were produced or manufactured to customers located in other states.

(D) On or about August 15, 1962, respondent acquired Southern Materials by exchanging for all of its assets about 751,842 shares of respondent's common stock, which stock was then selling for approximately \$19 per share. Respondent caused such assets to be transferred to a new wholly owned subsidiary, Southern Materials Incorporated of Norfolk.

PAR. 4. (A) Ninety-five percent, more or less, of all cement produced in the United States is portland cement. Portland cement is an essential ingredient in the manufacture of ready-mixed concrete and concrete products.

(B) Ready-mixed concrete is so called because it is mixed either fully or partially at a central plant and then delivered by mixer trucks to the job site ready to pour. Except for occasional highway and other large construction projects, substantially all concrete poured for construction purposes is ready-mixed concrete. In many geographic areas, ready-mixed concrete producers account for more than fifty percent of all portland cement consumed.

(C) Some manufacturers of ready-mixed concrete, such as Southern Materials, are also engaged in the manufacture of concrete products, for example, concrete block or pipe. Producers of concrete products, in some sections of the country, purchase as much as ten to twenty percent, more or less, of all portland cement sold therein.

PAR. 5. Four sections of the country are relevant herein, namely, the Seattle Area, with respect to respondent's acquisition of Pioneer, and the Norfolk, Richmond, and Jacksonville Areas, with respect to respondent's acquisition of Southern Materials.

A general description of each of these areas is as follows:

The Seattle Area is located in the State of Washington, and is comprised of the city of Seattle and its metropolitan area, which is situated in the counties of King and Snohomish.

The Norfolk Area is located in the Commonwealth of Virginia and, at the time of the acquisition of Southern Materials, was comprised of the independent cities of Norfolk, Newport News, Hampton, Portsmouth, Williamsburg, Suffolk, South Norfolk and Virginia

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Beach, and of the counties of James City, Nansemond, Norfolk, Princess Anne and York.

The Richmond Area is located in the Commonwealth of Virginia, and is comprised of the independent cities of Richmond, Petersburg, Hopewell, and Colonial Heights, and of the counties of Chesterfield, Dinwiddie, Henrico, Hanover, and Prince George.

The Jacksonville Area is located in the State of Florida, and is comprised of the county of Duval.

PAR. 6. (A) Lone Star is one of the three largest producers and sellers of portland cement in the United States. It has twenty cement manufacturing plants, five located in South America and fifteen in this country. The domestic plants of respondent are located in New York, Pennsylvania, Virginia, Alabama, Louisiana, Texas, Indiana, Kansas and Washington.

(B) For calendar years 1957 through 1961, the sales and net income of respondent and its domestic subsidiaries, and their assets, stated in millions of dollars, were approximately as follows:

Year	Sales	Income	Assets
1961.....	\$98.9	\$12.9	\$173.3
1960.....	97.8	11.8	169.5
1959.....	104.3	14.2	169.0
1958.....	97.2	13.7	*171.6
1957.....	87.3	13.8	*177.2

*Includes foreign subsidiaries.

PAR. 7. (A) Lone Star, at all times mentioned herein, was a principal supplier of portland cement, in competition with other firms, to the Seattle Area from mills located in Seattle and Concrete, Washington. At the time of the acquisition of Pioneer, one of respondent's competitors in the Seattle Area was integrated with a ready-mixed concrete producer located in this Area who was one of the leading consumers of portland cement therein.

(B)(1) In the Seattle Area, prior to and at the time it was acquired, Pioneer operated four ready-mixed concrete plants and, in competition with other firms, it was the largest supplier of ready-mixed concrete, selling substantially all of its production in this Area. Pioneer was also one of the largest purchasers of portland cement in the Seattle Area.

(B)(2) Pioneer's total sales, its sales of ready-mixed concrete, and its net income for calendar years 1958 and 1959, and its assets

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as of the time of its acquisition on December 1, 1959, were approximately as follows:

	Total sales	Ready-mixed concrete sales	Net income	Assets
1958-----	\$6, 109, 269	\$3, 196, 736	\$238, 176	-----
1959-----	5, 904, 559	2, 756, 138	201, 342	\$3, 982, 141

PAR. 8. (A) At all times mentioned herein, Lone Star, in competition with one or more other cement producers, was the principal supplier of portland cement to the Norfolk and Richmond Areas from plants located in South Norfolk and near Roanoke, Virginia. Lone Star also supplied portland cement to the Jacksonville Area from its plants located in Alabama.

None of respondent's competitors in the Norfolk, Richmond, or Jacksonville Areas, at the time of the acquisition of Southern Materials, was integrated with any manufacturer of ready-mixed concrete or concrete products located in any of these sections of the country.

(B)(1) Prior to and at the time it was acquired, Southern Materials operated twenty-seven ready-mixed concrete plants, twenty of which were located in Virginia, principally in the Norfolk and Richmond Areas, and seven of which were located in the Jacksonville Area. Southern Materials, in competition with other firms in each of these Areas, was the largest supplier of ready-mixed concrete, selling substantially all of its production in such Areas. Southern Materials was also the largest purchaser of portland cement in the Norfolk, Richmond, and Jacksonville Areas.

(B)(2) Southern Materials' sales, net income and assets for fiscal years beginning June 1, 1959, and ending May 31, 1962, stated in millions of dollars, were approximately as follows:

Year	Sales	Income	Assets
1962-----	\$26. 7	\$1. 5	\$16. 7
1961-----	19. 7	1. 0	15. 7
1960-----	19. 2	1. 1	14. 4
1959-----	16. 1	1. 1	11. 4

Ready-mixed concrete, in the fiscal year ending in 1960, accounted for more than 60% of Southern Materials' gross sales.

PAR. 9. In the following ways, among others, the effect of respondent's acquisitions of Pioneer and Southern Materials may be substantially to lessen competition or tend to create a monopoly in either the manufacture and sale of portland cement or in the manufacture and sale of ready-mixed concrete, or in both of these lines of commerce, in the Seattle Area, as a result of the acquisition of Pioneer, and in the Norfolk Area, or the Richmond Area, or the Jacksonville Area, or in all of these sections of the country, as a result of the acquisition of Southern Materials:

(1) Present and future competitors of respondent, both actual and potential, have been and may be precluded from selling portland cement to a substantial consumer;

(2) Present and future competitors of respondent, both actual and potential, have been or may be foreclosed from, and respondent has been or may be assured of, a substantial share of the market for portland cement;

(3) The entry of new sellers of portland cement may be inhibited or prevented;

(4) The competitive position of respondent in the sale of portland cement has been substantially enhanced;

(5) Further integration of suppliers and consumers of portland cement may result, in that competitors of respondent in the manufacture and sale of portland cement have been or may be encouraged, or feel a necessity, to merge or otherwise become affiliated with manufacturers of ready-mixed concrete, or of concrete products, or both; and competitors of respondent in the manufacture and sale of ready-mixed concrete, and of concrete products, may have been or may be encouraged, or feel a necessity, to merge or otherwise become affiliated with manufacturers of portland cement.

(6) As an integrated manufacturer and seller of portland cement, ready-mixed concrete, and concrete products, respondent has achieved or may achieve a decisive competitive advantage over its competitors which are engaged only in the manufacture and sale of portland cement, of ready-mixed concrete, or of concrete products; and

(7) The entry of new sellers of ready-mixed concrete or concrete products may be inhibited or prevented.

PAR. 10. Prior to its acquisition of Pioneer and Southern Materials, respondent had, it now has, and, after the divestiture of Pioneer and Southern Materials which is sought in this proceeding, it will continue to have, such a significant competitive position in the sale of portland cement in the Seattle, Richmond, Norfolk, and Jacksonville

Areas, and in every other section of the country in which Lone Star is engaged in the sale of portland cement, that the effect of any acquisition by it of any of the stock or assets of any corporation engaged in commerce, and engaged in the sale of ready-mixed concrete, or of concrete products, in any of these sections of the country, may be substantially to lessen competition or tend to create a monopoly as alleged in Paragraph Nine.

PAR. 11. The acquisition of Pioneer and of Southern Materials each constitutes a violation by respondent of Section 7 of the Clayton Act (U.S.C. Title 15, Section 18), as amended.

DECISION AND ORDER

On July 15, 1963, the Commission issued complaint in the above-captioned proceeding. Subsequently, complaint counsel and respondent executed an agreement containing a consent order, and on December 18, 1964, the hearing examiner certified this agreement to the Commission.

It appears that, in the circumstances, the agreement affords an adequate basis for disposition of this proceeding, the order contained in the agreement should be accepted, and the Commission itself should initially decide this matter and forthwith issue its decision and order. Accordingly, the agreement is hereby accepted, the following jurisdictional findings are made, and the following order is entered:

1. Respondent is a corporation organized, existing and doing business under the laws of the State of Maine with its office and principal place of business located at 100 Park Avenue, New York, New York.
2. The Federal Trade Commission has jurisdiction over the subject-matter of this proceeding and the respondent.

ORDER

It is ordered, That respondent, Lone Star Cement Corporation, and its subsidiaries, affiliates, officers, directors, agents, representatives, employees, successors and assigns, shall, within one (1) year from the date of service of this Order, divest, absolutely and in good faith, and to a purchaser or purchasers approved by the Federal Trade Commission, the following ready-mixed concrete plants acquired by respondent as a result of the acquisition of Southern Materials Company, Incorporated, and Pioneer Sand & Gravel Company, Incorporated, together with the land on which they are located (except as provided in the notes herein) and all machinery or equipment

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thereon presently being used in the manufacture and sale of ready-mixed concrete, including such ready-mixed concrete mixer trucks as are necessary to establish such purchaser or purchasers as effective competitors in the manufacture and sale of ready-mixed concrete.

Norfolk Area

Little Creek
Hampton Blvd. ("Grain Elevator")¹
Virginia Beach
Euclid
Crawford St. (Portsmouth)²
Virginia Avenue
Hampton³
Williamsburg
Oyster Point
Wise Point
Lee Hall (Newport News)⁴

Richmond Area

Acca
South Richmond
Ashland
Bellwood⁵
Hopewell⁶

¹ At this location respondent may sell or, at its option, lease or sublease the land on which the ready-mixed concrete plant, machinery and equipment to be divested are situated, or may, at its option, sell the plant, machinery and equipment for removal.

² At this location the ready-mixed concrete plant to be divested consists of cement bins and truck repair shop, with related minor equipment. At such location respondent shall sell the cement bins and may sell or, at its option, lease or sublease the portion of the land on which such bins and truck repair shop are situated for a minimum term of ten (10) years, subject to earlier termination if respondent loses the right to occupy such portion of the land under its month-to-month lease from the owner thereof.

³ At this location the ready-mixed concrete plant to be divested consists of cement bins and truck repair shop, with related minor equipment. At such location respondent shall sell the cement bins and may sell or, at its option, lease or sublease the portion of the land on which such bins and truck repair shop are situated for a minimum term of ten (10) years.

⁴ At this location the ready-mixed concrete plant to be divested consists of cement bins. Respondent shall sell the cement bins and may sell or, at its option, lease for a minimum term of ten (10) years a portion of the land on the edge of the present property, which portion shall be sufficient to permit efficient operation of such plant.

⁵ At this location respondent may sell or, at its option, lease for a minimum term of ten (10) years the portion of respondent's land on which the ready-mixed concrete plant is situated.

⁶ At this location the ready-mixed concrete plant to be divested consists of a cement bin. Respondent shall sell such bin and may sell or, at its option, lease the portion of respondent's land on which it is situated for a minimum term of ten (10) years.

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Jacksonville Area

West (Edgewood)

Hap

Cecil Field

McClenny

Bowden

Beach (Mayport)

Seattle Area

Canal St.

Northlake⁷

Kent

Respondent shall begin to make good faith efforts to divest the aforesaid ready-mixed concrete plants promptly after the date of service of this Order and shall continue such efforts to the end that the divestiture thereof shall be effected within the aforesaid period of one (1) year. If divestiture of all of said ready-mixed concrete plants, or any of them, shall not have been accomplished within the specified one (1) year period, or any extension thereof, the Commission will give respondent notice and an opportunity to be heard before the Commission issues any further order or orders which the Commission may deem appropriate.

It is further ordered, That, in said divestiture respondent shall not sell or transfer, directly or indirectly, any of the aforesaid assets to any corporation, or to anyone who is at the time of divestiture an officer, director, employee or agent of a corporation, engaged in the production and sale of portland cement or the principal business of which is the distribution of portland cement, or to any corporation or person controlled by one of the foregoing corporations or persons, or to any person who is an officer, director, employee or agent of, or under the control or direction of, Lone Star Cement Corporation or any of its subsidiaries or affiliates, or who owns or controls, directly or indirectly, more than one (1) percent of the outstanding shares of common stock of Lone Star Cement Corporation.

It is further ordered, That, pending divestiture, respondent shall not make any changes in any of the assets to be divested which shall

⁷ At this location the ready-mixed concrete plant to be divested consists of a central mixer and related minor equipment. Respondent shall sell the central mixer and related minor equipment and may sell or, at its option, lease for a minimum term of ten (10) years the portion of the land on which the central mixer and related equipment are situated.

impair their present capacity for the manufacture, sale and distribution of ready-mixed concrete, or their market value.

It is further ordered, That, for a period of three (3) years from the date of divestiture of each of the aforesaid ready-mixed concrete plants, respondent shall, in each calendar year, make available and affirmatively offer, to the purchaser or purchasers of said ready-mixed concrete plants, in good faith, and at prices, terms, and conditions and from locations then currently offered by respondent to competing purchasers in the relevant areas, a quantity of mineral aggregates, for the use of such purchaser or purchasers in the manufacture of ready-mixed concrete at each said ready-mixed concrete plant, equivalent to the quantity consumed by each such ready-mixed concrete plant in the calendar year 1963.

It is further ordered, That respondent shall not supply, in any calendar year, in any of the following areas, to the purchaser or purchasers of the aforesaid ready-mixed concrete plants for consumption in said plants in the manufacture of ready-mixed concrete, more than thirty-five percent (35%) of the portland cement consumed, in the aggregate, by all of the divested ready-mixed concrete plants in each such area:

Norfolk,
Richmond,
Jacksonville, and
Seattle,

Provided, however, That:

(i) The foregoing limitation shall not apply to sales of portland cement to any of said ready-mixed concrete plants following the expiration of three years from the date of divestiture of each such plant; and

(ii) Sales of portland cement to any of said ready-mixed concrete plants as a result of the specification by a customer of said plant, in an oral or written agreement with the operator of said plant, requiring the purchase of respondent's cement shall not be taken into consideration in computing the amount of cement supplied or consumed in accordance with this paragraph.

It is further ordered, That, for a period of three (3) years from the date of service of this Order, respondent shall not sell or distribute ready-mixed concrete in the Norfolk, Richmond, Jacksonville, or Seattle Areas except from locations at which respondent presently operates plants: *Provided*, That the above limitation shall not apply to ready-mixed concrete produced by any temporary plant established for the purpose of supplying concrete to a single project

which requires from respondent at least 15,000 cubic yards of concrete. For the purpose of the foregoing proviso a single project shall include, without limitation, projects such as a shopping center, housing development, apartment house, school, factory, bridge or a highway section.

It is further ordered, That, for a period of two (2) years from the date of service of this Order, or until the issuance or announcement by the Federal Trade Commission of a trade regulation rule or report concerning mergers or acquisitions in the cement industry, if such event occurs prior to the expiration of such two-year period, respondent shall cease and desist from acquiring, directly, or indirectly, through subsidiaries or otherwise, any part of the share capital or assets of any corporation engaged in the manufacture or sale of ready-mixed concrete or concrete products in the States of Virginia, Florida and Washington.

It is further ordered, That respondent shall, within sixty (60) days after the date of service of this Order, and every sixty (60) days thereafter until respondent has fully complied with the provisions of this Order, submit in writing to the Federal Trade Commission a report setting forth in detail the manner and form in which respondent intends to comply, is complying or has complied with this Order. All compliance reports shall include, among other things that are from time to time required, a summary of all contacts and negotiations with potential purchasers of the specified ready-mixed concrete plants, the identity of all such potential purchasers, and copies of all written communications to and from such potential purchasers.

IN THE MATTER OF

MAURICE COAT & SUIT MFG. CO., INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION, THE FUR PRODUCTS LABELING, AND THE
WOOL PRODUCTS LABELING ACTS