

Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist contained herein.

IN THE MATTER OF

HOLDERBANK FINANCIERE GLARIS S.A., ET AL.

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

Docket C-2375. Complaint, April 4, 1973—Decision, April 4, 1973.

Consent order requiring a holding company with its principal office in Holderbank, Canton of Aargau, Switzerland, and its subsidiary headquartered in Montreal, Canada, among other things to divest itself of an acquired portland cement producer; approving a proposal to sell the acquired company to an individual “as one acceptable but not exclusive method” of compliance with the divestiture provision; and dismissing the complaint as to one of the respondents.

COMPLAINT

The Federal Trade Commission, having reason to believe that the above-named respondents have violated the provisions of Section 7 of the Clayton Act, as amended (U.S.C. Title 15, Section 18) and Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. Section 45), and that a proceeding with respect thereto would be in the public interest, hereby issues its complaint pursuant to Section 11 of the Clayton Act, as amended (U.S.C. Title 15, Section 21) and Section 5 of the Federal Trade Commission Act (15 U.S.C. Section 45) stating its charges as follows:

I. DEFINITIONS

1. For the purpose of this complaint the following definitions shall apply:

(a) "Portland cement" includes Type I through V of portland cement as specified by the American Society for Testing Materials. Neither masonry nor white cement is included.

(b) "Detroit area" consists of the counties of Macomb, Oakland and Wayne, Michigan.

II. HOLDERBANK FINANCIERE GLARIS S.A.

2. Holderbank Financiere Glaris S.A. (hereafter "Holderbank"), was incorporated in the Canton of Glaris, Switzerland on August 4, 1930. It is a holding company organized and existing under the laws of Switzerland and has its principal office located in the town of Holderbank, Canton of Aargau, Switzerland.

3. Holderbank is principally engaged in the manufacture, sale and distribution of cement throughout the free world, with manufacturing plants located in Switzerland, Germany, Austria, France, Belgium, Netherlands, Lebanon, South Africa, Mexico, Costa Rica, Columbia, Brazil, Peru, Australia, Canada and the United States.

4. The Holderbank group has a total worldwide annual cement production capacity in excess of 90 million barrels, is a major supplier of portland cement in Holland, Italy and Lebanon, is a leading marketer of portland cement in France, Greece, the Belgian Congo, Brazil, Sudan, South Africa, Mexico, Costa Rica, Canada and the United States, and accounts for approximately 50 percent of the cement production in Switzerland and Belgium. The Holderbank group had net sales of S Fr. 1,202,603,000, net earnings of S Fr. 97,434,000 and total assets of S Fr. 2,680,696,000 in 1970.

5. Holderbank maintains a technical center in Switzerland where scientists, chemists and engineers conduct research on the technological aspects of cement and concrete. Information supplied by all cement producing plants is collected and made available to all members of the Holderbank group and in turn, such research information is disseminated to the operating companies to further increase the quality of cement and efficiency of operation.

6. The first entry of Holderbank into North America was made in 1953 when a portland cement plant was built at Villeneuve, Canada, near Quebec City. A subsequent plant was built in 1956 at Clarkson, near Toronto, on the shores of Lake Ontario. These plants operate under the name St. Lawrence Cement Co.

7. Holderbank, through stock ownership and through interlocking directors, maintains working control of both St. Lawrence Cement Co. and Dundee Cement Company, which companies are further described hereinafter.

8. At all times relevant herein, Holderbank, through its subsidiaries St. Lawrence Cement Co. and Dundee Cement Company, was a corporation engaged in commerce, as "commerce" is defined in the Clayton Act and the Federal Trade Commission Act.

III. ST. LAWRENCE CEMENT CO.

9. St. Lawrence Cement Co. (hereafter "St. Lawrence"), is a corporation organized and existing under the laws of the province of Quebec, Canada, with its principal office located at 50 Place Cremazie West, Suite 1024, Montreal 351 P.Q., Canada. Holderbank is by far the largest stockholder in St. Lawrence and maintains working control of the company through its ownership of 49.745 percent of the voting stock, through common directors, and by the transfer of executive personnel between the two companies.

10. St. Lawrence is principally engaged in the manufacture, sale and distribution of portland cement. From its 3,000,000 barrel capacity plant at Villeneuve, Quebec and its 6,000,000 barrel plant at Mississauga, Ontario, Canada (Clarkson), it distributes portland cement in the Canadian provinces of Nova Scotia, New Brunswick, Prince Edward Island, Quebec and Ontario, and in the United States in the States of New York, Michigan, Maine, Vermont and Massachusetts. St. Lawrence is also engaged in the production, sale and distribution in Canada of building materials, including ready mixed concrete, asphalt, crushed stone, sand, concrete block and prestressed concrete, as well as the construction of roads and industrial paving.

11. In 1970 St. Lawrence had net sales of \$49,384,709 (Canadian), net earnings of \$1,870,622 (Canadian), and assets as of December 31, 1970 of \$81,447,495 (Canadian).

12. At all times relevant herein, St. Lawrence was engaged in selling and shipping portland cement in interstate commerce and was a corporation engaged in commerce, as "commerce" is defined in the Clayton Act and the Federal Trade Commission Act.

IV. DUNDEE CEMENT COMPANY

13. Dundee Cement Company (hereafter "Dundee") is a corporation organized and existing under the laws of the State of Delaware, with its principal office located at Dundee, Michigan.

14. Dundee is principally engaged in the manufacture, sale and distribution of portland cement from plants located at Dundee, Michigan and Clarksville, Missouri under the brand name "Dundee." The capacities of these plants to produce portland cement are 4,500,000 and 6,800,000 barrels, respectively.

15. Dundee's Clarksville plant has access to water and rail transportation, and its Dundee plant has access to rail transportation. From these plants, Dundee, primarily by means of an extensive fleet of large (7,500 barrel capacity) water borne hopper barges, ships portland cement to fifteen (15) distribution terminals located throughout the central United States. Dundee portland cement is distributed from the Alleghenies to the Rockies and from the Great Lakes to the Gulf of Mexico.

16. For the fiscal year ended March 31, 1971 Dundee had net sales of approximately \$30,000,000, and assets of over \$80,000,000.

17. Dundee is a subsidiary of, and controlled by, Holderbank, which holds 54.18 percent of its voting stock. As with St. Lawrence, common directors are on the boards of directors of Holderbank and Dundee and key executive personnel are transferred between the companies. Dundee's present chairman was also the first chairman of St. Lawrence. The plans for the construction of the first Dundee cement plant at Dundee, Michigan, were made following the building of the second St. Lawrence cement plant in 1956. The equity capital for the venture was supplied by Holderbank and its principals.

18. The Detroit area is one of the principal markets for portland cement manufactured at Dundee's Michigan plant. In 1970 the Michigan plant produced approximately 5,000,000 barrels of portland cement, of which nearly 700,000 barrels were shipped to customers in the Detroit area, making Dundee the fourth leading portland cement supplier to the Detroit area during 1970.

19. At all times relevant herein, Dundee was engaged in selling and shipping portland cement in interstate commerce and was a corporation engaged in commerce, as "commerce" is defined in the Clayton Act and the Federal Trade Commission Act.

V. BASF WYANDOTTE CORPORATION

20. BASF Wyandotte Corporation (hereafter "Wyandotte") is the wholly-owned subsidiary of one of the world's largest chemical companies, the West German firm, Badische Anilin - & Soda-Fabrik A. G. (hereafter "BASF"). BASF acquired control of the Wyandotte Chemicals Corporation in the fall of 1969, but the

firm continued to operate under the name Wyandotte until December 31, 1970, when the name was officially changed to BASF Wyandotte.

21. Wyandotte was primarily a producer of chemicals and operated several divisions which produced inorganic chemicals, organic chemicals, urethane chemicals, cleaning and sanitizing chemicals for commercial, industrial and institutional uses, products for the dry cleaning industry, protective coatings for electric public utilities, as well as portland cement. Wyandotte also had affiliated companies in Europe and Latin America which sold and distributed chemical products in those areas.

22. In 1969, Wyandotte had net sales of \$153,129,570 and net earnings of \$510,147, and its total assets as of December 31, 1969, were \$155,474,961.

23. Wyandotte's Cement Division was principally engaged in the manufacture, sale and distribution of portland cement. The company first entered the portland cement business in 1899.

24. In March 1970, Wyandotte's Cement Division discontinued to operate the kilns of its 1,500,000 barrel capacity plant at Wyandotte, Michigan, but continued to produce portland cement by purchasing raw clinker from St. Lawrence's Mississauga, Ontario plant. The division continued to sell and distribute portland cement under the Wyandotte brand name in the States of Michigan, Ohio and Indiana.

25. In 1970, Wyandotte's Cement Division purchased 240,000 tons of clinker from St. Lawrence (1 ton clinker = 5.3 barrels of cement) and produced 1,104,000 barrels of portland cement valued at \$3,488,640.

26. The Detroit area is the principal market for the portland cement processed at the Wyandotte plant. In 1970, Wyandotte shipped 881,660 barrels of portland cement to customers in the Detroit area. In 1970 Wyandotte was the third leading portland cement supplier to the Detroit area.

27. At all times relevant herein, BASF Wyandotte was engaged in selling and shipping portland cement in interstate commerce and was a corporation engaged in commerce, as "commerce" is defined in the Clayton Act and the Federal Trade Commission Act.

VI. THE ACQUISITION

28. On November 24, 1970, St. Lawrence organized Wyandotte Cement Incorporated (hereafter "Cement") under the laws of

the State of Michigan. On January 16, 1971, St. Lawrence entered into an agreement with Wyandotte whereby St. Lawrence acquired all the portland cement producing facilities of Wyandotte, including kilns, together with a 99 year lease on the property on which the facilities were located. The total consideration paid for these facilities was \$1,400,000. All facilities and the lease were assigned to Cement.

VII. NATURE OF TRADE AND COMMERCE

29. The portland cement industry in the United States is substantial. In 1970 there were about 50 portland cement companies in the United States operating approximately 182 plants. Total shipments of portland cement in 1970 amounted to approximately 390 million barrels valued at about \$1,298,235,000.

30. The cement industry in the United States is concentrated. In 1967 the top four firms held 28 percent of the market and the top eight firms 48 percent of the market.

31. Portland cement manufacturers sell their portland cement to consumers such as ready mixed concrete companies, concrete products manufacturers, contractors and building materials dealers. On a national basis about 60 percent of all portland cement is shipped to firms engaged in the production and sale of ready mixed concrete.

32. Historically there have been a number of mergers and acquisitions in the portland cement industry. Each horizontal merger in the portland cement industry results in a lessening of competition in the industry as a whole, particularly if there was actual competition between the two merging firms in the same geographic market. Each such merger additionally reduces the number of suppliers available to customers for portland cement.

33. There are no cement companies serving the entire United States, but the larger companies, through a network of geographically scattered plants, cover major portions of the country. The effective marketing area of a cement plant is geographically limited by high shipping costs in relation to product value. Markets for portland cement are therefore primarily local or regional rather than national in scope, and production plants are widely scattered to serve the available markets.

34. Prior to the acquisition, Dundee and Wyandotte competed with each other and six other firms in the sale of portland cement in the Detroit metropolitan area and the States of Michigan, Ohio and Indiana. The Detroit area is a relevant geographic market area in which to assess the competitive consequences of this acquisition. The top four firms in 1970, which included

Wyandotte and Dundee, accounted for over 73 percent of the Detroit area market.

35. All of these firms, except Wyandotte, were multiplant producers of portland cement. Wyandotte was the last independent, single-plant cement producer in the relevant geographic area.

36. Of the total unit sales of portland cement in the Detroit market area in 1970, Holderbank, through its Dundee subsidiary, with approximately 10 percent of the market, accounted for the fourth largest share; Wyandotte, with approximately 14 percent of the market, accounted for the third largest share. Now, as a result of the instant acquisition by St. Lawrence, Holderbank, through its subsidiaries, accounts for approximately 24 percent of the relevant market, making it the second largest supplier of portland cement to the Detroit market.

VIII. EFFECTS OF THE ACQUISITION

37. The effect of Holderbank's acquisition, through its St. Lawrence and Cement subsidiaries, of the cement producing assets of Wyandotte, as above alleged, may be substantially to lessen competition or to tend to create a monopoly in the manufacture and sale of portland cement in the relevant Detroit geographic area in the following ways, among others:

(a) Wyandotte, with the third largest market share, and the last remaining independent firm, has been eliminated as a separate, independent competitor;

(b) Holderbank has substantially enhanced its competitive position by acquiring the Wyandotte trade name and its sales organization;

(c) Concentration has been substantially increased and Holderbank's share of the relevant market has more than doubled;

(d) Actual and potential competition between Holderbank's Dundee subsidiary and Wyandotte and between Wyandotte and other cement producers has been eliminated;

(e) Purchasers of portland cement for use in the production of ready-mixed concrete and in other products and materials have been deprived of a substantial and independent source of supply; and

(f) Entry of new competitors may be inhibited or prevented.

IX. VIOLATION CHARGED

38. The acquisition of Wyandotte's Cement Division by Holderbank, through its St. Lawrence and Cement subsidiaries, constitutes a violation of Section 7 of the Clayton Act (U.S.C. Title 15, Section 18) as amended, and Section 5 of the Federal Trade Commission Act (U.S.C. Title 15 Section 45).

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereto with violation of Section 7 of the Clayton Act, as amended, and Section 5 of the Federal Trade Commission Act, 15 U.S.C. 18, 45, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's rules; and

The Commission having thereafter given careful consideration to the executed consent agreement and having determined that the relief provided by the order contained therein is adequate and appropriate in all respects to dispose of this matter, and having thereupon provisionally accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, and having duly considered the comments filed thereafter pursuant to Section 2.34(b) of its rules, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent, Holderbank Financiere Glaris S.A. is a holding company organized and existing under the laws of Switzerland and has its principal office located in the town of Holderbank, Canton of Aargau, Switzerland.
2. Respondent, St. Lawrence Cement Co. is a corporation organized and existing under the laws of the province of Quebec, Canada, with its principal office located at 50 Place Cremazie West, Suite 1024, Montreal 351 P.Q., Canada.
3. Respondent, Dundee Cement Company is a corporation organized and existing under the laws of the State of Delaware, with its principal office located at Dundee, Michigan.
4. Respondent, Wyandotte Cement Incorporated is a corporation organized and existing under the laws of the State of

Michigan, with its principal place of business located at 3505 Biddle Avenue, Wyandotte, Michigan.

5. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

I.

It is ordered, That respondents, Holderbank Financiere Glaris S.A., ("Holderbank"), St. Lawrence Cement Co. ("St. Lawrence") and Wyandotte Cement Incorporated ("Wyandotte"), corporations, their successors and assigns, and their officers, directors, agents, representatives and employees, shall, on or before December 31, 1973, divest themselves absolutely, in good faith, and as a unit, of all right, title and interest in all assets, properties, rights and privileges, tangible and intangible, including but not limited to, all properties, plants, machinery, equipment, raw material reserves, trade names, contract rights, trademarks, and good will, acquired by respondent as a result of their acquisition of the assets of the Cement Division of BASF Wyandotte Corporation and now operated as Wyandotte Cement Incorporated, together with all plants, machinery, buildings, storage terminals, land, raw material reserves, improvements, equipment and other property of whatever description that have been added to the former Cement Division of BASF Wyandotte as may be necessary to restore the former Cement Division of BASF Wyandotte, as a going concern and an effective competitor in the manufacture and sale of portland cement.

II.

It is further ordered, That divestiture in accordance with the "Agreement" annexed hereto dated November 1, 1972, by and between St. Lawrence, Wyandotte and Edward H. Bovich together with Exhibit A ("Promissory Note") and Exhibit B ("Agreement For Purchase of Clinker") be and hereby is approved as one acceptable but not exclusive method of compliance with Paragraph I requiring divestiture by Holderbank, St. Lawrence and Wyandotte.

III.

It is further ordered, That the "Agreement" and Exhibits A and B annexed thereto shall not be altered in any material respect without the prior approval of the Federal Trade Commission and that St. Lawrence and Wyandotte shall submit a detailed written report to the Commission within ten (10) days

of, (1) actual divestiture under the terms of the "Agreement" or, (2) any actual or indicated failure on the part of Edward H. Bovich, St. Lawrence and Wyandotte to consummate the "Agreement" in accordance with its terms.

IV.

It is further ordered, That if default by Edward H. Bovich occurs under Exhibit A ("Promissory Note") to the "Agreement" annexed hereto, or for any other reason respondents regain direct or indirect ownership or control of any of the divested assets as set forth in Paragraph I, said ownership or control shall be redvested, subject to approval of the Federal Trade Commission, within six (6) months from the date of reacquisition.

V.

It is further ordered, That in the event divestiture is not accomplished in accordance with the "Agreement" and Exhibits A and B annexed hereto that respondents within thirty (30) days from the date of notice required by Paragraph III of this order and every sixty (60) days thereafter until they have fully complied with the divestiture provision of this order, shall submit in writing to the Commission a report setting forth in detail the manner and form in which it intends to comply with this order. All compliance reports shall include, among other things which may from time to time be required, a summary of all contacts and negotiations with all persons who are contacted by or who express to respondent a possible interest in acquiring ownership or control over the assets, properties, rights or privileges to be divested under this order, the identity of all such persons, copies of any proposed or executed sales contracts, copies of any internal corporate documents discussing such divestiture, and copies of all written communications from and to such potential purchasers.

VI.

It is further ordered, That pending divestiture neither Holderbank, St. Lawrence nor Wyandotte shall make any changes in any of the plants, machinery, storage terminals, buildings, equipment or other property of whatever description of the former Cement Division of BASF which shall impair its present rated capacity for the production, sale and distribution of portland cement, or the market value of such facilities, unless such capacity or value is restored prior to divestiture.

VII.

It is further ordered, That respondents shall notify the Commission at least thirty (30) days prior to any proposed change which may affect compliance obligations arising out of this order, such as dissolution, assignment or sale resulting in the emergence of a corporate successor, and that this order shall be binding on any such successor

VIII.

It is further ordered, That the complaint is dismissed as to respondent Dundee Cement Company.

AGREEMENT

AGREEMENT dated as of November 1, 1972 among ST. LAWRENCE CEMENT CO., a Quebec corporation ("St. Lawrence"), WYANDOTTE CEMENT INCORPORATED, a Michigan corporation ("Wyandotte"), and EDWARD H. BOVICH ("Bovich").

WITNESSETH:

WHEREAS on January 16, 1971 St. Lawrence acquired from BASF Wyandotte Corporation ("BASF") the plant and equipment of the Cement Division of BASF employed in the manufacturing, distributing and selling of Portland cement, all as described in an Agreement dated January 16, 1971 among BASF, St. Lawrence and Wyandotte which was organized by St. Lawrence and is wholly owned by it, a true copy of such Agreement and the several exhibits thereto ("BASF Agreement") having been delivered to Bovich; and

WHEREAS in accordance with the provisions of the BASF Agreement St. Lawrence contemporaneously obtained a lease of the real estate on which the plant and equipment were located at a nominal rental and subject to termination by BASF in the event that the acquired properties were no longer employed in the operation of a Portland cement plant; and

WHEREAS under date of May 10, 1972 the Federal Trade Commission ("FTC") notified St. Lawrence of its determination to institute a formal proceeding looking to the divestiture by St. Lawrence of the above described business, assets and leasehold (herein, together with all subsequent additions and improvements, being called "the Wyandotte Assets"); and

WHEREAS the Wayne County Department of Health notified St. Lawrence and Wyandotte that the continued operation of the clinker grinding facilities would not be permitted after December 31, 1972 unless adequate measures were taken to eliminate air pollution alleged to constitute violations of the Environmental Protection Act of 1970 of the State of Michigan and, in response to such notification, Wyandotte initiated and is in the process of completing the installation of anti-pollution equipment at a cost estimated to be in excess of \$700,000; and

WHEREAS by reason of the threatened FTC proceeding St. Lawrence is prepared to effect a divestiture of the Wyandotte Assets to Bovich on the terms and conditions set forth in this Agreement; and

WHEREAS Bovich desires to acquire as at December 31, 1973 the Wyandotte Assets on the terms and conditions of this Agreement provided that the air pollution complaints of the Wayne County Department of Health and any other similar public or private complaint shall have been satisfactorily met prior to such date;

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the parties hereto agree as follows:

1. St. Lawrence will sell, assign and transfer as of the close of business on December 31, 1973 ("the Closing Date") to a new corporation ("Purchaser") to be organized by Bovich the plant and equipment included in the Wyandotte Assets by an instrument in substantially the form annexed as Exhibit B to the BASF Agreement, the leasehold and the exclusive right to the use of the name "Wyandotte Cement Incorporated" in consideration of (i) the issuance and delivery by Purchaser to St. Lawrence of a promissory note in the form annexed hereto as Exhibit A, (ii) the execution and delivery by Purchaser of a recordable mortgage to secure such note covering all buildings and fixtures included in the Wyandotte Assets and all subsequent additions thereto and improvements thereof and (iii) the execution and delivery by Purchaser of an appropriate security agreement and related Financing Statement.

2. St. Lawrence and Wyandotte will sell, assign and transfer to Purchaser all inventories of raw materials, finished goods, spare parts and miscellaneous supplies in the possession of Wyandotte on the Closing Date by an instrument in substantially the form annexed as Exhibit C to the BASF Agreement in consideration of an undertaking on the part of Purchaser to pay to St. Lawrence (i) on May 1, 1974 for the clinker inventory as at December 31, 1973 an amount equal to of the net selling price of Portland cement realized by Wyandotte in the calendar year 1973,* (ii) on March 1, 1974 for the Portland cement inventory as at December 31, 1973 an amount equal to the inventory price for clinker asset forth above plus the actual average cost of converting clinker into Portland cement incurred by Wyandotte in 1973 in accordance with present accounting practices of Wyandotte which include all costs of grinding and of materials added in the grinding process and (iii) on March 31, 1974 for the spare parts and miscellaneous supplies an amount equal to the total amount, if any, by which their aggregate book value as at December 31, 1973 exceeds \$50,000.

3. St. Lawrence and Wyandotte shall retain all accounts receivable, accounts payable, insurance policies, debts, liabilities or obligations of Wyandotte generated pursuant to its business, all of such being for the account of Wyandotte as of the Closing Date. All accounts receivable and accounts payable generated by Purchaser in operating the Wyandotte Assets or carrying on the business on and after the Closing Date shall be for the account of Purchaser. Accounts payable arising pursuant to open purchase orders issued by St. Lawrence or Wyandotte prior to the Closing Date but where delivery occurs on or after the Closing Date shall be for the account of Purchaser. Purchaser shall use its best efforts to collect the accounts receivable retained by Wyandotte on the Closing Date and shall promptly remit to St. Lawrence, P.O. Box 520, Mississauga, Ontario, Canada, all payments in respect of such accounts receivable. Purchaser shall advise Wyandotte of any actual or prospective default on the part of any debtor.

4. St. Lawrence will execute and deliver to Purchaser and Bovich will cause Purchaser to execute and deliver to St. Lawrence an agreement for the sale by St. Lawrence and the purchase by Purchaser of clinker in substantially the form annexed hereto as Exhibit B. Bovich may terminate his obligation hereunder by giving St. Lawrence written notice of such election not later than June 30, 1973.

5. In the event that (i) the anti-pollution equipment installed by Wyandotte

*plus freight and canal charges from Mississauga, Ontario to Wyandotte, Michigan

is determined by the appropriate authorities to be inadequate to accomplish the intended purpose or (ii) notwithstanding approval by the appropriate authorities of such anti-pollution equipment, court action has been threatened or instituted by a private citizen for declaratory or equitable relief under the Environmental Protection Act of 1970 of the State of Michigan, and neither St. Lawrence nor Bovich is willing to assume the responsibility of defending any such action or incurring any resulting liability or the cost of such additional equipment as would appear to be required to satisfy the appropriate public or any private complainant, St. Lawrence may terminate this Agreement by written notice to Bovich not later than July 31, 1973.

6. Wyandotte shall, until the Closing Date, continue to operate its business in the usual and ordinary course and shall use its best efforts to preserve such business and to preserve for Purchaser the relationships of Wyandotte with suppliers and customers having business with Wyandotte, except for any cause not within the reasonable control of Wyandotte. Prior to the Closing Date neither St. Lawrence nor Wyandotte shall make any changes in any of the plant or equipment which shall substantially impair the present rated capacity for the manufacturing, distributing and selling of Portland cement, or the market value of such facilities, unless such capacity or value shall have been restored prior to the Closing Date.

7. Purchaser shall be entitled to all of the continuing rights and benefits and shall assume all of the continuing obligations of St. Lawrence and Wyandotte under the BASF Agreement except for the promissory notes issued by St. Lawrence to BASF which St. Lawrence agrees to pay on their respective maturity dates.

8. Purchaser shall, until the payment in full of the principal of and interest on its promissory note, continue to operate its business in the usual and ordinary course except for any cause not within the reasonable control of Purchaser.

9. The obligations of St. Lawrence and Wyandotte hereunder shall be subject to the following conditions:

(i) St. Lawrence shall have obtained the consent of BASF to the proposed transaction as required by the terms of the BASF Agreement.

(ii) St. Lawrence shall have received from Messrs. Tolleson, Burgess and Mead, counsel for Bovich and Purchaser, an opinion to the effect that Purchaser has been duly organized and exists, in good standing, under the laws of the State of Michigan and that all necessary corporate action to consummate this Agreement has been taken by Purchaser.

10. The obligations of Bovich under this Agreement shall be subject to the following conditions:

(i) The anti-pollution complaints of the Wayne County Department of Health and any other complaint or complaints under the Environmental Protection Act of 1970 of the State of Michigan shall have been adequately met or St. Lawrence shall have assumed responsibility for the satisfaction of any and all of such complaints by a written instrument in form and substance satisfactory to Bovich and his counsel.

(ii) There shall have been no material destruction of or damage to the plant or equipment which shall not have been remedied prior to the Closing Date, whether or not any resulting loss shall be insured.

(iii) All covenants on the part of St. Lawrence and Wyandotte to be performed on and prior to the Closing Date shall have been duly fulfilled.

(iv) Bovich shall have received an opinion of Messrs. Milbank, Tweed, Hadley & McCloy, counsel for St. Lawrence and Wyandotte, to the effect

that St. Lawrence is a corporation duly organized and validly existing, in good standing, under the laws of Canada, Wyandotte is a corporation duly organized and validly existing, in good standing, under the laws of the State of Michigan and all necessary corporate action on the part of St. Lawrence and Wyandotte to consummate this Agreement has been duly taken.

11. St. Lawrence and Wyandotte will at any time and from time to time after the Closing Date, at the request of Purchaser, execute and deliver all such further deeds, assignments and assurances as may be required for the better assigning, transferring and confirming to Purchaser any or all of the assets or property to be sold, assigned and transferred to Purchaser as provided herein. Bovich will and will cause Purchaser to, at any time and from time to time after the closing date at the request of St. Lawrence, execute and deliver all such further instruments as may be required for the better assuring of the security for Purchaser's promissory note.

12. This Agreement shall not be assignable by Purchaser without the prior written consent of St. Lawrence.

13. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Michigan.

IN WITNESS WHEREOF Bovich has executed this Agreement and St. Lawrence and Wyandotte have caused this Agreement to be executed by their respective officers thereunto duly authorized.

/s/ Edward H. Bovich
Edward H. Bovich

ST. LAWRENCE CEMENT CO.

/s/ By
President

WYANDOTTE CEMENT INCORPORATED

/s/ By
Vice President

EXHIBIT A

December 31, 1972

PROMISSORY NOTE

\$2,500,000

WYANDOTTE CEMENT INCORPORATED, a Michigan corporation (herein called the "*Company*"), for value received, hereby promises to pay to the order of ST. LAWRENCE CEMENT CO., a Quebec corporation (herein called the "*Payee*"), at P.O. Box 520, Mississauga, Ontario, Canada, the principal sum of Two Million Five Hundred Thousand United States Dollars (\$2,500,000), in five consecutive annual installments whereof each of the first four installments shall be in the amount of Two Hundred Fifty Thousand Dollars (\$250,000) and payable on the 31st day of December commencing December 31, 1974 and whereof the fifth and final installment shall be in the amount of One Million Five Hundred Thousand Dollars (\$1,500,000) and payable on December 31, 1978, and to pay interest on the unpaid amount of each installment from the date hereof, in like money on the last day of each March, June, September and December, commencing March 31, 1974, at the rate of eight and one-half percent (8 1/2%) per annum (computed on the basis of a year of 365 days).

The Company shall have the right, on not less than five days' prior written notice to the Payee, to prepay without penalty or premium at any time all or, from time to time, part of the principal of this Note. On each prepayment, the Company shall pay interest accrued on the principal amount so prepaid to the date of such prepayment.

If any payment to be made hereunder shall become due on a Saturday, Sunday or business holiday under the laws of the State of Michigan, such payment shall be made on the next succeeding business day and such extension of time shall be included in computing any interest in respect of such payment.

If any of the following events of default shall occur and shall not have been remedied:

A. the Company shall default in the payment of the principal hereof when due and payable or in the payment for 30 days of any installment of interest hereon; or

B. the Company shall (1) apply for or consent to the appointment of a receiver, trustee or liquidator of the Company or of all or a substantial part of the assets of the Company, (2) be adjudicated a bankrupt or insolvent or (3) file a voluntary petition in bankruptcy or a petition or an answer seeking reorganization or an arrangement with creditors or to take advantage of any insolvency law or an answer admitting the material allegations of a petition filed against the Company in any bankruptcy, reorganization or insolvency proceeding, or corporate action shall be taken by the Company for the purpose of effecting any of the foregoing; or

C. an order, judgment or decree shall be entered, without the application, approval or consent of the Company, by any court of competent jurisdiction, approving a petition seeking reorganization of the Company or appointing a receiver, trustee or liquidator of the Company or of all or a substantial part of its assets, and such order, judgment or decree shall continue unstayed and in effect for any period of 60 consecutive days;

the Payee or other holder of this Note may, by written notice to the Company, declare the principal of and accrued interest on this Note to be forthwith due and payable.

This Note shall be governed by, and construed in accordance with, the laws of the State of Michigan.

WYANDOTTE CEMENT INCORPORATED

By _____
President

EXHIBIT B

AGREEMENT dated December 31, 1973 between ST. LAWRENCE CEMENT CO., a Quebec corporation ("St. Lawrence"), and WYANDOTTE CEMENT INCORPORATED, a Michigan corporation ("Purchaser").

WITNESSETH:

In consideration of the mutual covenants of the parties hereto, St. Lawrence agrees to sell and Purchaser agrees to purchase Portland cement clinker ("clinker") in accordance with the following terms and conditions:

1. *Product, Quantity and Quality*

A. The product to be produced and sold by St. Lawrence and purchased by Purchaser is clinker produced in strict compliance with ASTM Specification C-150 and which shall have the following additional characteristics:

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C ₃ S	58.0%	minimum
Total alkali as Na ₂ O	0.85%	maximum
Free lime	1.0%	maximum
Ignition loss	0.75%	maximum
Fe ₂ O ₃	3.0%	maximum

Purchaser may upon not less than 30 days written notice to St. Lawrence specify that the alkali content of the clinker to be shipped by St. Lawrence in not more than two lake freighters in any calendar year shall not be greater than a percentage less than 0.85 but not less than 0.60, in which event the base an minimum prices per ton specified in Paragraph 5 hereof shall be increased by 3.6¢ for each 0.01% of alkali content below 0.85%.

The clinker sold by St. Lawrence to Purchaser hereunder shall be guaranteed by St. Lawrence to be in compliance with the foregoing specifications at point of loading on a lake freighter at Mississauga, Ontario.

B. The maximum annual quantity of clinker that St. Lawrence shall be obligated to sell and deliver to Purchaser by water transportation only shall be 300,000 tons (of 2,000 lbs. each) and Purchaser shall be obligated to purchase all of its requirements for clinker up to such amount. At Purchaser's request and with St. Lawrence's consent, the maximum annual quantity of clinker may be increased.

C. Purchaser shall furnish an estimate of its annual requirements for clinker to be filled by St. Lawrence each year on or before the 30th day of September prior to the year to which the estimate pertains. The estimate shall state the annual requirements in monthly amounts during the Great Lakes navigation season (normally April 1 to December 10). The quantity estimated for delivery monthly may be adjusted, provided that St. Lawrence is notified in writing by Purchaser at least 15 days prior to the beginning of the month for which an adjustment is desired.

D. Measurement of the quantity of clinker delivered shall be made by Government approved belt scale at Mississauga, Ontario, or, in exceptional cases only, by boat draft subject to verification by Purchaser.

E. To assure steady deliveries adequate to meet Purchaser's requirements hereunder, St. Lawrence shall maintain an adequate supply of clinker.

2. Analysis and Certification

A. Representative samples of clinker produced by St. Lawrence shall be taken and analyzed either daily or in lots of 1,000 tons or less to determine whether the clinker meets the specifications set out above. St. Lawrence shall submit the analysis to Purchaser so that the analysis is received by the superintendent of Purchaser's plant prior to unloading each of St. Lawrence's shipments. Each submission of analyses shall be certified in a written statement by St. Lawrence that the clinker meets all of the specifications set out above.

B. Quality control procedures and test methods to determine whether the clinker meets the specifications shall be mutually agreed upon and set forth in a manual for use by the quality control laboratories of each of the parties hereto. In the event of a dispute between the parties as to whether or not any analysis reflects that the clinker is in compliance with the specifications, the matter shall be referred to an impartial professional testing laboratory for resolution, and the parties hereto will share equally the expense of any such testing laboratory work. The decision of such testing laboratory shall be binding on the parties hereto for the purposes of this agreement. St. Lawrence and Purchaser shall each be afforded access to the clinker to which a dispute

in analytical results pertains at the time that any such impartial professional testing laboratory takes samples for resolution of the dispute.

3. *Demurrage*

Should St. Lawrence order or cause a delay in the loading of a lake freighter made available by Purchaser, the resultant demurrage shall be paid by St. Lawrence.

4. *Pollution Control*

With regard to dust emission attendant upon the loading operation, St. Lawrence and Purchaser will each take due precautions in order to comply with the requirements of the Ontario Air Pollution Act in those phases under their respective control (or in Purchaser's case, under the control of the lake freighters furnished by it).

5. *Base and Minimum Prices*

The price for clinker f.o.b. shiphold at Mississauga, Ontario, net of any sales or use or other taxes imposed by any authority shall be of the net selling price of Portland cement realized by Purchaser. Net selling price shall be defined as an invoiced price to customer net of any sales or use or other taxes imposed by any taxing authority and less cash and competitive discounts and freight to customer; provided, however, that St. Lawrence shall not be obligated to make any sales to Purchaser at a price of less than f.o.b. shipload at Mississauga, Ontario.

6. *Terms of Payment*

Invoices submitted by St. Lawrence to Purchaser shall be expressed in United States dollars per ton and payments by Purchaser shall be made to St. Lawrence, P. O. Box 520, Mississauga, Ontario, Canada within 30 days after the date of the invoice.

7. *Term of Agreement*

The term of this Agreement shall be three years commencing January 1, 1974 and ending December 31, 1976; provided, however, that Purchaser may extend the term of this Agreement for an additional two years ending December 31, 1978 by giving St. Lawrence written notice of such election not later than January 1, 1975.

8. *Inventory*

St. Lawrence shall upon Purchaser's request exert every reasonable effort to deliver a sufficient quantity of clinker over and above Purchaser's current requirements to maintain an inventory of not less than 15,000 tons as a safeguard against the possibility of interruption or delay in regular shipments by St. Lawrence to Purchaser.

9. *Force Majeure*

Failure of St. Lawrence to make or Purchaser to take any one or more deliveries when due if caused by fire, storms, floods, strikes, lockouts, accidents, war, riots, or civil commotions, inability to obtain ships or raw materials, embargoes, any federal, provincial, or state regulation, law restriction or order, seizure or requisition of the product specified in this Agreement by either the governments of Canada or the United States or of any Province or State thereof or of any agency thereof, or by reason of any compliance with a demand or request for such product for any purpose for national defence or any other cause or contingency beyond the reasonable control of the party affected (whether or not of the same kind or nature as the foregoing causes or contingencies), shall not subject the party so failing to any liability to the other.

10. *Assignability*

This Agreement shall bind and enure to the benefit of the successors and

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assigns of the respective parties hereto. This Agreement shall not be assignable by either party without the prior written consent of the other party; provided, however, that this Agreement may be assigned or transferred by either party without the prior written consent of the other party in the event of the merger or consolidation of such party with or into a corporation that shall agree in writing to assume all of the responsibilities and obligations imposed by this Agreement.

11. This Agreement shall be interpreted according to the laws of the Province of Ontario; should any dispute of any kind arise in connection with this Agreement, including but not restricting the generality of the foregoing, any question in respect to the interpretation, validity, termination or non-termination of this Agreement, the parties agree to submit to the jurisdiction of the courts of the Province of Ontario exclusively.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized.

ST. LAWRENCE CEMENT CO.

By _____

President

WYANDOTTE CEMENT INCORPORATED

By _____

President

IN THE MATTER OF